



WASHINGTON TAX BRIEF

October 26, 2022



Today's Speakers

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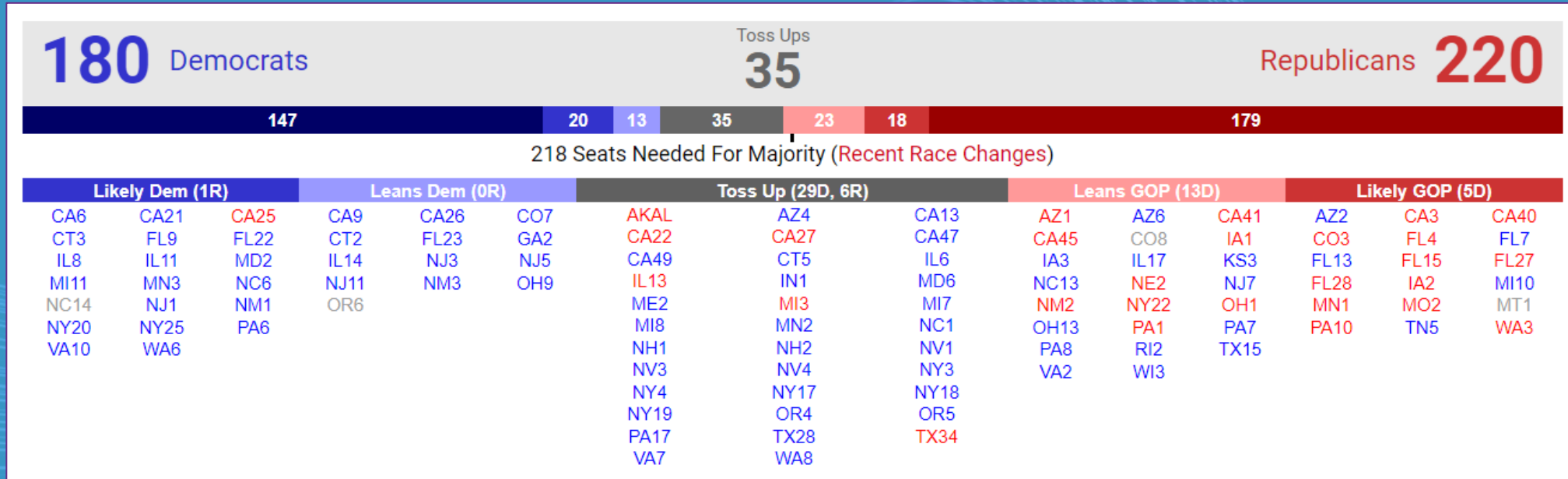
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STATEMENTS ON
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LEGISLATIVE
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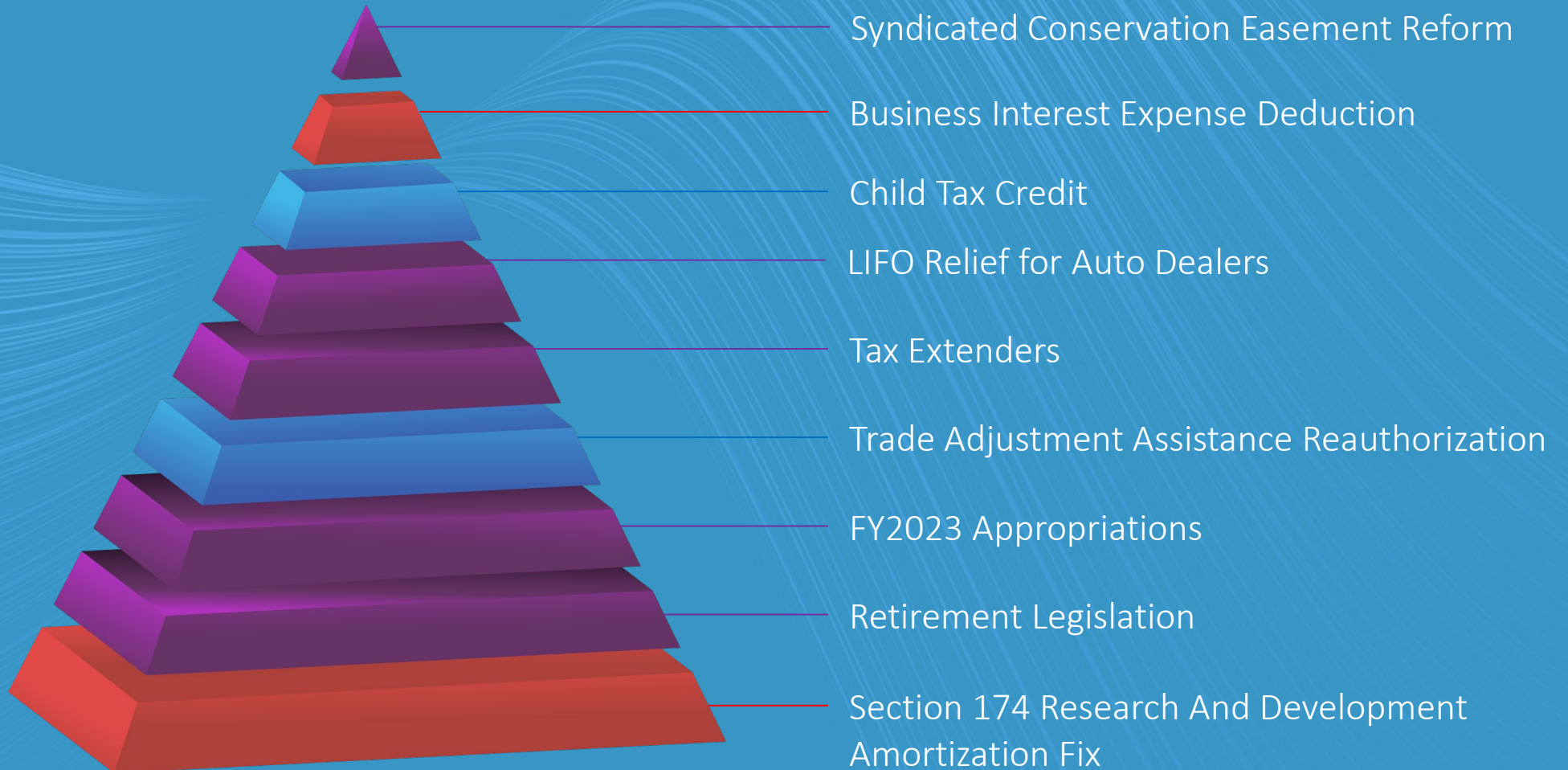
Lame Duck Session of Congress

Starts 11-9-2022





The Optimistic Case: Piecing Together a Year-End Deal





AICPA™

The Pessimistic Case: How a Lame Duck Bill Falls Apart

- Those Post-Inflation Reduction Act Feelings
- Will November Election Results Be Decided by Lame Duck Session?
- Who Are The New Majorities?
- Did Democrats Already Get What They Needed?





ADVOCATING
FOR MEMBER
PRIORITIES



Employee Retention Credit

Good Day,

Hope you had a great weekend! It looks like someone from our team reached out a few weeks ago about the Employee Retention Credit(ERC). Just to confirm, as long as you had 3+ W-2 employees during 2020 and 2021(not including yourself), you ABSOLUTELY are eligible for the ERC.

We never heard back from you and wanted to see what you wanted to do about the ERC money owed to you from the IRS Covid Relief Program. Do you want to proceed or do you prefer we don't contact you again?

Just remember this is a refund on your payroll wages, NOT a loan. Average business gets back over \$50k.

Thank you for your consideration,



Employee Retention Credit: Action

AICPA's continued advocacy aimed at educating the IRS and Treasury on the unscrupulous business practices of ERC mills, and urging action has resulted in:

- Special processing of Forms 941-X > certain dollar amount
- Audits of Forms 941 and 941-X
- Public acknowledgement, communication and vehicle to report illegal ERC activities



Employers warned to beware of third parties promoting improper Employee Retention Credit claims

Issue Number: IR-2022-183

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

How to Report Bad Actors



Employers warned to beware of third parties promoting improper Employee Retention Credit claims

Issue Number: [IR-2022-183](#)

To report tax-related illegal activities relating to ERC claims, submit [Form 3949-A, Information Referral](#).

Also report instances of fraud and IRS-related phishing attempts to the [Treasury Inspector General for Tax Administration](#) at [800-366-4484](#).

Employee Retention Credit

While the ERC is an opportunity to consider for your business, the eligibility rules and credit calculations are complex with significant consequences if done improperly.

ERC Resource Library

- Chart — [ERC: Fact or Fiction?](#)
- Guidance — [ERC FAQs](#)
- Podcast — [Reconciling ERC claims with reality](#)

Employee retention credit: Fact or fiction?

Given COVID-19's wide-reaching effects, many small businesses will qualify for an employee retention credit (ERC).

FICTION. Determining whether a business is eligible for the ERC can be pretty complex. Your business must meet the gross receipts test (50% or more reduction for 2020 or a 20% or more decline for 2021 qualifying quarters when compared to 2019 quarters) or experience a full or partial suspension of operations because of a government order. Whether a business experienced a partial suspension is a facts and circumstances determination and will vary depending on the location of the business and the government orders.

My business did not have a significant revenue decline in a calendar quarter compared to 2019 (50% or more for 2020 or 20% or more for 2021), but I can still qualify for an ERC.

FACT. However, as noted above, there must have been a full or partial suspension of operations BECAUSE OF A GOVERNMENT ORDER that limited commerce, travel or group meetings due to COVID-19. A partial suspension is based on the facts and circumstances of what government orders are in place for the location. The orders would need to have a more than a nominal impact on the business to qualify for the ERC.



Required Minimum Distributions

SECURE Act

- Eliminated “stretch” RMDs effective after 2019

Proposed Regs.

- RMDs for Designated Beneficiaries when Death Occurs *Before* the RBD
 - Payments must be made within 10 years of death
 - No annual payments required
- RMDs for Designated Beneficiaries when Death Occurs *After* the RBD
 - Payments must be made within 10 years of death
 - Annual payments required if not an Eligible Designated Beneficiary

IRS Notice 2022-53

- RMD transition rule: pushed start date back to “no earlier than 2023”

AICPA to IRS: Eliminate Annual Payment Requirement

Schedules K-2 & K-3

Details

- The Schedules are required if there are “relevant international items.”
- IRS guidance does not define “relevance.”
- Required information includes sourcing of income, deductions, foreign taxes paid or accrued, and international information required by TCJA.

Filing Issues for 2021

- Lack of *de minimis* rules and clear definition of relevance resulted in broad applicability.
- Complexity and transitional challenges; many professionals were not familiar with many of the technical rules required to complete the schedules.
- Software providers had difficulty implementing the new rules, with some still catching up.
- Difficulty in obtaining the identity and type of partners, especially in tiered partnership structures.

Schedules K-2 & K-3: Developments

2021

- FAQ 15 provided transitional relief for the 2021 tax year only, to provide an exception from filing Schedules K-2 and K-3 for certain passthrough entities that met specific conditions
- Exception was allowed for certain U.S. entities with no foreign activities or foreign partners/shareholders

2022

- IRS issued draft Schedules K-2 and K-3 for 2022 tax returns
- Draft instructions not yet issued
- Minor changes to the 2022 draft forms from the 2021 year
- Additional relief for taxpayers that would streamline compliance and provide exceptions from filing may be provided in the instructions

Schedules K-2 & K-3 : AICPA Advocacy

- Provide broader exceptions for filing Schedules K-2 and K-3
- Make permanent the 2021 tentative exemption from filing Schedules K-2 and K-3 for certain domestic partnerships
- Reduce compliance burden required for foreign tax credit and limit to significant and relevant information
- Provide *de minimis* rule for certain information requirements





IRS Schedules K-2 and K-3 guidance and resources

Access resources to advise clients on IRS Schedules K-2 and K-3, which are used to report items of international tax relevance from the operations of pass-through entities.

- Client information letter
- K-2/K-3 — Making sense of new international passthrough reporting | Tax Section Odyssey
- Transitional challenges for Schedules K-2 and K-3 | Tax Section Odyssey
- AICPA advocacy
- IRS guidance

www.aicpa.org/resources/toolkit/irs-schedules-k-2-and-k-3-guidance-and-resources



Virtual Currency/Digital Assets AICPA Tax Advocacy Efforts

- AICPA submitted comments need guidance on Form 1040 virtual currency question and instructions (8/29/22), draft 2022 Form 1040
- AICPA drafted comments on section 6045 and section 6050I guidance needed
- AICPA drafting comments on IRS guidance needed on:
 - Staking rewards and transition from Proof of Work to Proof of Stake
 - Taxation of Non-Fungible Tokens (NFTs)
 - How to transfer virtual currency for a valid gift
 - Abandonment and worthlessness losses
 - Lending virtual currency
 - Prior AICPA recommendations and additional issues



August 29, 2022

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

Mr. William M. Paul
Principal Deputy Chief Counsel
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

Re: **Comments on Virtual Currency Question on the Form 1040 and Instructions**

Dear Commissioner Rettig and Principal Deputy Chief Counsel Paul:

The American Institute of CPAs (AICPA) appreciates the opportunity to submit comments on the virtual currency question¹ on the [2021 Form 1040, U.S. Individual Income Tax Return and instructions](#) (and its variations including the 2021 [1040-SR, U.S. Tax Return for Seniors](#), and 1040-NR, *U.S. Nonresident Alien Income Tax Return*) and [draft 2022 Form 1040](#) (as of July 27, 2022).² We offer these comments with the hope that the question can be clarified before the 2022 forms are finalized in order to provide greater certainty to taxpayers and their preparers in confidently and properly complying with the question and overall reporting requirements for virtual currency.

The AICPA recommends that the Department of the Treasury ("Treasury") and the Internal Revenue Service (IRS) clarify the virtual currency question on the first page of the Form 1040 and its instructions. We make the below recommendations now to be considered for the finalized 2022 Form 1040 and other variations of Form 1040.

1. Clarify the meaning of virtual currency.
2. Do not ask about "digital assets" until this term has been defined in final regulations under section 6045.³
3. Modify the virtual currency question for simplicity and clarity.
4. Include additional elements into the Form 1040 instructions for the virtual currency question.
5. Explain if a taxpayer needs to answer "yes" if a dependent had a virtual currency event but does not have a filing requirement.

¹ The AICPA has previously provided comments on virtual currency taxation matters including on the Form 1040 question. See "[Comments on Notice 2014-21, Virtual Currency Guidance](#)," June 10, 2014; "[Updated Comments on Notice 2014-21, Virtual Currency Guidance](#)," May 30, 2018; and "[Comments on Revenue Ruling 2019-24, the New Question on Schedule 1 \(Form 1040\), and the Internal Revenue Service's Frequently Asked Questions on Virtual Currency Transactions](#)," February 28, 2020. These comments are in addition to our prior comments.

² Our references to Form 1040 and its instructions in this letter is intended to refer to all variations of Form 1040, such as Form 1040-NR, U.S. Nonresident Alien Income Tax Return, and 1040(SP), U.S. Individual Income Tax Return (Spanish version).

³ Unless otherwise indicated, references to a "section" are to a section of the Internal Revenue Code of 1986, as amended (the "Code"), and references to a "Treas. Reg. §" are to the Treasury regulations promulgated under the Code.



Virtual Currency/Digital Assets – Proposed Federal Legislation

AICPA monitoring and analyzing legislation

[H.R. 7614](#), Digital Commodities Exchange Act of 2022

- Introduced April 2022
- [Bill summary](#)

[S. 4356](#), Responsible Financial Innovation Act (a/k/a Lummis-Gillibrand bill)

- Introduced June 2022,
- [Bill overview](#)

[S. 4760](#), Digital Commodities Consumer Protection Act of 2022

- Introduced August 2022





Virtual Currency/Digital Assets – State Tax Guidance

AICPA SALT TRP

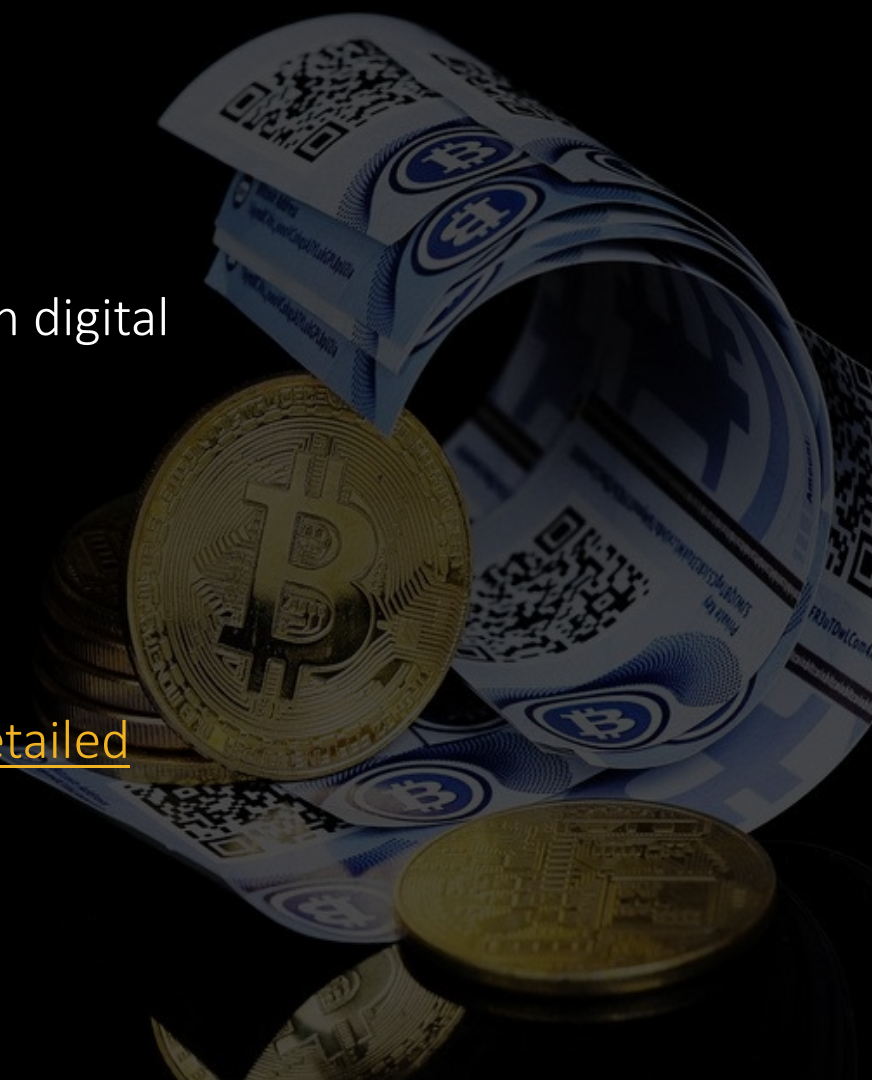
- Developing tracking list of state tax authorities' guidance on digital assets

National Conference of State Legislatures (NCSL)

- [NCSL state tracking chart](#)

[Multistate Tax Commission \(MTC\)](#)

- [MTC Sales Tax on Digital Products Project](#) and MTC [draft detailed outline of white paper \(9/1/22\)](#)





IRS Services: Developments

- Ramping up IRS service levels
 - Notice 2022-36
- Influencing IRS' strategic direction
 - IRS report to Treasury on use of new funds
- IRS to initiate new pilot for PPS line





Failure to File Penalty Relief: IRS Notice 2022-36

- Automatic relief for failure to file penalties
- Applies for broad range of returns for 2019 and 2020 tax years
- Returns must be filed by Sept. 30, 2022
- More relief is needed
 - Extend filing deadline to Dec. 31, 2022
 - Expand scope of forms
 - Include other tax years
- IR 2022-185: Extended for disaster areas



September 8, 2022

The Honorable Lily Batchelder
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Charles P. Rettig
Commissioner of the Internal Revenue Service
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

Mr. William M. Paul
Principal Deputy Chief Counsel
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20044

RE: Notice 2022-36 Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020 and Requested Relief Expansion, Modification, and Clarification

Dear Ms. Batchelder, Mr. Rettig, and Mr. Paul:

On behalf of the American Institute of CPAs (AICPA), we are writing to express our appreciation that the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) issued [Notice 2022-36](#) "Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020," (released August 24, 2022) and the related Internal Revenue Manual (IRM) Procedural Update ([sbse-20-0822-0912](#), dated August 25, 2022). Although we appreciate the relief provided, we have serious concerns about the deadline provided and the scope of relief provided in Notice 2022-36. This letter is in addition to our [August 30, 2022 letter](#), requesting extension of the September 30, 2022 deadline to December 31, 2022.¹

As we stated in our August 30 letter, we are pleased that IRS has provided some measure of COVID-19 related penalty relief for taxpayers. We applaud the unprecedented waiver of the failure to file penalty under section 6651(a)(1).² And we praise the IRS for waiving certain international information reporting penalties under sections 6038, 6038A, 6038C, 6039F and 6677. As the AICPA has been requesting in various letters to IRS and Congress and through our multi-year dialogue with IRS on Form 3520 penalties, the automatic (no taxpayer action needed) limited blanket penalty relief provided will save the IRS resources by eliminating unnecessary penalties and response processing and also by promoting voluntary compliance.³ Additionally, significant taxpayer burden will be reduced by waiving the penalties covered by Notice 2022-36.

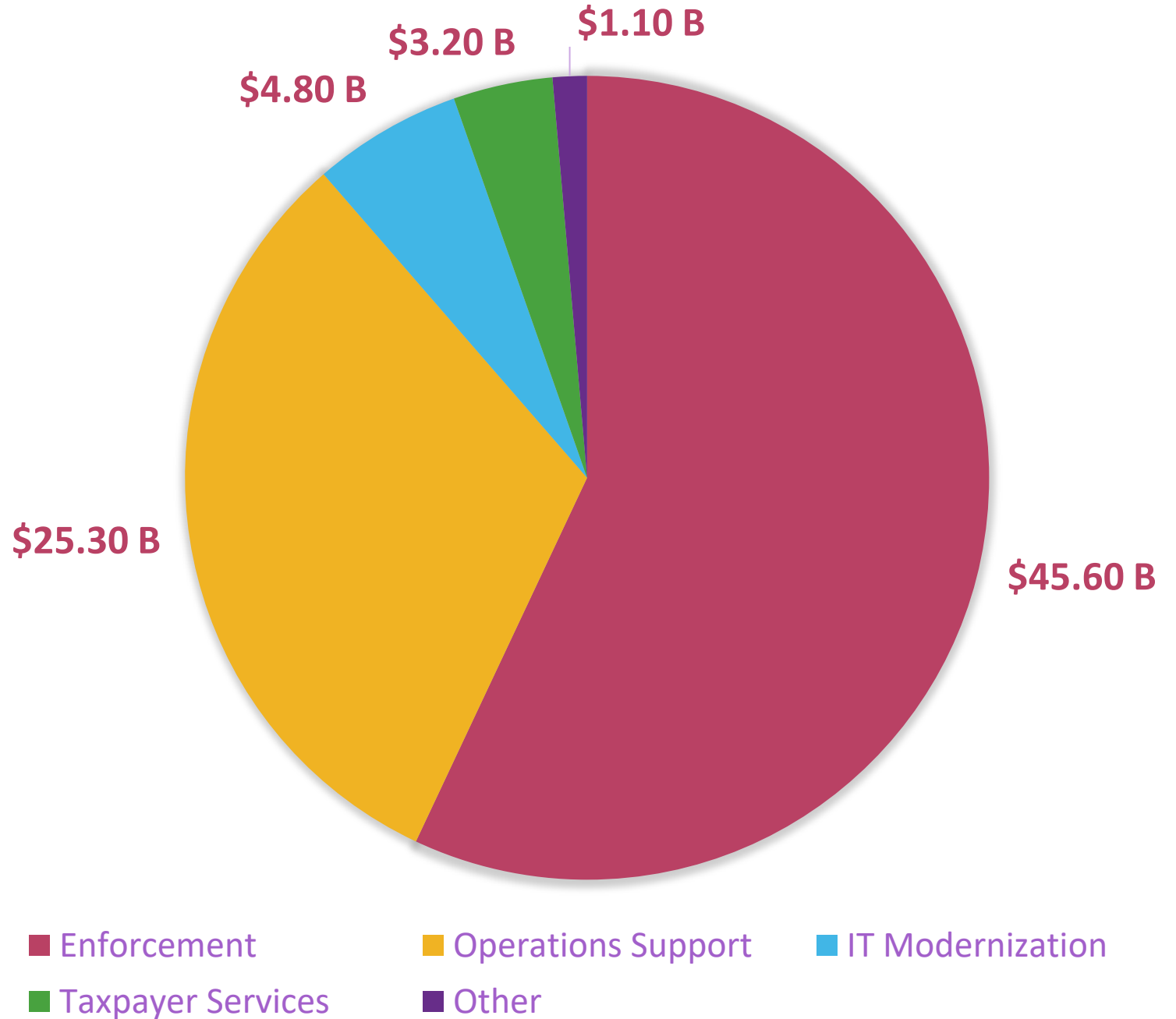
¹ See AICPA Letter, "[Notice 2022-36 Penalty Relief for Certain Taxpayers Filing Returns for Taxable years 2019 and 2020 and Request for Deadline Extension](#)," August 30, 2022.

² Unless otherwise indicated, references to a "section" are to a section of the Internal Revenue Code of 1986, as amended (the "Code"), and references to a "Treas. Reg. §" are to the Treasury regulations promulgated under the Code.

³ See AICPA letters, "[Additional Measures to Address Backlog](#)," July 11, 2022, "[Written Statement for Hearing before U.S. Senate Committee on Finance on Spotlighting IRS Customer Service Challenges](#)," February 17, 2022, "[AICPA](#)



IRA '22 \$80B
appropriations
to IRS



GOP's First Bill Would 'Repeal 87,000 IRS Agents,' McCarthy Says

POSTED ON SEP. 26, 2022

 Print



By

 DOUG SWORD
Contact Author

 JONATHAN CURRY
Contact Author

If Republicans take control of the House in 2023, they will support the addition of 200,000 police officers nationwide, a 50 percent cut in permitting times for energy development, and full funding of border enforcement.

But first, they'll go after the IRS.

"We'll put it out to the entire country: This is what we'll do," House Minority Leader Kevin

03

INFLATION
REDUCTION
ACT



IRA '22 by the numbers

H.R. 5376 is designed to reduce the deficit, invest in domestic energy production, and lower healthcare drug costs.

August 16, 2022

Signed into law

\$737 Billion

Expected to be raised

\$437 Billion

Total investments

10+

AICPA Comment Letters



Major Components

- Corporate alternative minimum tax
- Excise tax on repurchase of corporate stock
- Extending the excess business loss limitation
- Funding the Internal Revenue Service and improving taxpayer compliance
- Clean energy tax credits and incentives
- Prescription drug pricing reform
- Part D improvements and maximum out-of-pocket cap for Medicare beneficiaries

One Hundred Seventeenth Congress of the United States of America

AT THE SECOND SESSION
*Began and held at the City of Washington on Monday,
the third day of January, two thousand and twenty-two*

An Act

Enacted pursuant to title II of S. Con. Res. 14.

As reported by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—COMMITTEE ON FINANCE Subtitle A—Deficit Reduction

SECTION 10001. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

PART 1—CORPORATE TAX REFORM

SEC. 10101. CORPORATE ALTERNATIVE MINIMUM TAX.

(a) IMPOSITION OF TAX.—

(1) IN GENERAL.—Paragraph (2) of [section 55\(b\)](#) is amended to read as follows:

“(2) CORPORATIONS.—

“(A) APPLICABLE CORPORATIONS.—In the case of an applicable corporation, the tentative minimum tax for the taxable year shall be the excess of—

“(i) 15 percent of the adjusted financial statement income for the taxable year (as determined under section 56A), over

“(ii) the corporate AMT foreign tax credit for the taxable year.

“(B) OTHER CORPORATIONS.—In the case of any corporation which is not an applicable corporation, the tentative minimum tax for the taxable year shall be zero.”.

(2) APPLICABLE CORPORATION.—[Section 59](#) is amended by adding at the end the following new subsection:

“(1) APPLICABLE CORPORATION.—For purposes of this part—

(A) APPLICABLE CORPORATION DEFINED.—

“(1) IN GENERAL.—The term ‘applicable corporation’ means, with respect to any taxable year, any corporation (other than an S corporation, a regulated investment company, or a real estate investment trust) which meets the average annual adjusted financial income test of subparagraph (B) for one or more taxable years which—



Analyzing the business changes

- Corporate alternative minimum tax (book AMT)
- 1% excise tax on corporate stock buybacks
- Research & development tax credit for start-up businesses
- Clean energy tax credits and incentives
 - Extending existing tax credits and deductions
 - New tax credits
 - Boosting the new tax credits
 - Direct pay and transferability



Changes impacting individuals

- Limiting an individual taxpayer's deduction of business losses
- Clean energy tax credits
- Prescription drug price reform
- Affordable Care Act (ACA) subsidy extension

PLANNING FOR
TAX
CHANGE

INFLATION REDUCTION ACT

Get the guidance and resources you need to understand how the Inflation Reduction Act affects your tax outlook today and beyond.

- Legislative summary
- Clean energy credits chart
- Energy tax credits and ESG client letter
- Inside look at the Inflation Reduction Act | Tax Section Odyssey
- New IRS funding in the Inflation Reduction Act | Tax Section Odyssey
- Advocacy

<https://www.aicpa.org/topic/tax/tax-policy-and-regulatory-change>



04

STATEMENTS ON
STANDARDS FOR
TAX SERVICES



Revised Statements on Standards for Tax Services

An Exposure Draft and
Invitation to Comment

To keep pace with the evolving tax profession, the updates to the AICPA's Statements on Standards for Tax Services (SSTs) will guide tax practitioners into the future and help them enhance their services and maintain their professional edge.

Learn more about the goals, timeline and FAQs for the proposed revisions and how you can provide input.

[Learn more →](#)



Revised Statements on Standards for Tax Services

An Exposure Draft and
Invitation to Comment

Keeping pace
with the evolving
tax profession.



Revised Statements on Standards for Tax Services (SSTs)

Exposure Draft (ED)

What are
SSTs?

- Enforceable tax practice standards
- Foundation for reputational integrity

Why
update?

- Align to the current state of the tax profession
- Address emerging needs
- Reinforce member reputation

What is
proposed in
ED?

- Reorganize SSTs by type of work performed
- Adopt three new standards related to
 - Data protection
 - Reliance on tools
 - Tax representation



Revised Statements on Standards for Tax Services (SSTs)

Invitation to Comment (ITC)

What is the
ITC ?

- Separate and independent from the ED
- Items that require additional research and investigation

What about
QM?

- A key market differentiator
- Not a “one-size-fits-all” solution
- Thoughts are needed on the concept of quality management

What is the
intent of the
ITC?

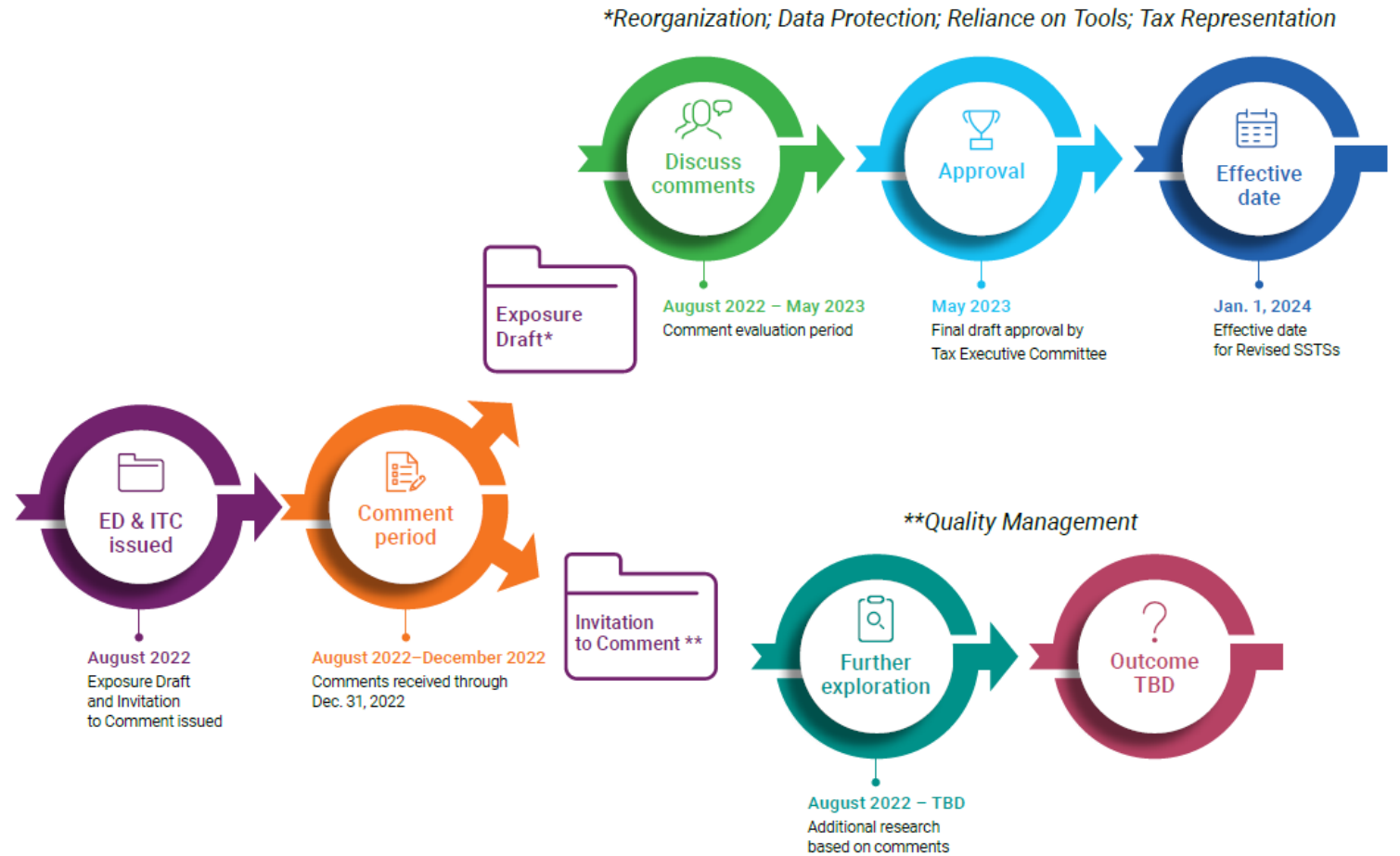
- How to best implement the concept of quality management
- The appropriateness of future modifications to the SSTs or other guidance



Revised Statements on Standards for Tax Services

Exposure Draft and Invitation to Comment

SSTS revision timeline





Revised Statements on Standards for Tax Services (SSTSs)

Comments
requested

- Submit comments via our online form or email comments to SSTScomments@aicpa-cima.com.
- Comment period for the ED and ITC ends on Dec. 31, 2022.
- If adopted, the proposed revision in the ED will be effective Jan. 1, 2024.

Learn more →

HOT TOPICS

- 1 Disaster Relief
- 2 Pass-through Entity (PTE)
State Level Tax
- 3 Remote & Hybrid Workers
- 4 Improving Tax
Practice Resiliency
- 5 Beneficial Ownership
Information Reporting



Q&A





National Tax & Sophisticated Tax Conference

October 31 – November 1
Washington, DC
+ Live online

Get the latest guidance on:

- Inflation Reduction Act
- Taxation of the newest intangible assets
- IRS's new compliance initiatives
- And much, much more

**\$250 off 2-day conference with code: NTA250 +
\$100 discount for Tax Section members**

Register now! aicpa.org/nta



TAX

Section Odyssey

- Reconciling ERC claims with reality
- Inside look at the Inflation Reduction Act
- Q&A on ERC, tax legislation and IRS woes
- State implications with the PTE tax
- Transitional challenges for Schedules K-2 and K-3
- Finalizing tax returns when you don't have all the answers

AICPA Town Hall Series

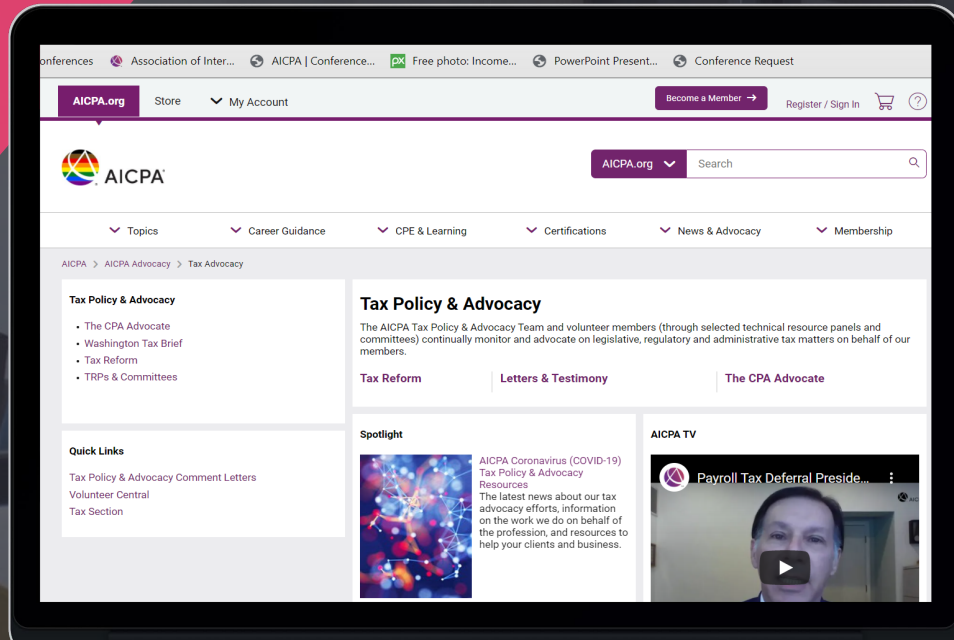
Join our Town Halls for latest news and updates on pressing issues facing the accounting profession.

- Led by AICPA executives Erik Asgeirsson, President & CEO, CPA.com, Lisa Simpson, VP Firm Services, and Sue Coffey, EVP Public Practice
- Free for AICPA members

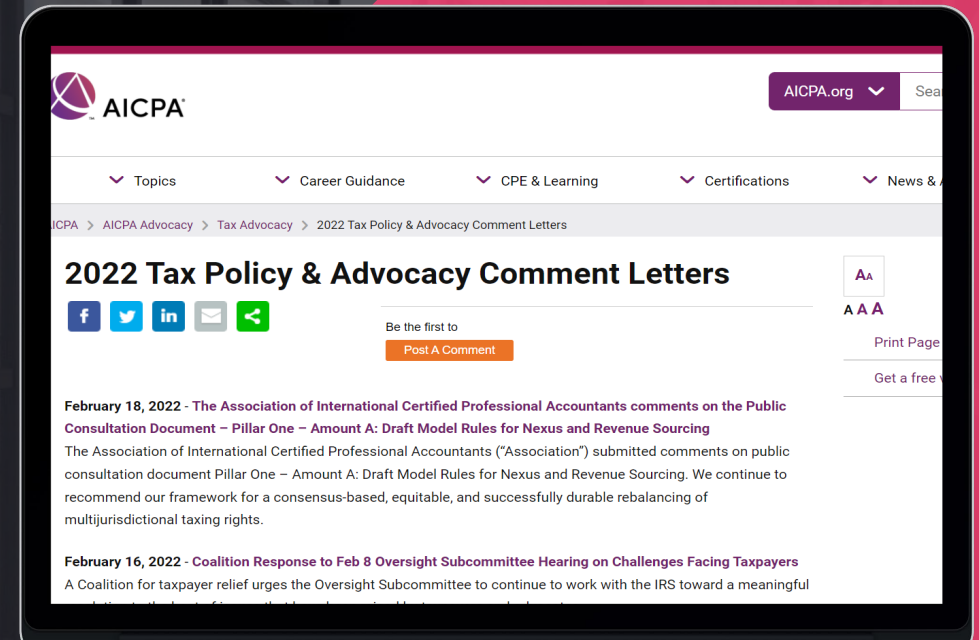
Register now

aicpastore.com/townhallseries

AICPA Tax Policy & Advocacy Webpages



<https://us.aicpa.org/advocacy/tax>



<https://us.aicpa.org/advocacy/tax/2022taxadvocacycommentletters.html>



Tax Section

Leading tax forward

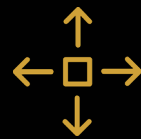
aicpa.org/tax



Engagement letters



Tax return checklists



IRS penalty abatement templates



The Tax Adviser magazine



16 hours of free CPE



SALT Roadmap State and Local Tax Guide



Tax Identity Theft Toolkit



Inflation Reduction Act summaries



Video learning library



Weekly e-newsletter



SALT Roadmap

Interactive tool to access state and local tax info in one central place



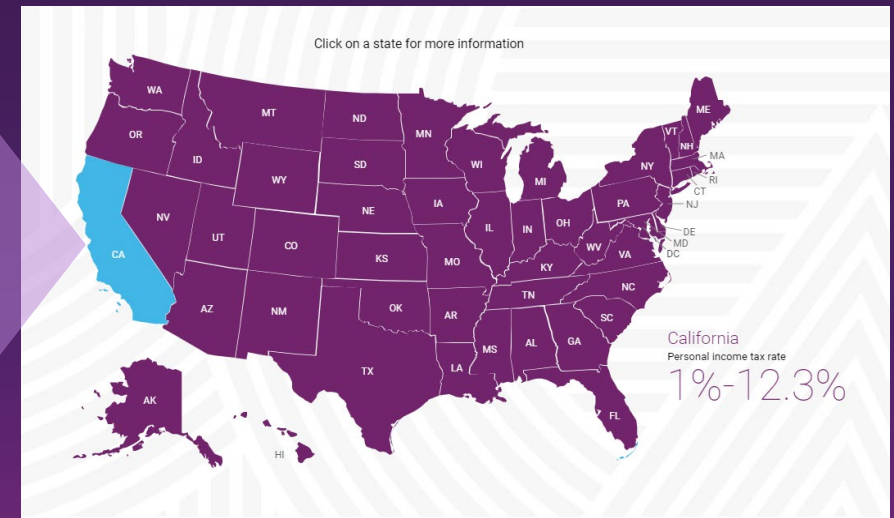
California pass-through entity/general business taxes:

Access [California business tax information](#) for compliance obligations.

[California allows a pass-through entity tax election](#) for taxable years beginning on or after Jan. 1, 2021, and before Jan. 1, 2026.



Personal income tax	Corporate income tax	Franchise tax	Sales/use tax
Pass-through entity / general business taxes	Due dates	State tax forms	View California's state government websites



www.aicpa.org/resources/landing/salt-roadmap-state-and-local-tax-guide



Mark your calendars for the next Tax Practice Quarterly webcast.

Tax Practice Quarterly: 2022 Tax Ethics Update

Nov. 16, 3pm ET (rebroadcast) | Webcast | 2 CPE credits

[Register now →](#)

Tax Practice Quarterly: 2023 Busy Season Readiness

Dec. 7, 1pm ET | Webcast | 2 CPE credits

[Register now →](#)

Tax Section members attend for free as part of their membership.



2022 Fall Tax Rewind

A quarterly roundup of the latest tax updates

Nov. 18, 1pm ET | Webcast | 2 CPE credits

Register today →





Accountants Liability: Balancing Risk and Reward (Tax Focus)

Nov. 16 and other dates available, 1pm ET | Webcast | 4 CPE credits

Register today →



Free for AICPA members

AICPA Washington Tax Brief

The latest news, advocacy, exclusive videos,
resources and learning in one place

Feb 22, 2023, 1pm ET | Webcast | 1 CPE credit

[Register today →](#)