



WASHINGTON TAX BRIEF

October 27, 2021



About the Washington Tax Brief

Webcast series to update you on:

- The regulatory and political environment for tax issues
- AICPA's advocacy efforts to:
 - protect your professional interests
 - support sound tax policy
 - promote effective tax administration
- Open to all AICPA members
- Open to all state society staff and committee members





*Melanie
Lauridsen*

Senior Manager
Tax Policy & Advocacy



Amy Miller

Senior Manager
Tax Policy & Advocacy



*Eileen
Sherr*

Director
Tax Policy & Advocacy



Today's Speakers

AICPA Tax Staff

A photograph of the United States Capitol building in Washington, D.C., featuring its iconic white dome and neoclassical architecture. In the foreground, there are several large trees in full bloom with pink cherry blossoms. The sky is a clear, bright blue with a few wispy white clouds. The entire scene is set against a background that transitions from purple on the left to blue on the right.

Topics for
Today

1.

**Legislative
Outlook**

2.

**Advocating for
AICPA Priorities**

3.

Hot Topics

4.

Questions



Legislative Developments

Biden Administration Budget Proposals

Treasury Green Book
Released 5/28/21



AICPA Comments on Biden Administration Budget Proposals

Biden Administration
Budget Proposals
Treasury Green Book
Released 5/28/21

AICPA Comments (August 2021)

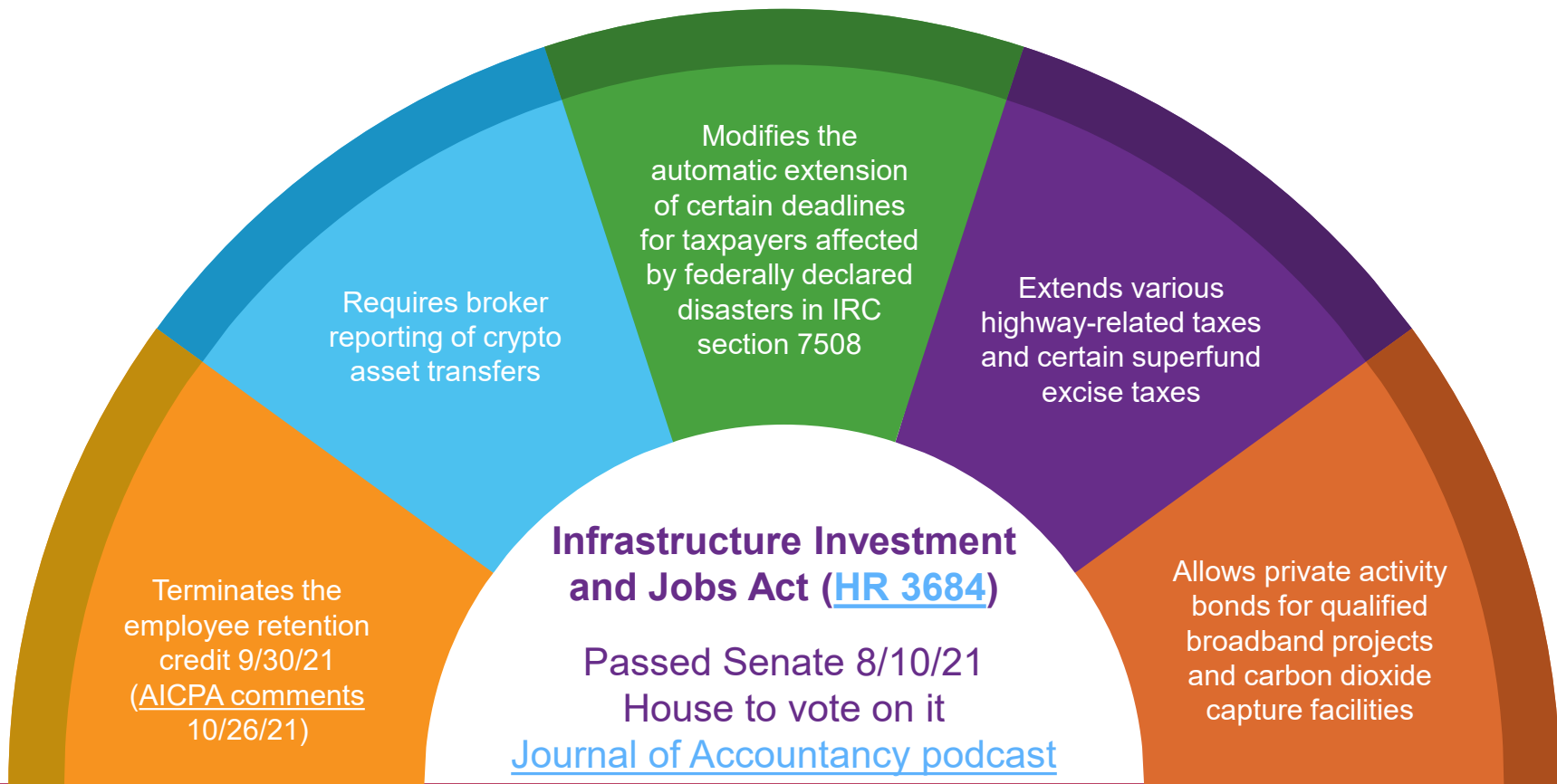
- Oppose valuation issues with treating transfers of appreciated property by gift or on death as realization events
- Support modification of “Tax Administration Rules” related to the BBA centralized partnership audit regime
- AICPA Insights blog on outlook (5/21)



Bipartisan Infrastructure Bill



Tax Provisions in the Bipartisan Infrastructure Bill





Reconciliation Outlook

- Expedited consideration of Build Back Better
- Winter 2021
- Individual, business, and tax practitioner implications

DC Update: Landing the Plane on a Reconciliation Bill

Clock is Ticking on a Deal



Behind the Scenes Conversations

- White House and Manchin/Sinema
 - Climate Change Provisions, Child Tax Credit, Corporate Tax Rate

- White House and House Moderates
 - Infrastructure Bill

- White House and House Progressives
 - Preserving a Large Topline Number

Nearing the Reconciliation and Infrastructure Endgame

Reconciliation bill negotiations are very fluid with both drama & compromises occurring. Passing delayed, but still likely.



***Senator
Joe Manchin***
(D-WV)



***Senator
Kyrsten Sinema***
(D-AZ)



Build Back Better House Ways & Means Committee Proposals

Links to Reconciliation Documents

House Ways and Means Committee (HWMC)
(released 9/13/21, passed 9/15/21)

- [Legislative language](#)
- [Section by section summary](#)
- [List of the revenue provisions](#)

Joint Committee on Taxation (JCT)

- [Distributional analysis](#)
- [Revenue estimates](#)
- [Description of the revenue provisions](#)

Journal of Accountancy (summary)

- [Article on tax provisions in HWMC legislation](#)



What House proposals
have we seen?



Individuals

Raise top
marginal
income tax
rate from 37%
to 39.6%

Expansion of
the Net
Investment
Income Tax
(NIIT)

3% surcharge
to individuals
with Adjusted
Gross Income
(AGI) of \$5M+

Increase
capital gains
rate to 25%

Corporations



Return of graduated corporate tax rates (18% to 21% to 26.5%)



Changes to international tax regime



Modification of §163(j)

Other Provisions



Required Distributions from “Mega” IRAs and restrictions to high-value IRA practices



Early sunset of TCJA estate tax exemption; and trust and valuation discounts changes

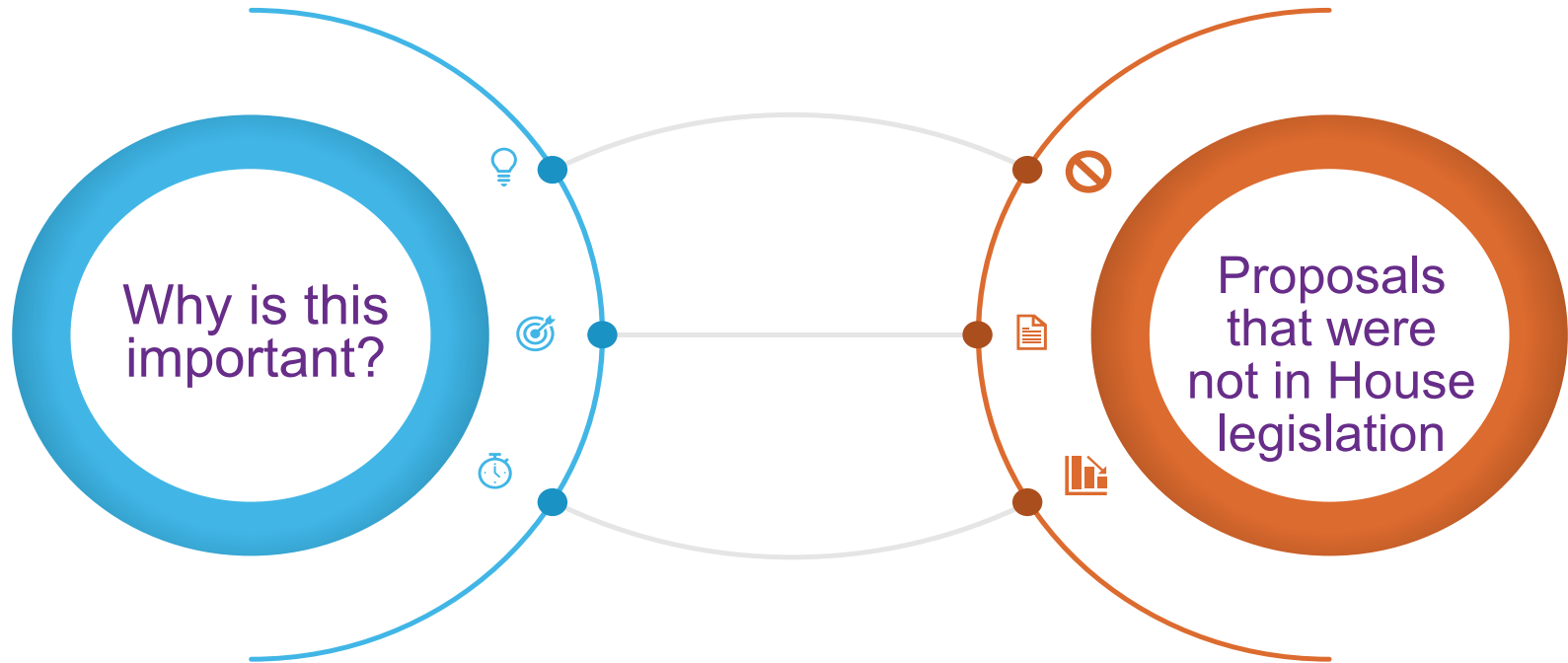


Temporary rule to allow certain S Corporations to reorganize as partnerships tax free

What was left out of the
House proposals?



What's Absent and Implications



- SALT deduction cap changes
- Stepped up basis changes
- 15% minimum tax on book income

What did AICPA comment on the House proposals?



AICPA Comments on House Reconciliation Legislation

- Submitted October 1, 2021
- Tax policy proposal examples:
 - The good: Temporary S corp reorganization rule
 - The bad: New procedural requirements for penalty assessment
 - The uncertain: Wyden partnership changes



October 1, 2021

The Honorable Ron Wyden
Chairman
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard Neal
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Re: Tax Provisions in House Reconciliation Legislation or Being Considered

Dear Chairmen Wyden and Neal, and Ranking Members Crapo and Brady:

The American Institute of CPAs (AICPA) provides comments on various tax issues important to the accounting profession that are in the [language reported out by the House Ways and Means Committee](#) under its jurisdiction for the reconciliation bill ("House reconciliation legislation"), or that might be considered as legislation is further considered.

The AICPA is a long-time advocate for a tax system based on principles of good tax policy.¹ We look forward to working with Congress as the reconciliation package moves forward to ensure that the proposed changes are administrable, equitable, and meet the needs of both taxpayers and tax practitioners. In this regard, we highlight some of the key issues we have identified for your consideration. We note that the items listed are not in any priority order, and we likely will have additional comments and insights as we further analyze the reconciliation legislation. In addition, as Congress moves forward with a reconciliation bill, it is important that special care is given to transition rules and to provide sufficient time and flexibility to implement the transition rules and offer penalty relief as needed.

Specifically, the AICPA provides comments on the following tax issues:

- I. AICPA Supported Provisions in the House Reconciliation Legislation
 1. Individual Tax Provisions
 2. Employer-Provided Dependent Care Assistance Exclusion

¹ See [AICPA Principles of Good Tax Policy](#).

AICPA Comments on House Reconciliation Legislation

- Ensure changes
 - Administrable
 - Equitable
 - Meet needs of taxpayers and practitioners
- Provide transition rules and penalty relief



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AICPA Comments on House Reconciliation Legislation

- AICPA supported provisions
- AICPA concerns with certain tax provisions
- Additional comments



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AICPA Comments on House Reconciliation Legislation

- **AICPA supported provisions**
 - Individual tax provisions
 - Child tax credit modifications
 - Child and dependent care tax credit changes
 - Employer-provided dependent care assistance exclusion
 - Temporary rule to allow certain S corporations to reorganize as partnerships tax-free
 - Deferral of IRC section 174 amortization
 - International tax provisions
 - Restoration of former IRC section 958(b)(4) deduction of foreign source portion of dividends limited to controlled foreign corporations
 - Modification to base erosion and anti-abuse tax GILTI changes to carryforward losses
 - Modifications to foreign tax credits
 - Limiting IRC section 78 gross-up to IRC section 960(a) and (d) taxes



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AICPA Comments on House Reconciliation Legislation

- **AICPA concerns with certain provisions**
 - IRC Section 199A – Deduction for qualified business income
 - IRC Section 461(l) – Excess business losses
 - IRC Section 162(m) – Limitation on deduction of excess employee remuneration
 - Employee benefits tax provisions
 - Contribution limit for individual retirement plans of high-income taxpayers with large account balances
 - Tax treatment of rollovers to Roth IRAs and accounts
 - Prohibition on certain IRA investments
 - Statute of limitations with respect to IRA noncompliance
 - Trust and estate tax provisions
 - Valuation concerns
 - Grantor trusts
 - Estates
 - Modification to treatment of certain losses under IRC section 165(g)
 - Limitation on certain special rules for IRC section 1202 gains
 - Modification of procedural requirements relating to assessment of penalties



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AICPA Comments on House Reconciliation Legislation

• Additional comments

- IRS regulation of paid tax return preparers
- Financial account reporting to improve tax compliance
- IRS funding
- Structural changes to Subchapter K (Partnership Taxation)
- Corporation minimum tax at 15 percent of a corporation's book income
- Nonqualified deferred compensation

• Journal of Accountancy article on the tax legislation



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Financial Account Reporting to Improve Tax Compliance Proposal

- Requires reporting of gross inflows and outflows of cash transactions and transfers to and from accounts with the same owner.
 - Current rumor of \$10,000 de minimis threshold
- Regime would cover accounts similar to financial institution accounts and would also require reporting of gross receipts and gross purchases



Regulation of Paid Preparers

AICPA APPLAUDS PANETTA-RICE BILL (HR 4184)

- Reinstate Registered Tax Return Preparer (RTRP) Program
- Maintains PTIN requirement
- Grants IRS authority to revoke PTIN
- GAO study on IRS exchange of information with state taxing authorities

Mitigation of Market Place Confusion

RTRPs subject to advertising requirements to mitigate marketplace confusion




IRS does not endorse any preparer

Unlicensed or non-credentialed preparers advertising the RTRP program should display or broadcast a statement that:



Directs them to the IRS website where the differences between types of preparers and their qualifications are explained

The image features a blue background with a circular inset on the left showing the U.S. Capitol building at night, illuminated with warm lights. The text 'AICPA Tax Legislative Compendium' is written in white on the right side of the blue background. A small yellow horizontal line is positioned below the word 'Compendium'.

AICPA Tax Legislative Compendium

AICPA Tax Legislative Compendium

On 10/8/21, AICPA suggested simplification and technical legislative proposals that were submitted to Congress with a cover letter, hoping some are included in the tax legislation.

AICPA proposed legislative changes to tax provisions:

- Needing attention
- Technical in nature
- Can be readily addressed
- Correcting technical problems in the Internal Revenue Code
- Simplifying existing provisions
- Promoting simplicity
- Making the tax code fairer
- Effectively promoting important policy objectives
- Improving tax administration
- That are generally noncontroversial

AICPA Tax Legislative Compendium

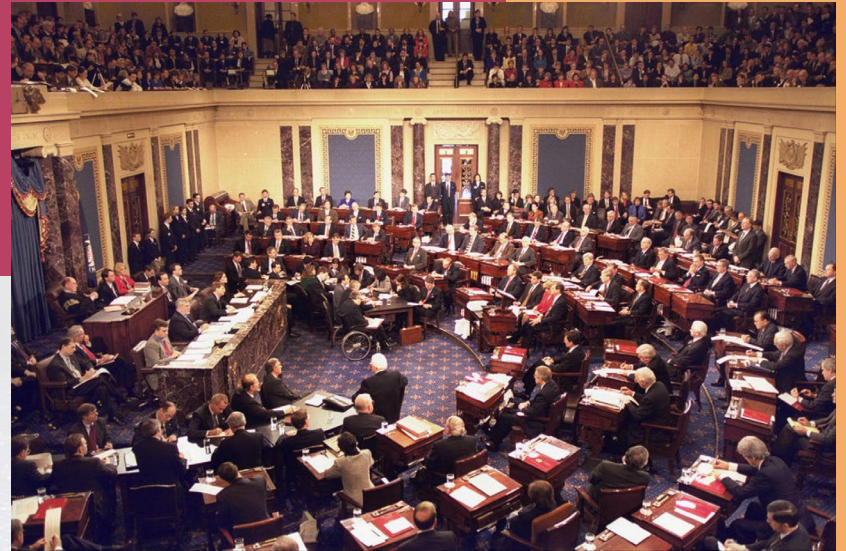
- General
 - Standardize definitions to avoid multiple meanings for the same term
- Corporations and shareholders
- Employee benefits
- Individuals
 - Harmonize and simplify education related tax provisions
 - Harmonize standard mileage rates for business, medical, armed forces moving expense, and charitable contribution purposes
- International tax
- Partnerships
- S corporations
- Tax administration
- Tax methods and periods
- Trust, estate, and gift tax
 - Modify the deadline for estate basis reporting to 2/15 after the year of distribution
 - Allow administrative relief for late portability, inter vivos qualified terminable interest property, and qualified revocable trust elections



Outlook

Senate Negotiations?

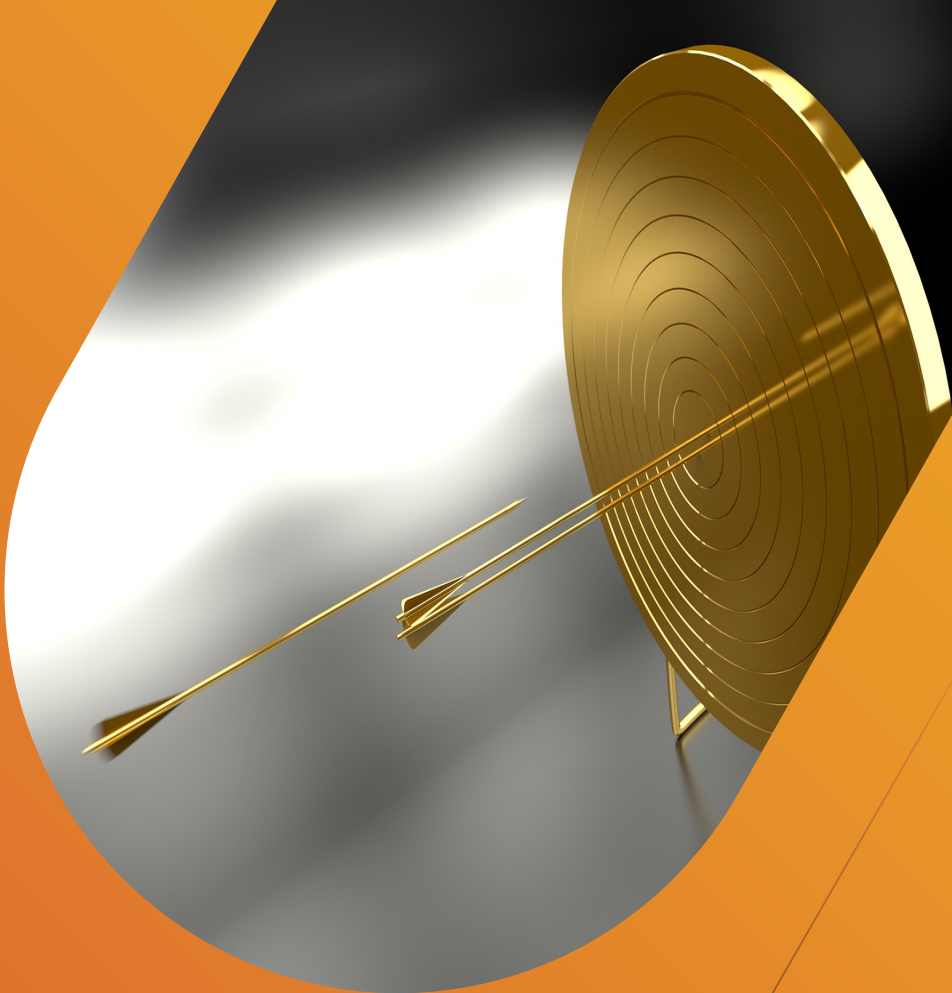
- \$1.9 trillion without rate increases
- IRS enforcement (\$150B)
- Global tax overhaul (\$250B)
- Billionaire unrealized gains tax (\$250B)
- Excess stock buyback excise tax (\$275B)
- Corporation profits minimum tax (\$250B)
 - [Legislative language, one pager summary, press release](#)



Winter 2021 “Must-Pass” Items

- Continuing Resolution – Dec 3
 - Debt ceiling – winter 2021/early 2022
 - Infrastructure bill – Senate passed, House to vote
 - Reconciliation bill – by Christmas
-



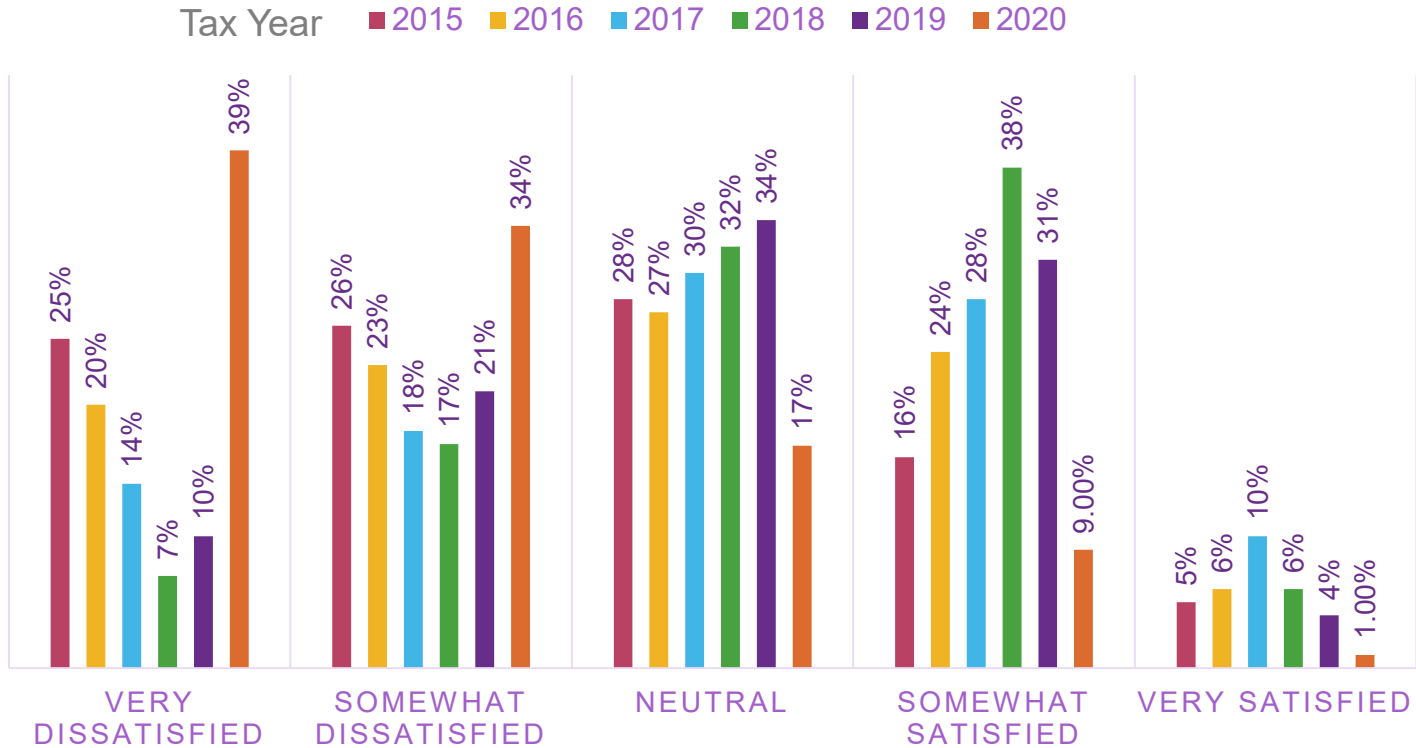


Advocating for AICPA Priorities

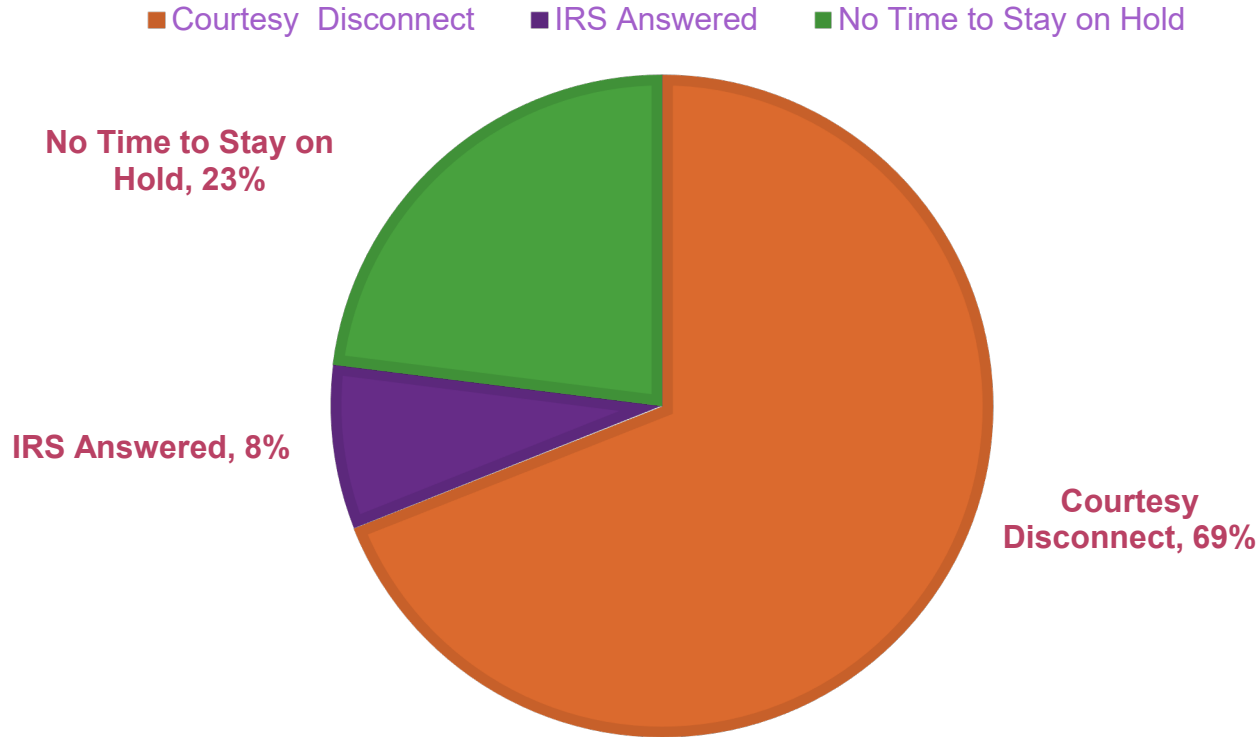
A stylized, semi-transparent microphone graphic is positioned on the left side of the slide. The microphone's head is a spherical mesh, and its handle extends downwards. A vertical dashed white line runs through the center of the microphone's head, extending from the top to the bottom of the slide. The background is a solid, deep red color.

State of IRS Services

Overall Satisfaction with IRS Taxpayer Services



IRS “Courtesy Disconnect” During 2020 Filing Season



Top 4 Concerns Identified

Inability to connect
with the IRS



01

Workload due to
COVID, laws and
regulations



02

The lack of IRS's
response to written
communications



03

The IRS is not on the
right path



04

Penalty Relief: Reducing the Need to Contact IRS

- HR 5155
 - Underpayment and late payment penalty relief for 2020
- Reasonable cause and First Time Abate adjustments
- Delay compliance actions
- Align account holds with mail delays



May 17, 2021

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

Mr. Mark J. Mazur
Acting Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Additional Penalty Relief Measures

Dear Commissioner Rettig and Acting Assistant Secretary Mazur:

The American Institute of CPAs (AICPA) recognizes and appreciates the efforts the Department of the Treasury ("Treasury") and the Internal Revenue Service (IRS) have made to provide various forms of relief to taxpayers affected by the Coronavirus Disease 2019 pandemic (commonly known as "Coronavirus"). However, many taxpayers and their tax advisors continue to face pandemic-related challenges and are unable to voluntarily comply with their tax obligations, despite making good faith efforts to do so. Furthermore, the IRS continues to be stretched thin by the Coronavirus pandemic and has a staggering 29 million returns on hold that need manual processing on top of their ability to only answer 2% of all phone calls.¹

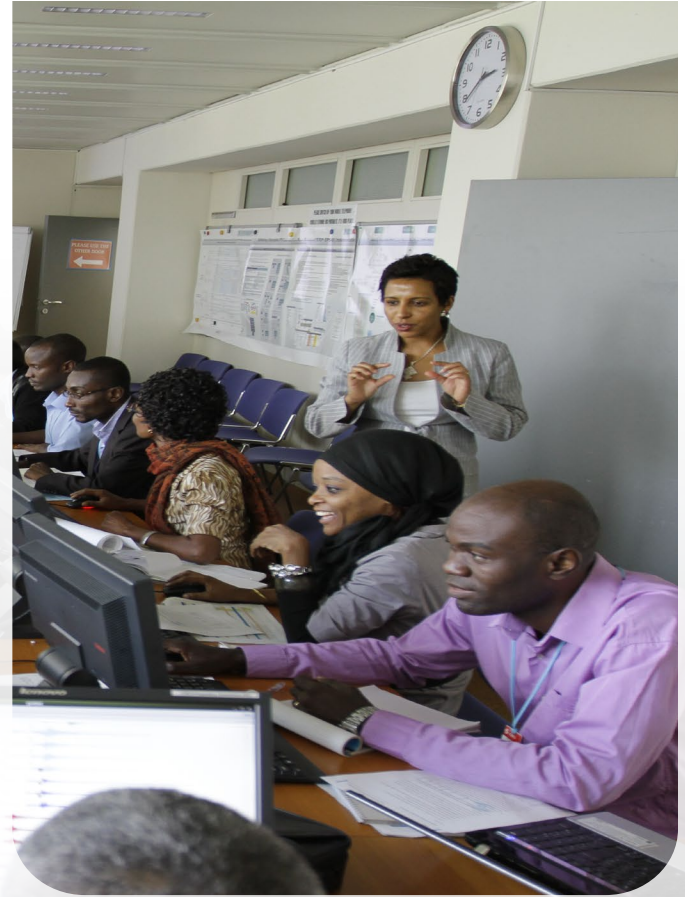
All taxpayers, regardless of their economic standing, deserve a tax administration system that provides support to help them meet their tax obligations. With this in mind, penalty relief measures that are fair, reasonable and practical, would not only mitigate the negative effect of the Coronavirus on taxpayers but also require fewer contacts with the IRS, thereby alleviating the current struggles that taxpayers, their advisors and the IRS face on a daily basis. Specifically, we urge Treasury and the IRS to:

- Provide taxpayers with targeted relief from both the underpayment of estimated tax penalty and the late payment penalty for the 2020 tax year.
- Offer a reasonable cause penalty waiver, *similar to* the procedures of first time abate (FTA) administrative waiver, without affecting the taxpayer's eligibility for FTA in future tax years. Furthermore, the IRS should honor reasonable cause penalty waiver requests when a taxpayer qualifies for reasonable cause relief. Additionally, the IRS should publicly make it well known that an e-fax alternative to written reasonable cause requests over a certain threshold is available.
- Discontinue compliance actions until the IRS is prepared to devote the necessary resources for a proper and timely resolution of the matter. At a minimum, halt automatic collections activities of liens and levies for at least 90 days after the May 17 filing deadline.
- Align requests for account holds with the time it takes the IRS to process any penalty abatement requests.

¹ National Taxpayer Advocate Blog, "2021 Filing Season Ramps to the Road, Part I," April 22, 2021.
1455 Pennsylvania Ave. NW, Washington, DC 20004-1081
T: +1 202.737.6600 F: +1 202.638.4512
aicpaglobal.com | cimaglobal.com | aicpa.org | cgma.org

Taxpayer First Act Report to Congress

- IRS Services:
 - Taxpayer experience
 - Training
 - Organizational redesign
- Phased approach for implementation
- Cost: \$2.18B + \$1.9B for IT Infrastructure = \$4.08B



IRS Tidbits

- IRS status of operations link – What is open, what to expect, etc.
 - <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>
- Local Taxpayer Advocate – First line of defense when IRS can't help
 - <https://www.irs.gov/advocate/local-taxpayer-advocate>
- E-signature relief through Dec 31, 2021
- Quarterly estimated payment due dates
 - [H.R. 4214, The Tax Deadline Simplification Act](#)



Employee Retention Credit

- Created by Coronavirus Aid, Relief, and Economic Security Act in March 2020
 - Set to expire December 31, 2020
 - [IRS Notice 2021-20](#): authoritative guidance on wages paid March 13 – December 31, 2020
 - Interplay of qualified wages with wages reported on PPP loan forgiveness applications
 - Form 941 / Form 941-X filing rules for PPP loan borrowers
- Taxpayer Certainty and Disaster Relief Act in December 2020
 - Enhanced rules and extended credit to June 30, 2021
 - [IRS Notice 2021-23](#): authoritative guidance on wages paid January 1, 2021 – June 30, 2021
 - Rules on the election to use alternative quarter to calculate gross receipts
- American Rescue Plan Act in March 2021
 - Enhanced rules and extended credit to December 31, 2021
 - Guidance pending on wages paid July 1, 2021 – December 31, 2021

Employee Retention Credit

- On August 4th, the IRS issued [Notice 2021-49](#) and accompanying [IR-2021-165](#).
- On August 10th, the IRS issued [Rev. Proc. 2021-33](#)

LISTEN: Tax Section Odyssey Podcast

- [ERC — What we know now](#)

LISTEN NOW



Tax Section Odyssey Podcast



Employee Retention Credit FAQs

- Are wages of a more-than-50% corporate shareholder and their spouse considered qualified wages for the ERC?
- How/when should an amended payroll tax return (Form 941-X) be filed if an original return or amended payroll tax return was filed prior to guidance being received and is now inaccurate?
- What effect does the receipt of Paycheck Protection Program (PPP) forgiveness and other COVID relief have on the calculation of gross receipts for ERC purposes?
- How does an employer allocate ERC qualified wages versus PPP qualified salary expense for forgiveness purposes?
- How do you calculate the number of employees to determine whether a business is considered a small eligible employer for ERC purposes?

Employee Retention Credit FAQs

- When do you reduce the salary deduction for the ERC?
- For reduction of gross receipts, how do you determine the qualifying quarter in 2021?
- Are tips included as qualified wages for ERC purposes?
- What is a “recovery startup business” and what does that mean for the calculation of that business’ ERC?
- What is a “severely financially distressed employer” and what does that mean for the calculation of that business’ ERC?
- How do the aggregation rules affect the ERC?



Hot Topics

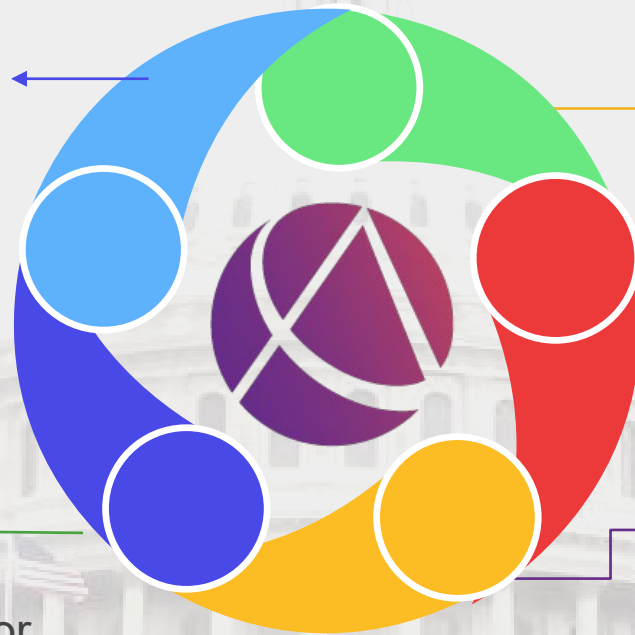
Hot Topics

State Tax Issues

- Mobile workforce
- Sales tax on professional services
- Passthrough entity level taxes

Accounting Methods

- Section 481(a) adjustments for depreciation by CFCs
- Section 473 safe harbor
- Procedural guidance



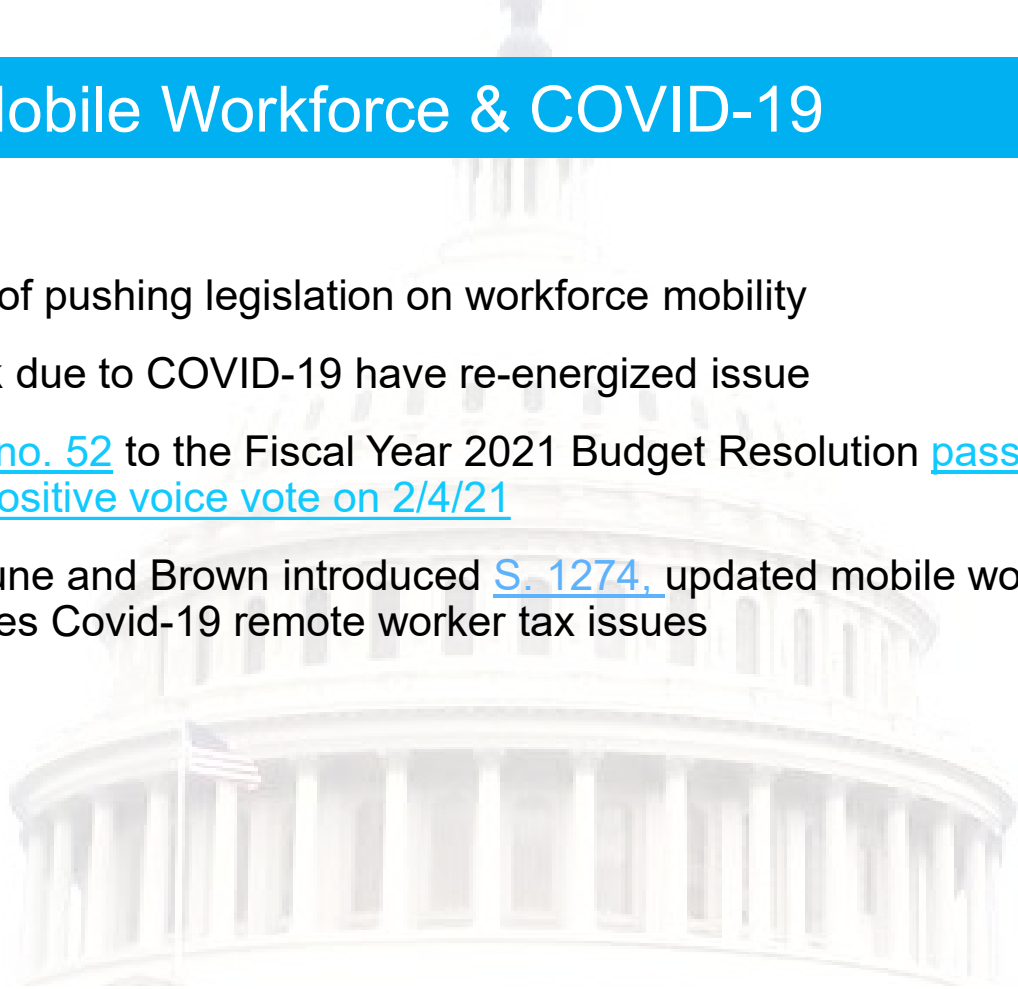
Disaster Relief

Exempt Organizations

- Form 990 comments
- Tips to e-filing challenges

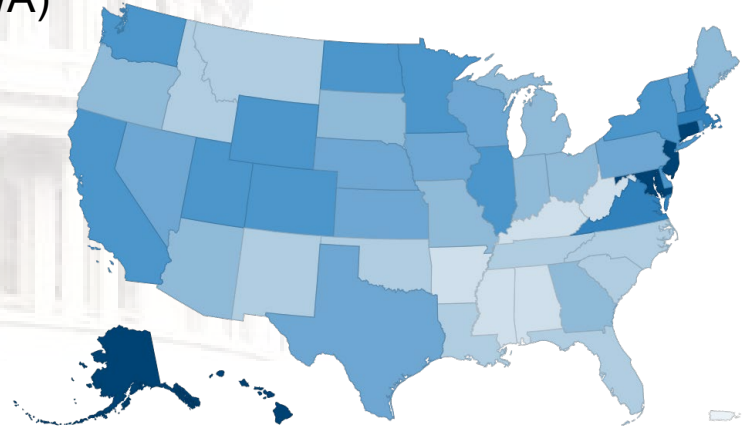
Passthrough PPP Loan Forgiveness/Basis

- Long history of pushing legislation on workforce mobility
- Remote work due to COVID-19 have re-energized issue
- [Amendment no. 52](#) to the Fiscal Year 2021 Budget Resolution [passed Senate by unanimous positive voice vote on 2/4/21](#)
- Senators Thune and Brown introduced [S. 1274](#), updated mobile workforce bill that also addresses Covid-19 remote worker tax issues



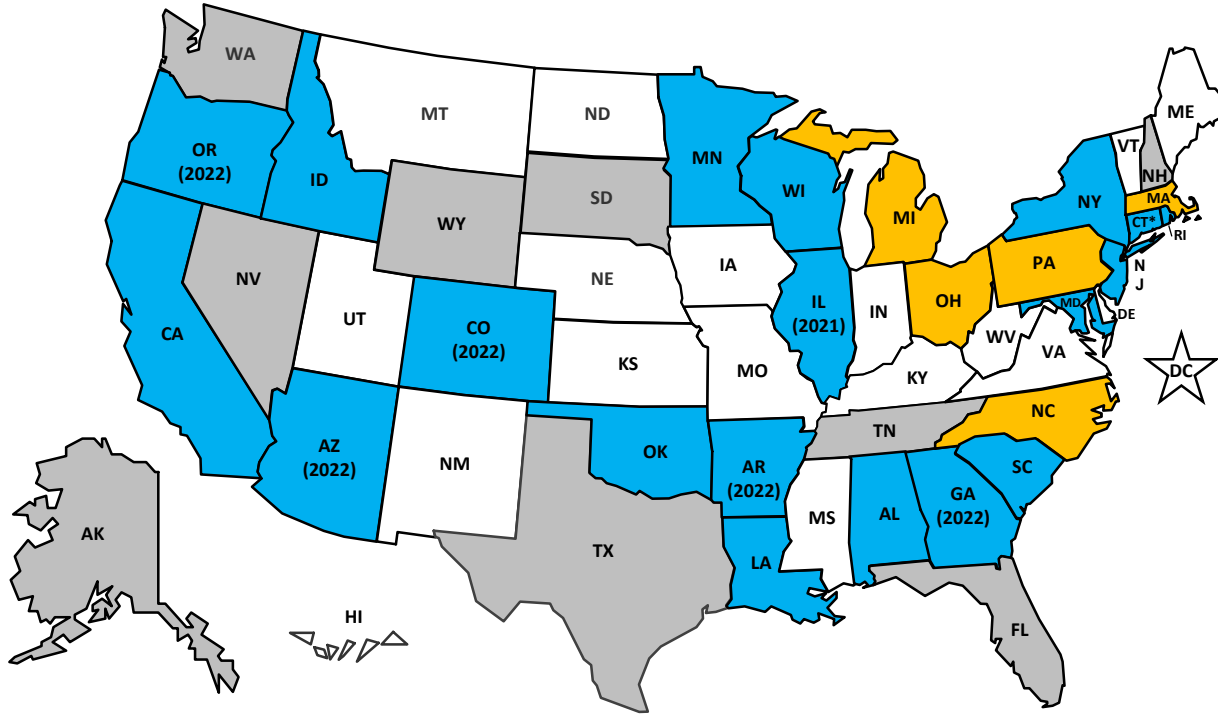
Taxation of professional services

- Eight states in 2021 are proposing or have proposed varying levels of legislation – Alaska, Louisiana, Nebraska, Oregon, Pennsylvania, South Carolina, West Virginia and Wyoming
- West Virginia – Profession-led coalition defeated Governor’s proposal
- Trend expected to continue into 2022
- (may consider: CA, CT, IL, KS, MD, PA, RI, VA, WA)
- Prior attempts: MD, UT, MN, MA, MI, FL
- State budgets will continue to play key role



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

As of October 8, 2021



● 18 States that enacted a PTE tax since TCJA SALT deduction limitation, effective for 2021 (or earlier) unless noted:

[AL](#), [AR¹](#), [AZ¹](#), [CO¹](#), [CT²](#), [GA¹](#), [ID](#), [IL](#), [LA](#), [MD](#), [MN](#), [NJ](#), [NY](#), [OK](#), [OR¹](#), [RI](#), [SC](#), [WI](#)

¹ Effective in 2022 or later

² Mandatory

● 5 States with proposed PTE tax bills:
MA – [H. 4009](#), vetoed by governor
MI – [HB 5376](#), first reading
NC – [S. 105](#), in reconciliation
OH – [SB 246](#), in committee
PA – [HB 1709](#), in committee

● 9 States with no owner-level personal income tax on PTE income

- **State pass-through entity level taxes**

- Applies to **S corporations, partnerships, and limited liability companies** taxed federally as partnerships or S corporations
- Shifts state tax on business income from **owners to entity**
- Allows entity to federally deduct as an **expense from business income** the entity's state income taxes paid in carrying on a trade or business
- **Owners receive a credit** against state personal income tax for their distributive or pro rata share of the state entity tax paid at entity level
- **IRS Notice 2020-75 provides federal deduction for state PTE-level taxes paid, deducted** in computing its non-separately stated taxable income or loss, not in owners' SALT cap limit, even if state provides a corresponding or offsetting, owner-level tax benefit, such as a full or partial credit, deduction, or exclusion. **(11/9/20 issued, retroactive to enacted or 2018)**
- [Main Street Employers Coalition](#)
- [Model act](#)
- [EY study](#) on TCJA tax impact on business income of C and S corporations
- [AICPA issue paper on state pass-through entity-level tax implementation issues](#)
- [AICPA state pass-through entity-level tax implementation issues one pager](#)
- AICPA [The Tax Adviser article](#) on issues to consider with PTE-level taxes – June 2021
- [MTC project on state taxation of partnerships](#)



- **State pass-through entity level taxes**

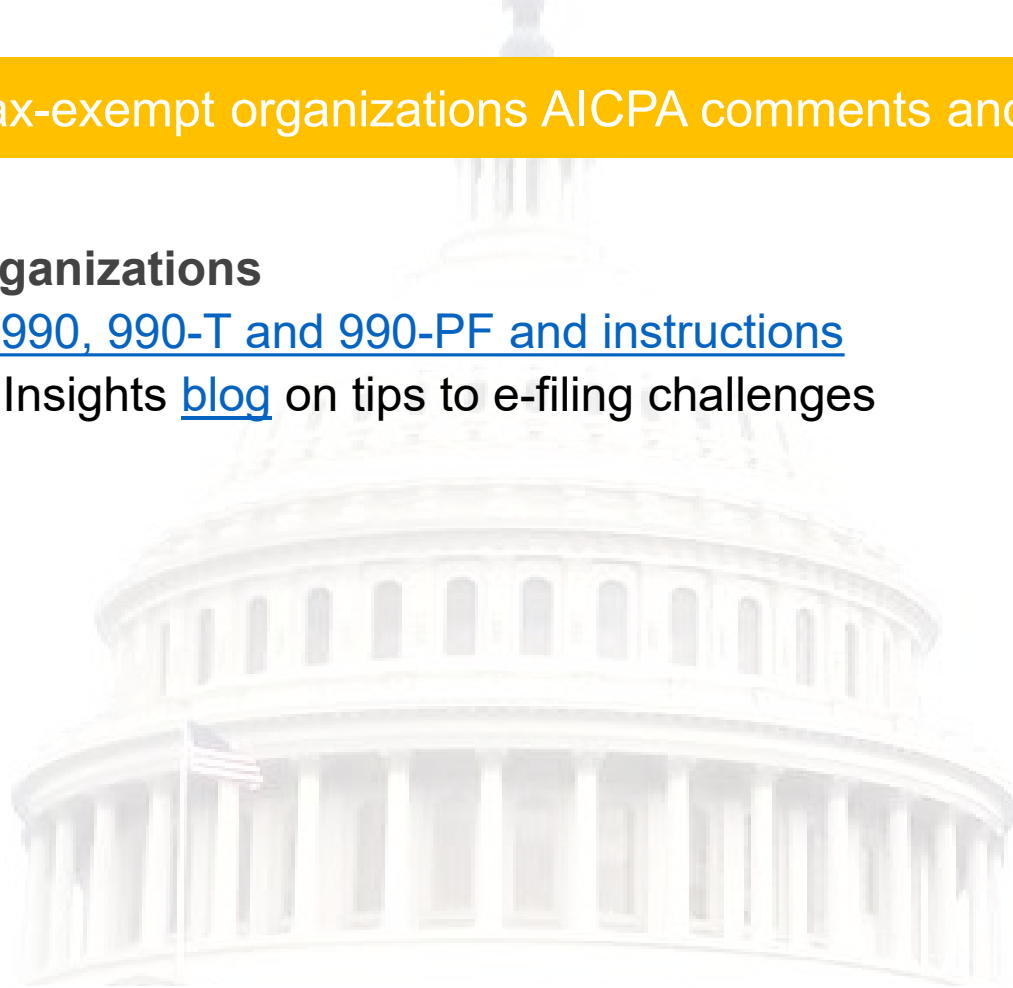
- AICPA drafted a comment letter to Treasury and IRS on [Notice 2020-75](#).
- The letter outlines comments and recommendations that identify and provide additional information to Treasury and the IRS regarding certain issues arising for S corporation shareholders with respect to the Notice and various states' enacted legislation (or proposed enactment) imposing PTE taxes on the passthrough entity.
- These comments focus on an S corporation's inability to specially allocate items and the single class of stock requirement.



- **Accounting Methods**

- [Section 481\(a\) adjustments for depreciation by CFCs](#)
- [Section 473 safe harbor and expedited relief](#)
- Accounting method procedural guidance
 - [Rev. Proc. 2021-34](#), issued 8/12/21, provides [AICPA requested](#):
 - Provides procedural guidance on implementing final section 451 regs
 - Allows adopt accounting methods following final regs' position on new provisions,
 - Can apply final regs early.
 - Includes scope limitation waivers for inventory and uniform capitalization method changes
 - [Rev. Proc. 21-28](#), issued 6/17/21, allowed for [AICPA requested](#):
 - Allow for flexibility for certain impermissible depreciation method changes
 - Waiver of the five-year scope limitation for certain impermissible to permissible depreciation method changes related to the Taxpayer Certainty and Disaster Tax Relief Act of 2020.

- **Exempt Organizations**
 - [Forms 990, 990-T and 990-PF and instructions](#)
 - AICPA Insights [blog](#) on tips to e-filing challenges



- Significant uncertainty regarding:
 - Basis & at-risk implications of deducting PPP expenses
 - Loan forgiveness timing and the accrual of tax-exempt income, which impacts basis for partners and S corporation shareholders
 - PPP expense deductibility and whether that impacts AAA or OAA, and the interaction of the accrued tax-exempt income, for S corporations
 - Reporting of these items on the returns themselves
 - 2020 Partnership Form 1065, Page 2, Schedule B, Question 6
 - 2020 S Corporation Form 1120-S, Page 3 Schedule B, Question 12
- The IRS and Treasury Department are keenly aware of these issues as well, and are working through the mechanics and impending future guidance
- AICPA advocacy has raised these issues to IRS and Treasury Department (March 15, 2021)
- We do not have answers on how to address these uncertainties, nor a timeline on IRS / Treasury guidance which we are awaiting, as are all taxpayers and practitioners → definitive guidance will be needed in order to answer these difficult questions

IRS Disaster Relief



IRS Tax Extension



FEMA



Limitation to
"Federally- Declared"
Disasters

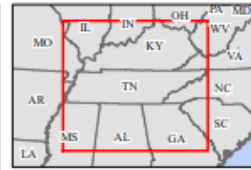
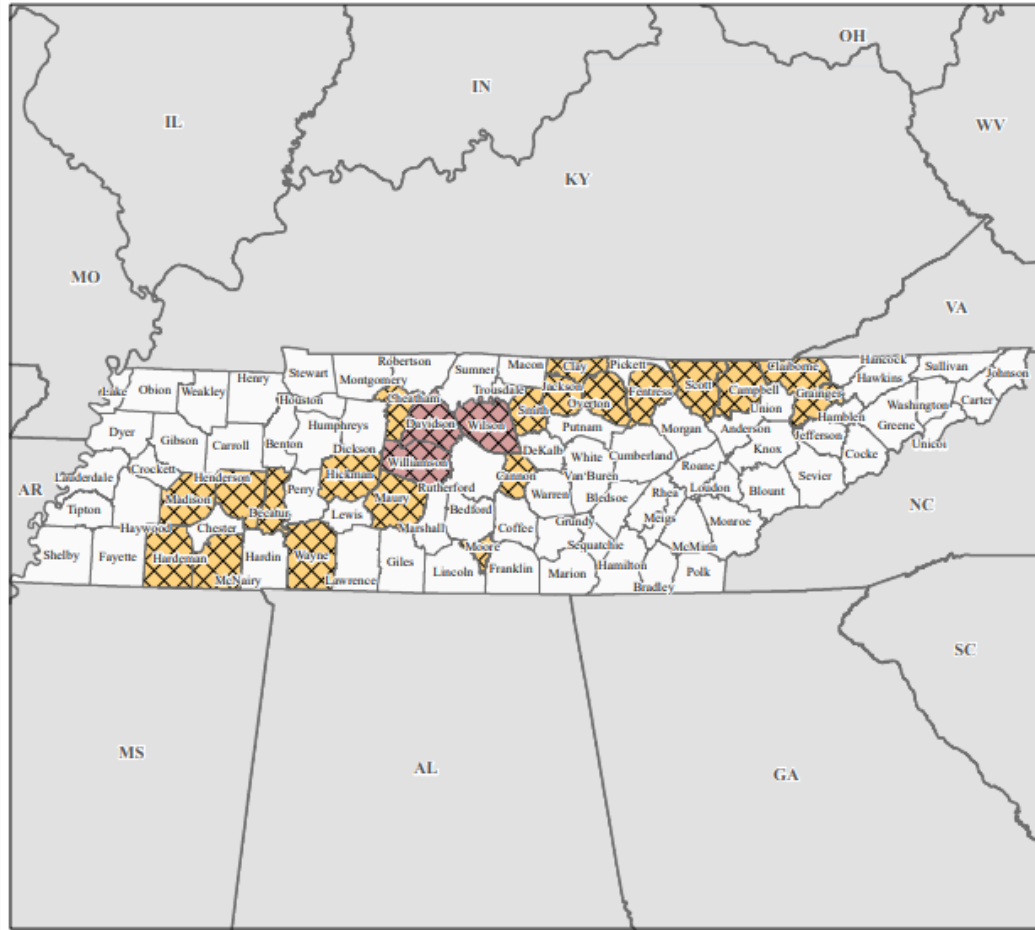


Penalty Waivers

INTERNAL
REVENUE
SERVICE



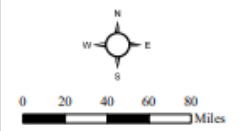
FEMA-4601-DR, Tennessee Disaster Declaration as of 05/08/2021



Data Layer/Map Description:
The types of assistance that have been designated for selected areas in the State of Tennessee.

All areas in the State of Tennessee are eligible for assistance under the Hazard Mitigation Grant Program.

- Designated Counties**
- No Designation
 - Individual Assistance and Public Assistance (Categories A - G)
 - Public Assistance (Categories A - G)



Data Sources:
FEMA, ESRI;
Initial Declaration: 05/08/2021
Disaster Federal Registry Notice: 05/08/2021
Datum: North American 1983
Projection: Lambert Conformal Conic

Tax Disaster Relief

Filing Relief for Natural Disasters Act

H.R. 3574 – Judy Chu (D-CA) & John Katko (R-NY)

S. 2748 – Catherine Cortez Masto (D-NV), John Kennedy (R-LA),
and Chris Van Hollen (D-MD)

Trigger: Official state
declared disaster declaration

Authority to issue tax deadline extensions



Q&A





AICPA & CIMA

The emerging view

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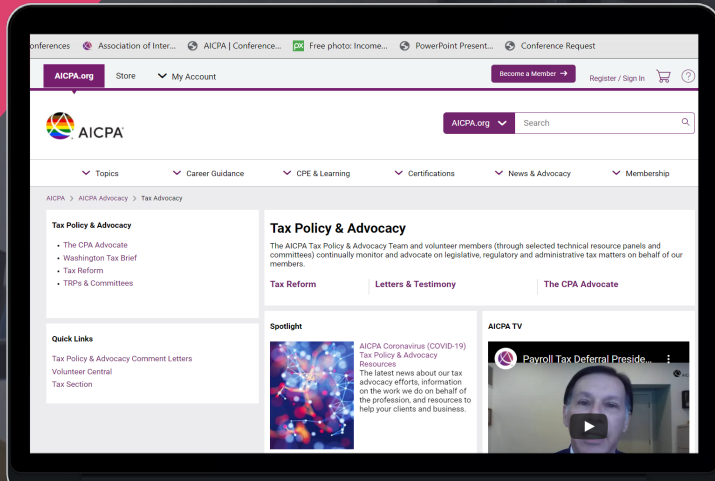
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- Free for AICPA members

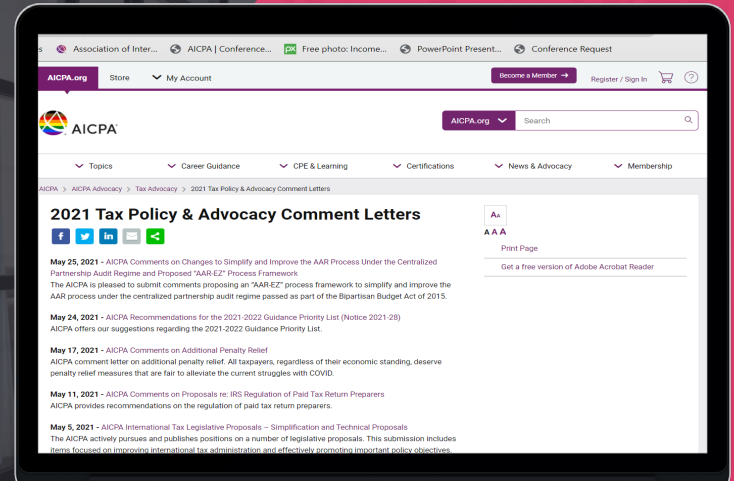
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AICPA Tax Policy & Advocacy Webpages



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



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Dec. 6, 1pm ET or Dec. 8 (rebroadcast) 3pm ET | Webcast | 2 CPE credits

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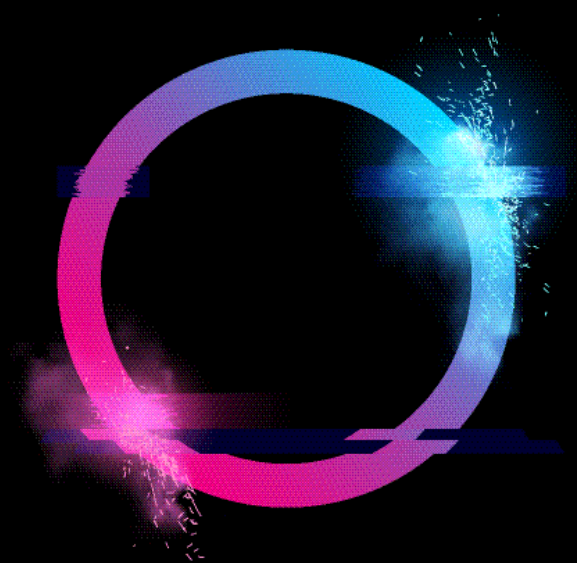


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