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2023 Tax Update



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Agenda

- Review new and proposed tax legislation
 - Inflation Reduction Act
 - Consolidated Appropriations Act
 - Opportunity Zones Transparency, Extension, and Improvement Act
- Tax Law Changes and Numbers for 2022 Tax Year
- Employee Retention Credit
- Dirty Dozen Tax Scams

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Legislation Acronyms

- TCJA - Tax Cuts and Jobs Act of 2017
- CARES – Coronavirus Aid, Relief, and Economic Security Act of 2020
- ARPA – American Rescue Plan Act of 2021
- CAA – Consolidated Appropriations Act of 2021
- IRAct - Inflation Reduction Act of 2021

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Inflation Reduction Act

Effective August 16, 2022

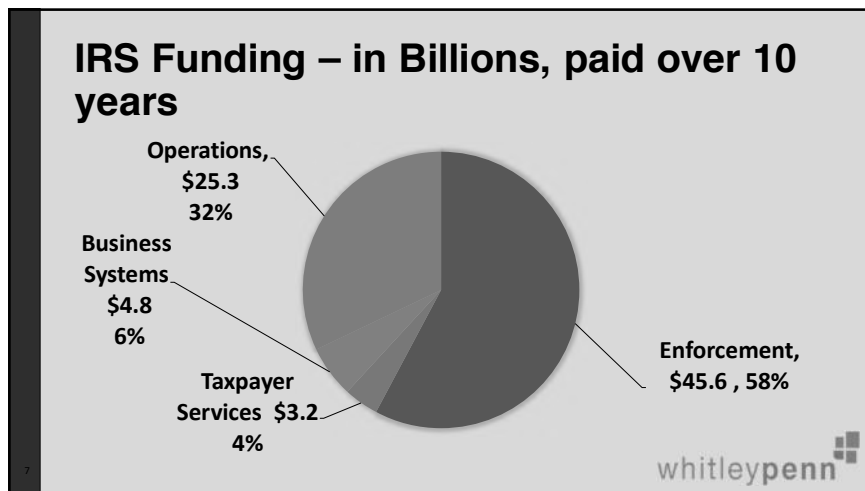
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87,000 New IRS Agents




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IRS Funding

- \$80 billion over 10 years
- \$15 million for the IRS to report to Congress on the potential creation and maintenance of IRS-Run e-file system
- Enforcement – could include legal support and investment in technologies
- Goal is to improve compliance which could bring in an estimated \$203 billion in increased revenue
- 87,000 agents is the number the 2021 Treasury Department estimated as the hiring needs to maintain efficiency and keep up with retiring and quitting staff



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IRS Pipeline Delays

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The Washington Post

- <https://www.washingtonpost.com/opinions/interactive/2022/irs-pipeline-tax-return-delays/>
- Why does the IRS need \$80 billion?
- By Catherine Rampell
- August 9, 2022



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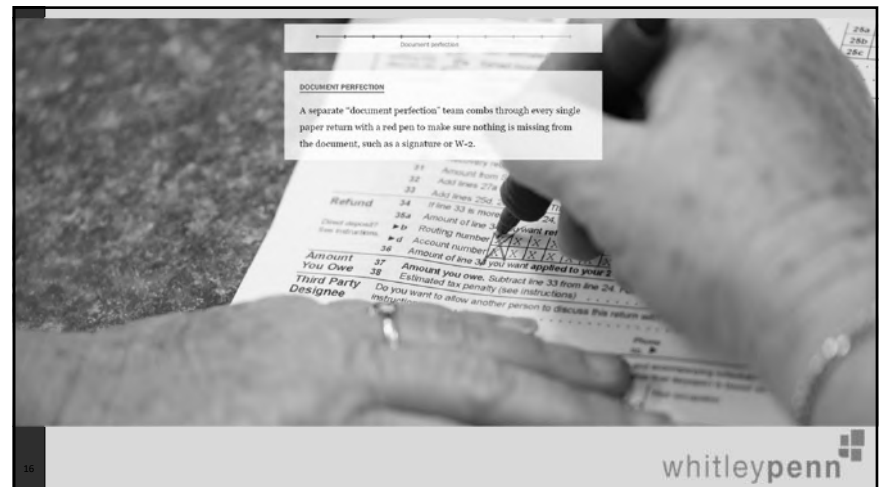
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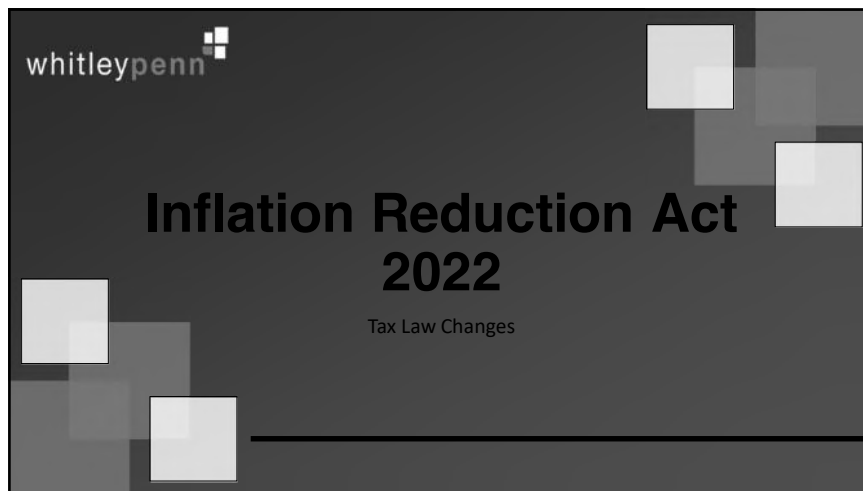
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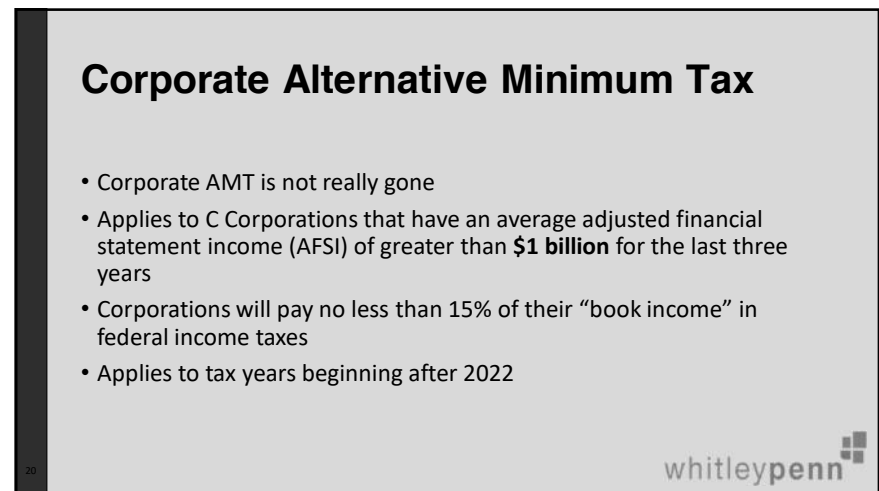
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1% Stock Buyback Excise Tax

- 1% excise tax will be imposed on the repurchase of stock by a **publicly traded corporation**, but is reduced by any new issues to the public or stock issued to employees
- Does not apply to:
 - Repurchases that are less than \$1 million or are contributed to an employee pension or similar plan
 - Repurchases are treated as dividends or to purchases by a dealer in securities in the ordinary course of business
- Does apply to purchases of corporate stock by a subsidiary of the corporation if more than 50% owned
- Applies to purchases made after 2022



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Extension of Excess Business Loss Limitation

- Enacted as part of Tax Cuts and Jobs Act (TCJA) in 2017, net business losses an individual may use in a year to offset other sources of income was capped at \$250,000 if single / \$500,000 if married filing joint
- Any excess loss is carryforward as an NOL, subject to the NOL limitation rules
- For 2022, the limitation is \$270,000 if single / \$540,000 if married filing joint



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Extension of Excess Business Loss Limitation

- TCJA original effective dates were from 2018 through 2025
- 2020 CARES Act deferred start to 2021 (2021 through 2025)
- 2021 ARPA extended so the rules apply through 2026
- Inflation Reduction Act extended so rules apply through 2028



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Increase in Research Credit against payroll tax for small businesses

- Before this law, small businesses could claim up to \$250,000 in qualifying research expenses as payroll tax credit against the employer's share of Social Security tax
- Credit has increased to \$500,000
- Unused credits are carried forward
- Applies to taxable years beginning after 2022



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Tax Provisions for Energy

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• Extension and modification of the Renewable Electricity Production Tax Credit (PTC)	• Credit for Previously- Owned Clean Vehicles
• Extension and modification of the Energy Investment Tax Credit (ITC)	• Credit for Qualified Commercial Clean Vehicles
• Increase in Energy Credit for Solar and Wind Facilities	• Extension and modification of Alternative Fuel Vehicle Refueling Property Credit
• Extension and modification of Carbon Oxide Sequestration Credit	• Extension of the Advanced Energy Project Credit
• Zero-Emission Nuclear Power Production Credit	• Advanced Manufacturing Production Credit
• Extension of Tax Credits for Biodiesel, Renewable Diesel, and Alternative Fuels	• Reinstatement of Superfund Hazardous Substance Financing Rate
• Extension of Second Generation Biofuel Credit	• Clean Electricity Production Credit
• Sustainable Aviation Fuel Credit	• Clean Electricity Investment Credit
• Credit for Production of Clean Hydrogen	• Cost Recovery for Qualified Facilities, Qualified Property, and Energy Storage Technology
• Extension and modification of Nonbusiness Energy Property Credit	• Clean Fuel Production Credit
• Extension and modification of Residential Energy Efficient Property Credit (renamed the Residential Clean Energy Credit)	• Elective Payment of Applicable Credits ("Direct Pay Election")
• Modification of Energy Efficient Commercial Buildings deduction	• Transfer of Eligible Credits
• Extension, increase, and modification of New Energy Efficient Home Credit	• Energy efficient commercial vehicles deduction
• Modification and termination of New Qualified Plug-In Electric Drive Motor Vehicle Credit (renamed Clean Vehicle Credit)	

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Nonbusiness Energy Property Tax Credit

- Personal tax credit for making a home more energy efficient (windows, doors, insulation, etc. on a principal residence)
- Existing credit was \$500 for a lifetime of qualified expenditures and was set to expire at end of 2022
- IRAct extended the credit to end of 2032
- Credit increased to 30% of amount paid for qualified expenses plus up to \$150 for a home energy audit
- Lifetime cap is eliminated and replaced by various caps:
 - \$1,200 per year
 - \$2,000 for specified heat pumps, water heaters and stoves
 - Annual limits on doors, windows and skylights

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Residential Clean Energy Credit

- Previously called "Residential Energy Efficient Property Credit"
- Personal tax credit for making energy-efficient solar, wind, geothermal, biomass or fuel cell power upgrades to your home
- Existing credit was 25% credit
- IRAct increased credit back to 30% through 2032 followed by a few years of a reduced rate

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New Energy Efficient Home Credit

- Credit for contractors who sold energy-efficient homes to homeowners
- Existing credit was set to expire at end of 2022
- IRA Act continued credit for \$500 to \$5,000



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Clean Vehicle Credit



- Personal credit of up to \$7,500 if adjusted gross income for the current or previous tax year does not exceed \$300,000 MFJ, \$225,000 HOH, or \$150,000 for single
- Applies to cars costing no more than \$55,000 and SUVs and light trucks not exceeding \$80,000
- Applies to vehicles bought after 2022
- Final assembly of vehicle must be in North America and critical elements of the battery can not come from "foreign entities of concern"



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Credit for Previously Owned Clean Vehicles

- Nonrefundable personal tax credit for purchasing from a dealer previously owned clean vehicles to individual purchasers whose modified AGI is less than \$150,000 MFJ, \$112,500 HOH, or \$75,000 for others
- Credit is lesser of \$4,000 or 30% of purchase price
- Applies to vehicles acquired after 2022



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Credit for Qualified Commercial Clean Vehicles

- Business credit for qualified commercial clean vehicles
- Credit is up to \$7,500 (or \$40,000 for vehicle with gross vehicle rating of at least 14,000 pounds)
- Applies to vehicles purchased after 2022
- Credit terminates after 2032



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	Pre-IRA 2022		Post IRA 2022	
	Flag for Credit	Flag for Vehicle Credit	Clean Vehicle Credit	Credit for Alternative Clean Vehicle
Maximum Amount	\$5,000 New vehicles up to \$15,000 and used up to about 1,000 lbs to 20,000	\$5,000 or 50% of the cost of the vehicle, up to \$12,500	\$7,500 \$12,500 for vehicles meeting requirements, including 10-year warranty requirement	\$12,500 or 50% of the cost of the vehicle, up to \$25,000 for heavy vehicles
Qualifying Vehicles	batteries with a kWh of capacity and nominal voltage	vehicles equipped by Fuel cells	batteries with 7 kWh of capacity and nominal voltage, charging vehicles, equipped by fuel cells, other 2024, no credit allowed for vehicles connecting to a network, not used from a municipality of housing, after 2022, no credit for vehicles used primarily for commercial purposes	zero-emission diesel vehicles, hydrogen fuel cell vehicles, and other 2024, no credit allowed for vehicles used primarily for commercial purposes
Manufacturing Location Requirements	NA	NA	Final assembly must occur within 500 miles of the facility (NAFTA)	NA
Manufacturer Limitations	limited after 2022 (up to 5% manufacturer)	NA	NA	NA
Eligible Taxpayers	Individuals & businesses, for tax exempt vehicles only (see credit)	Individuals & businesses	Individuals (limited to one credit entry 2 years)	Businesses & tax exempt entities, tax exempt entities need income credit on their part
Price Limits	NA	NA	no credit allowed for vehicles with MSRP > \$25,000 or after vehicle MSRP > \$15,000	no credit allowed if the sales price is \$25,000 or more
Income Limits	NA	NA	no credit if MAGI > \$100,000 (single filer), joint filers MAGI > \$125,000 (joint filers), MAGI > \$150,000 (joint filers), MAGI > \$200,000 (joint filers), MAGI > \$250,000 (joint filers), MAGI > \$300,000 (joint filers), MAGI > \$350,000 (joint filers), MAGI > \$400,000 (joint filers), MAGI > \$450,000 (joint filers), MAGI > \$500,000 (joint filers)	no credit if MAGI > \$100,000 (single filer), joint filers MAGI > \$125,000 (joint filers), MAGI > \$150,000 (joint filers), MAGI > \$200,000 (joint filers), MAGI > \$250,000 (joint filers), MAGI > \$300,000 (joint filers), MAGI > \$350,000 (joint filers), MAGI > \$400,000 (joint filers), MAGI > \$450,000 (joint filers), MAGI > \$500,000 (joint filers)
EV Charging Requirements	NA	NA	vehicles must report 10% for the taxpayer, taxpayers must report 10% for the taxpayer	vehicles must report 10% for the taxpayer, taxpayers must report 10% for the taxpayer
Transferability	only for tax exempt vehicles	only for tax exempt vehicles	Transferable (see credit)	Transferable (see credit)
Expiration	none	12/31/2021	12/31/2022	12/31/2022

<https://crsreports.com/gross.gov/product/pdf/IN/IN11996>



Clean Electricity Production Credit

- New business credit for production of clean electricity
- Credit equals kilowatt hours of electricity produced and sold, multiplied by a base amount of 0.3 cents or 1.5 cents (inflation adjusted)
- Applies to **facilities placed in service after 2024** where the **greenhouse emissions rate is not greater than zero**
- Credit phases out one year after the latter of 2032 or the year when annual greenhouse gas emissions from US electricity production are equal to or less than 25% of the emission rate



Clean Fuel Production Credit

- New business credit for clean fuel the taxpayer produces at a qualifying facility and sells for qualifying purposes
- Fuel must meet certain emission standards
- Credit applies to clean fuel produced after 2024 and sold before 2028



Consolidated Appropriations Act 2021

Tax Law Changes

Permanent Provisions

- Medical expense deduction floor is 7.5%
- Section 179D deduction for businesses with energy efficient commercial buildings
- Increase in income limitations for phase-out of lifetime learning credit and repeal of deduction for qualified tuition and related expenses



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Other Reminders for 2022 Tax Year

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Child Tax Credit

Child Tax Credit			
	Pre-TCJA (< 2018)	TCJA (2018-2020)	Rescue Act (2021)*
Maximum Possible	\$1,000/child	\$2,000/child	\$3,600/child
Non-Refundable	\$1,000/ch	\$600/ch	None
Refundable Portion	None	\$1,400/ch	\$3,600/ch
Amount for < Age 6	\$1,000/ch	\$2,000/ch	\$3,600/ch
Amount Age 6 & up	\$1,000/ch	\$2,000/ch	\$3,000/ch
Phaseout Range	1 phaseout range	1 phaseout range	2 phaseout ranges
Monthly Advances	No	No	Yes



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Child and Dependent Care Credit

Dependent Care Credit		
	2020	2021 (Rescue Act)
Expenses for 1 child	\$3,000	\$8,000
Expenses for 2 or > children	\$6,000	\$16,000
Applicable percentage	35% phased down to 20% (reduced by 1% for each \$2,000 exceeding AGI of \$15,000). Reach 20% by \$45,000 AGI.	50% phased down to 20% (reduced by 1% for each \$2,000 exceeding AGI of \$125,000). Reach 20% by \$185,000 AGI.
High earner phaseout	None	Reduced by 1% for each \$2,000 exceeding AGI of \$400,000. Full phaseout at \$440,000.
Qualifying child*	Under age 13	Under age 13
Refundable	No	Yes – Full credit refundable

*Also qualify: Spouse or other dependent physically or mentally incapable of caring for self



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2021 Individual Recovery Rebate

- \$1,400 single or \$2,800 MFJ credit is allowed in 2022
- \$1,400 credit allowed for qualified dependent
- Credit is refundable and has income phase-out limits
- Advanced payments were based on 2019 return unless the 2020 return had been filed
- Advanced payments can reduce actual credit on return, but do not have to be paid back

NONE FOR 2022



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Impact on 2022 Return

	2021	2022
Child Tax Credit	7,200	4,000
Dependent Care Credit	16,000	6,000
Recovery Rebate Credit	5,600	-
Credits	28,800	10,000



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Charitable Contributions

- If you don't itemize you may take a deduction of \$600 for MFJ or \$300 for others for cash contributions made during 2021
- For people who itemize, the 60% of AGI limit on deductions are suspended through 2021 – all cash contributions are deductible

NONE FOR 2022



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Form 1099-K Reporting

- Starting in 2022 the threshold for reporting has dropped from \$20,000 and 200 transactions to only \$600
- Filed by payment settlement entity

The image shows a Form 1099-K (2021) with the following fields visible:

- 1099-K** (with checkboxes for VOID and CORRECTED)
- FILER'S Name, street address, city or town, state or province, county, ZIP or foreign postal code, and residence no.**
- FILER'S TIN**
- 1099-K** (with checkboxes for VOID and CORRECTED)
- Form 1099-K** (with checkboxes for VOID and CORRECTED)
- Payment Card and Third Party Network Transactions**
- Copy A For Internal Revenue Service Center**
- Copy B For Primary and Secondary Reporting Regulation AGI, Notice, and the current General Instructions for Charitable Deductions**
- Form 1099-K (2021)** (with checkboxes for VOID and CORRECTED)
- Do Not Cut or Separate Forms on This Page**



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Research and Experimental Amortization

- Tax Cuts and Jobs Act changed the way we can expense R&E expenditures beginning with tax years **starting Jan 1, 2022**
- Research and experimental expenditures must be amortized over 5 years or longer
- Amortization period begins at the midpoint of the tax year in which the expenditures are paid or incurred
- Formerly, taxpayers who did not expense these costs could defer their recognition to a pro rata period of at least 60 months that the taxpayer could select “beginning with the month in which the taxpayer first realized benefits from such expenditures”



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Research and Experimental Amortization

- R&E expenses attributable to “foreign research” as defined in Section 41(d)(4)(F) are subject to a 15 year amortization period
- R&E expenses subject to amortization now include those in connection with the development of any software



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Additional Reminders

- Covid Related Retirement Plan Distributions
 - We are potentially in year 3 of 3 for recognizing distributions from retirement accounts during Covid as income
- Business Meals
 - 100% deductible for meals provided by a restaurant in 2022, but reduces to 50% for 2023
 - 50% deduction for employee snacks and coffee
 - Entertainment is still not deductible
- Unemployment Income is fully taxable
- Business Interest Expense
 - Business interest expense deduction is limited to 30% of EBITDA to 30% of EBIT
- Mortgage Insurance Premium Deduction – expired at end of 2021



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NOL Deductions

Year generated	Carryback*	Carryforward ("CF")	Carryforward deduction
Before 2018 (pre-TCJA rules)	2 years	20 years	<ul style="list-style-type: none"> • NOL CF deduction allowed up to taxable income. • Remaining NOL carried forward until used or CF period expires
2018-2020	5 years	Indefinite	<ul style="list-style-type: none"> • CF year before 2021: Before 2018 rules apply • CF year after 2020: Deduction is lesser of: 1) Available NOL CF, or 2) 80% of taxable income before NOL CF deduction
After 2020	N/A carryback no longer allowed	Indefinite	Deduction is the lesser of: <ul style="list-style-type: none"> • Available NOL CF, or • 80% of taxable income before NOL CF deduction

* The carryback period may be waived by taxpayer resulting in NOL CF only.



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Tax Year 2022 Numbers

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Tax Brackets for TY 2022

Rate	For Unmarried Individuals	For Married Individuals Filing Joint Returns	For Heads of Households
10%	\$0 to \$10,275	\$0 to \$20,550	\$0 to \$14,650
12%	\$10,275 to \$41,775	\$20,550 to \$83,550	\$14,650 to \$55,900
22%	\$41,775 to \$89,075	\$83,550 to \$178,150	\$55,900 to \$89,050
24%	\$89,075 to \$178,050	\$178,150 to \$340,100	\$89,050 to \$178,050
32%	\$178,050 to \$215,950	\$340,100 to \$431,900	\$178,050 to \$215,950
35%	\$215,950 to \$539,900	\$431,900 to \$647,850	\$215,950 to \$539,900
37%	\$539,900 or more	\$647,850 or more	\$539,900 or more



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Tax Brackets – look back at TY 2021

2021 Tax Rate	For Single Filers	For Married Individuals Filing Joint Returns	For Heads of Households
10%	Up to \$9,950	Up to \$19,900	Up to \$14,200
12%	\$9,951 to \$40,525	\$19,901 to \$81,050	\$14,201 to \$54,200
22%	\$40,526 to \$86,375	\$81,051 to \$172,750	\$54,201 to \$86,350
24%	\$86,376 to \$164,925	\$172,751 to \$329,850	\$86,351 to \$164,900
32%	\$164,926 to \$209,425	\$329,851 to \$418,850	\$164,901 to \$209,400
35%	\$209,426 to \$523,600	\$418,851 to \$628,300	\$209,401 to \$523,600
37%	\$523,601 or more	\$628,301 or more	\$523,601 or more



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Capital Gains Rates

2022 Capital Gains Tax Rate Thresholds				
Capital Gains Tax Rate	Taxable Income (Single)	Taxable Income (Married Filing Separate)	Taxable Income (Head of Household)	Taxable Income (Married Filing Jointly)
0%	Up to \$41,675	Up to \$41,675	Up to \$55,800	Up to \$83,350
15%	\$41,675 to \$459,750	\$41,675 to \$238,600	\$55,800 to \$488,500	\$83,350 to \$517,200
20%	Over \$459,750	Over \$238,600	Over \$488,500	Over \$517,200

	For Unmarried Individuals, Taxable Income Over	For Married Individuals Filing Joint Returns, Taxable Income Over	For Heads of Households, Taxable Income Over
0%	\$0	\$0	\$0
15%	\$40,400	\$80,800	\$54,100
20%	\$445,850	\$501,600	\$473,750

Look back at TY 2021



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Standard Deduction for 2023

Filing Status	Standard Deduction Amount
Single	\$12,950
Married Filing Jointly & Surviving Spouses	\$25,900
Married Filing Separately	\$12,950
Heads of Households	\$19,400

Compared to 2021

Filing Status	Deduction Amount
Single	\$12,550
Married Filing Jointly	\$25,100
Head of Household	\$18,800



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Other Inflation Adjusted Numbers

- The **adoption credit** is \$14,890 (\$14,440 in 2021)
- The **Roth IRA contribution** amount **phases out** for married taxpayers filing jointly with income between \$204,000 and \$214,000. For heads of household and unmarried filers, the phaseout range is between \$129,000 to \$144,000.
- The **maximum amount of deductible contributions** that can be made to an **IRA** is \$6,000 (increasing the contribution amount for taxpayers age 50 and over to \$7,000).
- The **above-the-line deduction for traditional IRA contributions** **phases out** for married joint filers whose income is greater than \$109,000 if both spouses are covered by a retirement plan at work.
- The **\$2,500 student loan interest deduction** **phases out** for married joint filers with modified adjusted gross income (MAGI) above \$145,000. For single taxpayers, the 2022 deduction phases out at a MAGI level of over \$70,000.
- The **foreign earned income exclusion** under Section 911 is \$112,000.



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Other Inflation Adjusted Numbers

- The gross-receipts test to qualify as a **small business** under Section 448(c) is average annual gross receipts of less than \$27 million in the prior 3-years
- IRS Section 199A **Qualified Business Income** (QBI) thresholds are:
 - Married filing joint returns - \$340,000 to \$440,100
 - Married filing separate - \$170,050 to \$220,050
 - All other returns - \$170,050 to \$220,050



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Standard Mileage Rate

Purpose	Rates 1/1 through 6/30/2022	Rates 7/1 through 12/31/2022
Business	58.5	62.5
Medical/Moving	18	22
Charitable	14	14

Last time the IRS split the mileage rate mid year was in 2011



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Estate and Gift Exemptions/Exclusions

	2022	2023
Gift & Estate Tax Exemption	\$ 12,060,000	\$ 12,920,000
Annual Gift Tax Exclusion	\$ 16,000	\$ 17,000
37% Rate Begins		
T&E	\$ 13,450	\$ 14,450
Single	\$ 539,900	\$ 578,128
MFJ	\$ 647,850	\$ 693,750



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Section 179

- Section 179 Deduction Limit - \$1,060,000
- Expensing limit will be reduced when more than \$2,890,000 of expensing-eligible property is placed in service
- Section 280F limitation for sport utility vehicle expense under Section 179 is \$28,900



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Bonus Depreciation

- Tax Cuts and Jobs Act provided for 100% bonus depreciation through 2022
- Bonus depreciation begins to phase out in 20% intervals beginning in 2023

2022	100%
2023	80%
2024	60%
2025	40%
2026	20%
2027	0%



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Tax Cuts and Jobs Act

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Expiration Dates

Split Congress

New Presidential Election

	2022	2023	2025	2026
Individual Rate Cuts			Last year	Gone
\$199A QBI Deduction			Last year	Gone
AMT Exemption Increase			Last year	Gone
\$10,000 SALT Cap			Last year	Gone
Estate Gift Exemption Incr.			Last year	Gone
21% Corp Tax Rate	-	-	-	-
Corp AMT Repeal	-	-	-	-
100% Bonus Depreciation	Last year	Gone		
\$163(j) Deprec. Addback*	Gone			
Amortize R&D Expense	Begins			
ACA Cadillac Tax	Begins			

* Last year 2021

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Bipartisan Budget Act 2015

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Partnership Rule Changes

- Centralized Audit Regime Rules
- File Extensions

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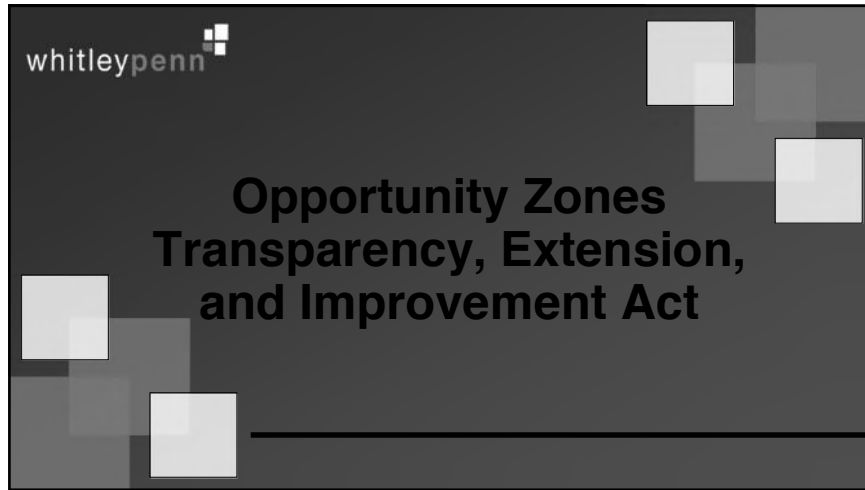
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Proposed Legislation

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First Enacted in 2017

	< 5 Years	5 – 7 Years	7 – 10 Years	Greater than 10 Years
Deferral of Initial Gain (180 days)	Until QOZ Investment is sold or December 31, 2026			
Basis Adjustment of Original Investment	None	Basis of original investment increases by 10%	Basis of original investment increases by 15%	Basis of original investment increases by 15%
Exclusion on QOZ Investment	None	None	None	No gain recognized on sale
Note			To take advantage of the full deferral, you must invest by December 31, 2019	

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Opportunity Zone Transparency, Extension, and Improvement Act


	< 5 Years	5 – 7 Years	7 – 10 Years	Greater than 10 Years
Deferral of Initial Gain	Until QOZ Investment is sold or December 31, 2026 2028			
Basis Adjustment of Original Investment	None	Basis of original investment increases by 10%	Basis of original investment increases by 15%	Basis of original investment increases by 15%
Exclusion on QOZ Investment	None	None	None	No gain recognized on sale
Note			To take advantage of the full deferral, you must invest by December 31, 2019	

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- ## Additional Details
- Requires the sunset of certain OZ tract designations
 - Imposes new reporting requirements to promote transparency
 - Allow QOFs to invest in other QOFs called “qualified feeder fund”
 - Creates “State and Community Dynamism Fund” to provide assistance to state and local governments
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Employee Retention Credit

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Frequently Asked Questions


1. Can you still apply for the ERC? Yes, for a few more years.
2. When will my ERC be paid by the IRS? If you are receiving less than \$200,000 per quarter, it is taking about 10 to 12 weeks. If you're receiving over \$200,000 the IRS is slow to pay.
3. Is the ERC taxable? Yes. The expenses you use to claim your credit are non-deductible.
4. Can private equity groups apply on behalf of the portfolio companies? Yes, but affiliation rules apply.




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Frequently Asked Questions

6. I acquired a company in 2021, can I apply for the ERC? Depends on whether you bought assets or stock.
7. How can I check the status of the ERC? Call the IRS or give your CPA authorization to communicate with the IRS on your behalf (Form 2848 or 8821)
8. Should I be worried about the companies I hear on the radio that can calculate this for me? Yes – lots of people “taking advantage” of the program.
9. Does Whitley Penn have an ERC Guru that can guide me through these rules? Yes! Derrick Bradford – Derrick.Bradford@whitleypenn.com



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Dirty Dozen Tax Scams

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Taxpayers Should Avoid:

1. Use of Charitable Remainder Annuity Trust (CRAT) to Eliminate Taxable Gain
 - Transferring appreciated property to a CRAT for step up in basis, selling the asset and purchasing a single premium immediate annuity and treats the payment as non-taxable
2. Maltese or Other Foreign Pension Arrangements Misusing Treaty
 - Taxpayer contributes to a foreign individual retirement account which doesn't have same requirements as a US "pension fund", however taxpayer claims it can be treated the same as a US pension fund



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Taxpayers Should Avoid:

3. Puerto Rican and Other Foreign Captive Insurance
4. Monetized Installment Sales
 - Seller receives the sales proceeds through purported loans
5. Pandemic-related scams
 - Economic Impact Payment and tax refund scams
 - The IRS won't initiate contact by phone, email, text, or social media asking for Social Security numbers or other personal or financial information



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Taxpayers Should Avoid:

6. Offer in Compromise Mills
 - Companies that make outlandish claims they can help taxpayers with IRS issues for a fee
7. Bogus calls, texts, emails and posts online to gain trust or steal
 - The IRS does not initiate contact with taxpayers by email
 - The IRS does not leave pre-recorded, urgent or threatening messages
8. Spear Phishing
 - Emails that your account has been put on hold with the IRS and you need to enter credentials to unlock it



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Taxpayers Should Avoid:

9. Concealing Assets in Offshore Accounts and Improper Reporting of Digital Assets
 - International tax compliance is a top priority of the IRS
 - US persons are taxed on worldwide income
 - Digital assets are just as reportable as tangible assets
10. High-Income Individuals Who Don't File Tax Returns
11. Abusive Syndicated Conservation Easements
 - Promoters skew a provision of the law, inflate appraisals, and use partnerships to avoid having a legitimate business purpose



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Taxpayers Should Avoid:

12. Abusive Micro-Captive Insurance Arrangements

- Promoters persuade owners of closely held entities to participate in schemes that lack many of the attributes of insurance

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IRC Section 1202 Small Business Stock

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Why 1202 Stock Matters

- A noncorporate shareholder who holds qualified small business stock (QSBS) for more than 5 years, may generally exclude 100% of the gain on the sale or exchange of the stock
- Maximum exclusion and limited to 50% of the greater of:
 - 10 times the taxpayer's basis in the stock
 - \$10 million dollars (shareholder by shareholder basis)

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How to Qualify as Small Business Stock

- Stock must be issued after August 10, 1993
- Acquired at the original issuance
- C Corporation stock only (not S Corp)
- Corporation had less than \$50 million of capital as of date of stock issuance
- 80% or more of the value of the corporation's assets must be used in the active conduct of one or more qualified trades or businesses
- Can not be in the business of banking, farming, insurance, finance, leasing, investing, hotels, motels, restaurants, or services including brokerage

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Worker Classification

Employee vs. Contractor

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Three Factors the IRS Considers


1. Behavioral Controls- who controls what work is accomplished and how the work is done
2. Financial Control (Who bears the risk)
 - The extent to which the worker has unreimbursed business expenses
 - The extent of the worker's investment in the facilities or tools used in performing services
 - The extent to which the worker makes his or her services available to the relevant market
 - How the business pays the worker, and
 - The extent to which the worker can realize a profit or incur a loss




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Three Factors the IRS Considers

3. Relationship
 - Written contracts or oral agreements describing the relationship the parties intended to create
 - Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay
 - The permanency of the relationship, and
 - The extent to which services performed by the worker are a key aspect of the regular business of the company



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Business vs. Hobby

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Trade or Business Checklist (Treas. Reg. Section 1.83-2(b))

1. Does the taxpayer carry on the activity in a business-like manner?
2. Does the taxpayer have the required expertise?
3. Does the taxpayer devote sufficient time and effort?
4. Are asset values appreciating or expected to appreciate?
5. Has the taxpayer been successful in other business ventures?
6. Are there sufficient amounts of profits in relation to losses?
7. Does the taxpayer rely on this activity for survival and not have other financial resources?
8. Does the activity seem to be more business than pleasure?
9. Does the activity have a history of more income than losses?

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