

A grayscale photograph of the United States flag waving in the foreground on the left, with the dome of the United States Capitol building visible in the background on the right. The image is partially obscured by a solid green horizontal bar at the bottom.

GBQuarterly: Year-End Business Tax Update

December 6, 2023

Presenters



Chris Dean

*Director, Tax & Business
Advisory Services*
614.947.5232
cdean@gbq.com



Jeff Waldeck

*Director, Tax & Business
Advisory Services*
614.947.5312
jwaldeck@gbq.com



Kevin Dunn

*Director, Tax & Business
Advisory Services*
614.947.5201
kdunn@gbq.com



Tyler Gabalski

*Manager, Tax & Business
Advisory Services*
614.947.5277
tgabalski@gbq.com

Agenda

- Corporate Transparency Act's Beneficial Ownership Reporting
- Employee Retention Credit
- State Passthrough Entity Tax Elections
- Research and Development
- Green Energy Incentives
- Other Changes
- Legislative Updates



Corporate Transparency Act's Beneficial Ownership Reporting

- Starting on 1/1/2024, an estimated 32.6 million existing businesses will be required to file beneficial ownership reports with FinCEN
- Beneficial ownership is generally any individual who owns, directly or indirectly, more than 25% of an entity or has "substantial control" over an entity
 - Complex family attribution and constructive ownership rules apply when calculating the 25% threshold
 - The name, date of birth, current street address, and a copy of a driver's license or passport of each beneficial owner are required to be submitted

Corporate Transparency Act's Beneficial Ownership Reporting

- Reporting companies include:
 - Domestic entities including corporations, limited liability companies or any similar entity created by filing a document with a secretary of state or any similar office under the law of a state or Indian tribe, **or**
 - Entities formed under the laws of a foreign country and registered to do business in any state or tribal jurisdiction by filing a document with a secretary of state or any similar office

Corporate Transparency Act's Beneficial Ownership Reporting

- Reporting companies in existence on 12/31/2023 have until 1/1/2025 to file their first report.
- Reporting companies formed between 1/1/2024 and 12/31/2024, must file their first report within 90 days of formation
- Reporting companies formed on or after 1/1/2025, must file their first report within 30 days of formation
- All reporting companies who have a change in beneficial owner information must file a report within 30 of days of the change

Corporate Transparency Act's Beneficial Ownership Reporting

Reporting Company Exemptions:

- Securities reporting issuer
- Governmental authority
- Bank
- Credit union
- Depository institution holding company
- Money services business
- Broker or dealer in securities
- Securities exchange or clearing agency
- Other Exchange Act registered entity
- Investment company or investment adviser
- Venture capital fund adviser
- Insurance company
- State-licensed insurance producer
- Commodity Exchange Act registered entity
- Accounting firm
- Public utility
- Financial market utility
- Pooled investment vehicle
- Tax-exempt entity
- Entity assisting a tax-exempt entity
- Large operating company
- Subsidiary of certain exempt entities
- Inactive entity

Corporate Transparency Act's Beneficial Ownership Reporting

- A “large operating company” is a legal entity that meets the following requirements:
 - More than 20 full-time employees of the entity are employed in the United States
 - The entity has an operating presence at a physical office within the United States
 - The entity filed a Federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales
- “Subsidiaries of certain exempt entities” include those whose ownership interests are controlled or wholly owned, directly or indirectly by certain exempt entities
 - This does not include subsidiaries of a money services business, pooled investment vehicle, entity assisting a tax-exempt entity, or inactive entity

Corporate Transparency Act's Beneficial Ownership Reporting

- In addition to individuals with 25% direct or indirect ownership, beneficial owners include those with “substantial control” over a reporting company
- There are four general criteria for determining if an individual exercises substantial control over a reporting company
 - Senior officer
 - Authority to appoint or remove certain officers or majority of directors
 - Important decision-maker
 - Any other form of substantial control

Corporate Transparency Act's Beneficial Ownership Reporting

TAKEAWAYS

- Consult with a qualified legal council and evaluate if your business is a reporting company
- Evaluate who may be considered a beneficial owner
- Gather beneficial owner information for initial reporting
- Establish protocol to remain compliant for beneficial owner changes or changes in beneficial owner information
- Initial reports can be filed on FinCEN's website beginning January 1, 2024

Employee Retention Credit Update

IRS issues IR-2023-169 on September 14, 2023

- The IRS Commissioner announced that they are putting a hold on processing any new ERC claims until at least the end of the year.
- *Note:* This does not mean any new claims filed are invalid or won't be considered.
- The IRS Commissioner has indicated that to end the program early, the IRS would have to work with Congress to change the law. The IRS does not have the authority to act on its own to bring an end to the ERC program.

IRS issues generic legal advice memorandum (GLAM) on October 18, 2023 indicating communications from OSHA are not considered "orders from an appropriate governmental authority"

IRS issues IR-2023-193 on October 19, 2023 regarding the withdrawal process for Employee Retention Credit claims where taxpayers had not cashed or received their refund checks

Businesses have until April 15, 2024, to file amended Forms 941 to claim the credit for wages paid during a qualifying period during 2020 and April 15, 2025, for wages paid in any qualifying period in 2021.

State Passthrough Entity Tax Elections

- 2017 Tax Reform introduced \$10,000 state and local tax limitation “SALT Cap” on Federal individual return
- More than 30 states have enacted or are considering legislation to allow Partnerships and S-Corporations (pass-through entities “PTE”) to elect to pay tax at the entity level for state income tax purposes
 - Ohio started in late 2022
- Basic mechanics of Ohio pass-through entity tax election:
 - Ohio tax paid by PTE and taken as a deduction on PTE’s Federal tax return as a general business deduction (SALT Cap workaround)
 - The owners add back the Ohio tax on their individual Ohio return but then claim a credit against their personal tax liability, and any excess is refunded to the individual

State Passthrough Entity Tax Elections

- Generally speaking, state PTET payments should be classified as distributions to owners under GAAP
 - Final determination of treatment will hinge on details of each state's PTET program.
- Will likely result in a book-to-tax difference on the tax returns. Understand the mechanics and proper reporting on returns and Schedules K-1.

State Passthrough Entity Tax Elections

TAKEAWAYS

- If an individual is overpaid at the state level, the refund may not be all taxable in the subsequent tax year (state tax credits are not always considered taxable income). Need to look at the total tax situation, not just the activity from the passthrough entity.
- Ohio now has rules that are favorable for residents when passthrough entity has passthrough election in place in other states (allowing a credit where previously not available).
- Potential opportunities in the sale of a business. May make asset deals more favorable for sellers by making the state tax deductible. Potentially offsetting certain unfavorable aspects at the federal level (Ordinary vs. Capital Gain treatment).

Research & Development

- 2017 Tax Reform Act – Revenue Raiser
 - For tax years beginning BEFORE January 1, 2022, taxpayers may deduct expenditures made for research activities.
 - However, for tax years beginning AFTER December 31, 2021, research expenditures must be capitalized and amortized over a five-year period (15 years for research conducted outside of the United States).
 - Amortization begins with the midpoint of the taxable year for the first year
- Legislative fix? – not likely

Research & Development

- All costs incidental to the development or improvement of a product
- Activities intended to discover information that would eliminate uncertainty
- Examples of potential Section 174 costs include the following:
 - Compensation of employees conducting research
 - Supplies consumed during research activities
 - Costs associated with research facilities:
 - Rent
 - Utilities
 - Depreciation
 - Attorney fees related to patent applications
 - Computer software development costs

Research & Development

Assume the taxpayer incurs \$5,000,000 of Section 174 costs annually and all research activity is conducted within the U.S.

Tax Year	2022	2023	2024	2025	2026	2027
R&D Costs, Annually	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
Tax Amortization	500,000	1,500,000	2,500,000	3,500,000	4,500,000	5,000,000
Book/Tax Difference	4,500,000	3,500,000	2,500,000	1,500,000	500,000	0
Fed Corp Rate	21%	21%	21%	21%	21%	21%
Current Tax Impact	945,000	735,000	525,000	315,000	105,000	0

Research & Development – Considerations



- Tracking – How do I start to analyze?
 - Financial Statement R&D footnote disclosure
 - IRC §41 R&D Tax Credit
 - UNICAP §263A R&D Costs
 - *None of the above will be an all-inclusive remedy
- R&D credit study opportunity?
 - The majority Section 174 costs qualify for an R&D tax credit in most cases.
 - In prior slide example, an average yearly credit of \$250,000-\$300,000 would help mitigate tax burden and potentially be cash flow positive by year 4 or 5.

Research & Development

TAKEAWAYS

- Not making a Section 280C election can lead to permanent savings in certain circumstances. Analysis is different than in years prior to the change.
- Consider the impact of capitalizing R&D costs on other provisions tied to taxable income. May be opportunities with Section 179 (depreciation), Section 163(j) (interest limitations), basis/passive limitations from passthroughs, and others.

Green Energy Incentives

The Inflation Reduction Act is the largest-ever U.S. investment committed to combat climate change, allocating \$370 billion in tax incentives to energy security and clean energy programs over the next 10 years

- Goal: Reduce greenhouse gas emissions by 40% in 10 years
- Introduces new credits and structures
 - New requirements to maximum certain green energy tax credits:
 - Prevailing wage requirements
 - Domestic content requirements
- Adds additional monetization options
- Provides tax-exempt entities the ability to claim credits
- Extends and enhances many of the current energy-related tax credits

Other Changes: Depreciation

- Starting in 2024, an 80% bonus depreciation allowance will be replaced with a 60% allowance
 - Asset must be placed in service by 12/31/2023 to qualify for 80% allowance
- 100% expensing of certain assets under Section 179 is still available for qualified taxpayers
 - Section 179 deductions are subject to many limitations at both the taxpayer and partner/shareholder level
 - Only available to taxpayers with less than ~\$2.7M of additions
 - Trusts cannot take Section 179 deduction
- Bonus depreciation allowance will continue to phase down
 - 60% in 2024
 - 40% in 2025
 - 20% in 2026
 - 0% in 2027 and after

Other Changes: Section 163(j) Interest Limitation

- IRC Section 163(j) generally limits the deduction for net business interest expense to 30% of a taxpayer's adjusted taxable income
- Adjusted taxable income (ATI) – In general:
 - For tax years beginning in 2018 through 2021 – EBITDA
 - For tax years beginning in 2022 – EBIT
 - Major impact on entities with material depreciation and amortization
 - Will come into play more often with higher interest rates
- Any business interest expense disallowed is carried forward and treated as business interest expense in the following year
 - Indefinite carryforward period

Other Changes

TAKEAWAYS

- Consider capitalization policies and impact of tangible property regulations. Review strategy around tax depreciation and use of Section 179.
- Consider depreciation and R&D impact on other tax provision tied to taxable income. May be opportunities with Section 179 (depreciation), Section 163(j) (interest limitations), basis/passive limitations from passthroughs, and others.
- Review income streams for classification as interest income for purposes of Section 163(j) limitation.
- Pay more attention to treasury function. Interest rates and timing of estimate payments matter more.

Legislative Updates

- Section 174 Research and Development Amortization
- Build It in America Act (not likely to occur in 2023)
- Moore v. United States
- Sunsetting TCJA provisions
 - Bonus depreciation
 - Section 199A
 - Excess business losses

Questions?



Join Us!



Upcoming Events:

- [12/7/23 Multistate Income Tax: Year in Review and 2024 Outlook](#)
- [12/12/23 The Power of Ancillary and Worksite Benefits](#)

Contact Information



Chris Dean

*Director, Tax & Business
Advisory Services*
614.947.5232
cdean@gbq.com



Jeff Waldeck

*Director, Tax & Business
Advisory Services*
614.947.5312
jwaldeck@gbq.com



Kevin Dunn

*Director, Tax & Business
Advisory Services*
614.947.5201
kdunn@gbq.com



Tyler Gabalski

*Manager, Tax & Business
Advisory Services*
614.947.5277
tgabalski@gbq.com