



Restaurant MasterClass Serving up Tax Tips: Year End- Strategies for Restaurant Owners

December 11, 2024

Notes

- This presentation is intended to make participants aware of tax issues that may apply to this audience.
- Information presented herein is not intended to be tax advice.
- Please consult with a qualified practitioner for tax advice related to specific transactions.



Presenters



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CPE Activity Question

How are your ticket counts so far in 2024?

- Better than 2023
- Same as 2023
- Lower than 2023

Agenda

- Corporate Transparency Act's Beneficial Ownership Reporting
- Expiring TCJA Business Tax Provisions
- Election Results
- Trump's Proposed Tax Policies – Business Provisions
- 2024/2025 Considerations
- Tax Credits
- Employee Retention Credit
- Credit Card Settlement Class Action Suite

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
- 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 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
- There are 23 categories of exemptions



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 - Exemption

- 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 who’s 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

UPDATE:

- U.S. District Court for the Eastern District of Texas
 - Ordered nationwide preliminary injunction on Beneficial Ownership Information reporting as of 12/3/24
 - Department of Justice is appealing ruling
 - As a result US FinCEN says BOI reporting is "voluntary" until issue settled
 - Taxpayers can file voluntarily or hold off until further guidance



Corporate Transparency Act's Beneficial Ownership Reporting



TAKEAWAYS

- Voluntarily report or hold off?

Report

- Consult with 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





CPE Activity Question

What segment do you see doing the best in 2025?

- QSR
- Casual
- Fine Dining

Expiring TCJA Business Tax Provisions

The structure of the TCJA tax provisions results in many provisions sunseting or revert back to prior law.

- Corporate tax rate remains at 21%

Key Business Provisions Changing

- Bonus Depreciation – has declined in recent years but is 0% for years beginning after 12/31/2026
- 199A Deduction – eliminated for years after 2025
- Limitation on losses for non-corporate taxpayers – reverts to pre-TCJA provisions





Election Results

President

- Trump 312
- Harris 226

Senate

- Republicans 53
- Democrats 47

House

- Republicans 220
- Democrats 214



Trump's Proposed Tax Policies – Business Provisions

- Lower corporate rate from 21% to 20% (15% if manufacturing in United States)
- Qualified opportunity zone capital gain deferral extended
- 20% qualified business income deduction extended
- Restore immediate expensing for research and development costs
- Limitation on excess business losses for non-corporate taxpayers would be repealed
- Bonus depreciation extended or made permanent
- Certain green incentives from the IRA repealed
- Modify 163(j) limitation to be based on EBITDA

What to Watch for in Congress

- Any changes to the tax code will be done through “budget reconciliation”, which will only require 50 votes in the Senate. Most other legislation requires 60 votes due to filibuster.
- What is the "reconciliation number"?
- Narrowness of House Majority – three Republicans who were elected will not be taking their seats due to cabinet appointments or other reasons. Will at least temporarily result in a majority of only two or three seats.
- Do they try to include tariff legislation with tax legislation for budgetary reasons?
- Do they try to include some of the promises President Trump made during the campaign, such as no tax on tips, Social Security benefits, or overtime, and another reduction in corporate tax rate?
- The legislative process for a tax bill will begin as soon as the new congress takes office, but specific provisions will not be known for at least a few months
- Where do taxes fall on the “to do” list?

2024/2025 Considerations: Tax Rates

It is unclear what provisions may be included in a year-end tax bill or 2025 tax bill.

- If tax rates decrease, consider **accelerating business deductions and/or deferring revenue**
- If tax rate increase, consider **accelerating income and/or deferring deductions**
- Consider methods of accounting changes
 - Review of CAPEX policies
 - Depreciation
 - Deferred revenue/revenue recognition
 - Audit protection

2024/2025 Considerations: §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



CPE Activity Question

How do you prefer to engage during a webinar?

- Via chat
- Through live Q&A
- Using polls and surveys
- I prefer to just listen

Depreciation Strategies for 2024

Bonus Depreciation & 179 Expensing

- TCJA increased and extended bonus depreciation
 - 2018-2022 – 100%
 - 2023 - 80%
 - 2024 - 60%
 - 2025 – 40%
 - 2026 – 20%
- 179 Expensing
 - TCJA also increased and expanded this provision
 - Generally, 179 expensing only applies to §1245 property
 - Added Qualified Improvement Property
 - Roofs
 - HVAC
 - Fire Protection and Alarm Systems
 - Security Systems
 - 2023 maximum deduction was \$1,160,000 on the first \$2,890,000
 - 2024 maximum deduction is \$1,220,000 with a phase-out threshold of \$3,050,000

Depreciation Strategies for 2024

Tangible Property Regs

- DeMinimis Expensing
 - Safe Harbor Election made annually
 - Items must also be expensed for financial statement purposes
 - \$2,500 for taxpayers without applicable financial statements
 - \$5,000 for taxpayers with applicable financial statements
 - Costs should include costs for delivery, installation, etc.
 - Should be supported on an invoice level for each unit of property
- Routine Repairs & Maintenance
 - Taxpayers can expense items of routine repairs and maintenance
 - Defined as recurring activities that taxpayer expects to perform as results of use of properties
 - Examples include painting, seal coating of parking lot, testing and inspection of HVAC units.
 - Items cannot be considered an improvement. Improvements are defined as
 - Betterment
 - Restoration
 - Adaptation to a new or different business use
 - Can be performed anytime during the useful life of the asset, only considered routine if taxpayer reasonable expects to perform the activity more than once in a 10-year period

Depreciation Strategies for 2024

Cost Segregation

- A accounting practice the utilizes both accounting and engineering to identify and estimate costs of certain components
 - Components are “segregated” into different classes and depreciable lives
 - Generally 39, 27.5, 15, 7, and 5 year property
 - Helps to identify assets potentially eligible for Bonus depreciation or 179 expensing
 - Assist taxpayers in identifying assets for which full or partial asset dispositions can be made.
 - Assist taxpayers in identifying assets eligible for immediate expensing under Tangible Property Regulations
 - Assists Taxpayers in setting up depreciation/fixed asset schedules to substantiate depreciation deductions on their returns

2024/2025 Considerations

TAKEAWAYS

- Consider timing of taxable income if the corporate / individual tax rates change
- 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.

Research & Development

What is the same for 2024?

- Tax credit available for domestic R&D activities
 - Federal credit often is between 6-10% of R&D spend
 - Many states, including Ohio have a R&D tax credit as well
- Typical eligible activities could include:
 - New or improved product: New menu items and new beverages
 - New or improved processes: Techniques to create a business component and show measurable improvement
 - Software Development: Self developed websites and mobile applications
- 2024 will be the 3rd consecutive year of R&D capitalization under Section 174
 - For tax years beginning in 2022 – Domestic and foreign R&D costs defined by Section 174 are required to be amortized for tax purposes
 - Domestic R&D costs are amortized over 5 years
 - Foreign R&D costs are amortized over 15 years

Employment Based Credits

- **FICA Tip Credit**

- Credit available to “creditable tips” times 7.65% (FICA tax rate)
- Currently under pressure from states seeking to increase minimum wage

- **Work Opportunity Tax Credit**

- One time tax credit for certain targeted groups who face barriers to employment
- Maximum credit can be up to \$9,600 per new hire
- Currently set to expire December 31, 2025

- **Empowerment Zone Credit**

- Annual credit awarded to companies operating in an Empowerment Zone and hire employees working in the same zone
- Located in economically depressed census tracts
- Maximum credit is 20% of wages up to \$15,000, or \$3,000 per employee
- Currently set to expire December 31, 2025

Employee Retention Credit

Recent IRS Developments

- IRS is issuing denial letters
 - Q3 2021 – no government orders
 - Comparison of Form 941 – Line 1 employees to credit amount
 - No Gross receipt decline
- Increased activity in issuance of refund checks for claims filed prior to 1/31/2024
- Several taxpayers are filing refund suits against the IRS





Credit Card Settlement Opportunity

- Eligible if you accepted Visa or Mastercard payments between 1/1/04 and 1/25/19
- Class Action Settlement was \$5.54B
- Filing deadline is 2/4/25
- Seeing many 3rd party service providers marketing this opportunity





CPE Activity Question

What worries you the most?

- Labor/Food Costs
- Economic Conditions
- Other

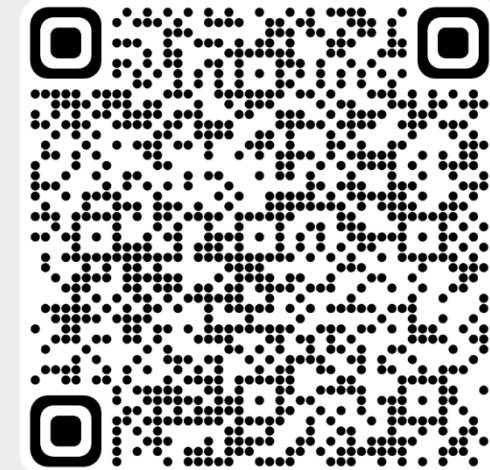
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