



2022 Federal Tax Update: Corporate



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Meet Doug Van Der Aa



Doug Van Der Aa is a lively and energetic speaker – especially on the subject of taxes and ethics. He has been a highly rated speaker and seminar leader for CPA Associations and other organizations throughout the country for more than 18 years.

Doug has over 25 years of professional experience, including tax practice in CPA firms and the practice of transactional business and real estate law as an attorney. As a CPA, Doug’s practice concentrated on the tax needs of closely held businesses, with their related pass-through entities, complex individual returns, estates and trusts.

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2022 Federal Tax Update: Corporate



Course Development Resources

- The author gratefully acknowledges **RIA Checkpoint** for use of certain materials included in this presentation.
- Additional materials are adapted from various authoritative pronouncements of the IRS.
- The opinions expressed within, however, are solely the responsibility of the author.

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Learning Objectives



- Highlight significant tax changes impacting 2022 and 2023 returns, including:
 - **American Rescue Plan Act of 2021**
 - **Infrastructure Investment and Jobs Act**
 - **Inflation Reduction Act**
- Discuss the latest **proposed** tax legislation impacting individual taxpayers.
- Provide practical suggestions to help save taxes in today's **extremely** uncertain tax environment.

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2022 Federal Tax Update: Corporate

COVID-Related Tax Relief Act of 2020

Business relief included:

- PPP2 Loan Program
- Clarification of PPP Loan Forgiveness
- Employee Retention Credit changes
- **100% business meal deduction**



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Paycheck Protection Program

PPP Loan Forgiveness

- A portion of the loan may be forgiven - **Tax-Free!**
- But the IRS had said that the business expenses were **non-deductible!**



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COVID-Related Tax Relief Act of 2020

The Act expressly overrides the IRS position and provides that:

“no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided...”

(Section 276)

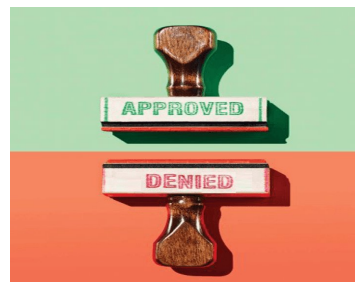


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COVID-Related Tax Relief Act of 2020

The Act expressly overrides the IRS

The IRS promptly surrendered and issued Revenue Ruling 2021-02 on January 6, which obsoletes Notice 2020-32 and Rev. Ruling 2020-27



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COVID-Related Tax Relief Act of 2020

The Act also clarifies that gross income does not include forgiveness of certain loans, emergency Economic Injury Disaster Loan (EIDL) grants, and certain loan repayment assistance under the CARES Act, and deductions are allowed.

(Section 278)



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Employee Retention Credit

In **Notice 2021-49** IRS applied the related party rules to hold that if the majority owner of a business has any living relatives (other than a spouse) then the owner's wages are **NOT** eligible for the ERC!



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Employee Retention Credit

Only in the rare situation when the majority owner does not have any living relatives can you use the owner's wages for claiming the ERC



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Employee Retention Credit

In light of **Notice 2021-49** you should *consider* amending previously filed ERC claims if you included the majority owner's compensation in the calculation!



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Employee Retention Credit

FYI – the ERC statute of limitations is open for **5 years!**
(Not the usual 3)



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Employee Retention Credit



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Employee Retention Credit

- The IRS is rolling out a new process for anonymous reporting of abusive “ERC mills”
- You can report them using Form 3949-A Information Referral
 - *Previously used to report fraud anonymously*

Form 3949-A (October 2020)	Department of the Treasury - Internal Revenue Service Information Referral <i>(See instructions on reverse)</i>	OMB Number 1545-1960
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COVID-Related Tax Relief Act of 2020

ADS Depreciation of Residential Rental Property



The Act changed residential rental property placed in service prior to 2018 from 40 years to 30-year ADS for electing real property trades or businesses.

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COVID-Related Tax Relief Act of 2020

Business Meals

The Act suspends the 50% deduction limit for food and beverages “...provided by a restaurant”

- Dine in or take out!
- 2021 and 2022



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COVID-Related Tax Relief Act

Business Meals

The IRS issued Notice 2021-25 explaining which meals qualify for the 100% deduction in 2021 and 2022



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Notice 2021-25

“...provided by a restaurant”

“restaurant” means a business that prepares and sells food or beverages to retail customers for immediate consumption, regardless of whether the food or beverages are consumed on the business’s premises.

100%

Notice 2021-25

“...provided by a restaurant”

However, a restaurant does **not** include a business that primarily sells pre-packaged food or beverages not for immediate consumption, such as a grocery store; specialty food store; beer, wine, or liquor store; drug store; convenience store; newsstand; or a vending machine or kiosk.

- ***So the 50% limit continues to apply***



Notice 2021-63

The IRS announced that the temporary 100% deduction applies to the **Meal portion** of 2021 and 2022 Per Diem allowance

- *But not the incidental portion*



American Rescue Plan Act of 2021

\$1.8 Trillion in economic relief for
Individuals, Business & Government



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American Rescue Plan Act of 2021

Business relief included:

- ~~More Employee Retention Credit changes~~
- ~~Sick and Family Leave Credits~~
- EIDL Grants are non-taxable



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\$1T Bipartisan Infrastructure

Infrastructure Investment and Jobs Act

NOT (really) a Tax Act !

- Employee Retention Credit
- **Crypto-asset Reporting**
- Disaster Relief
- Miscellaneous



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\$1T Bipartisan Infrastructure

Cryptocurrency Reporting



The Infrastructure Act extends the definition of **broker** to “any person who (for consideration) is responsible for regularly providing any service affecting transfers of **digital assets** on behalf of another person.”

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\$1T Bipartisan Infrastructure

Cryptocurrency Reporting



- The beginning date for basis tracking is January 1, 2023
- 1099B reporting would start for 2023
 - Returns required to be filed after December 31, 2023
 - *Filed in 2024 for 2023 activity*

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\$1T Bipartisan Infrastructure

Cryptocurrency Reporting

Digital assets would be treated as **cash** for Code Section 60501(a) purposes

- Requiring reporting anytime you (a trade or business) receive more than \$10,000 in **cash/digital assets**
 - *Returns and statements filed after December 31, 2023*



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BBB - Bank Account Reporting

The IRS was pushing (hard) to require financial institutions to report to the IRS the total amount of deposits and withdrawals over \$600/\$10,000

- Purportedly this will help the IRS focus on **wealthy** tax evaders
- **No**, This is all about targeting Schedule C, E and F filers

Four Pinocchios

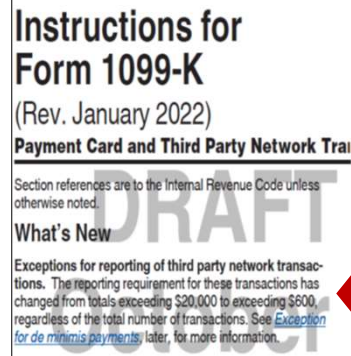


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1099-K Reporting

- Previously the threshold to report third party network transactions was \$20,000/200 transactions a year.
- **Under the American Rescue Plan the IRS is dropping this down to \$600 a year for 2022 !**
 - *Regardless of the number of transactions*



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1099-K Reporting

I suspect this is going to bring a lot of activity to light

- **Gig work**
- **Side Hustles**
- **Vacation homes & condo rentals**
- **Air BNB**
- **Roommates**
- **Non taxable personal stuff.....**



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\$1T Bipartisan Infrastructure

Miscellaneous tax provisions:

- Extension of Highway taxes
- Extension and modification of superfund excise taxes
- Allows tax-exempt Private-Activity bonds for qualified broadband projects and carbon dioxide capture facilities



Inflation Reduction Act

Signed by President Biden on August 16, 2022



Inflation Reduction Act

Key provisions of the \$739 Billion Act include:

- **New Corporate Taxes**
- Extended Premium Tax Credit
- Prescription Drug Pricing Reform
- **Green Energy Tax Credits**
- IRS Funding



President Gerald R. Ford – Fall 1974

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Corporate Minimum Tax

The Act imposes a new 15% corporate alternative minimum tax on the adjusted financial statement (book) income of large corporations.

*Effective for tax years beginning after
December 31, 2022*



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Corporate Minimum Tax

Corporations are subject to the tax if their average annual adjusted financial statement income for the three-year period (without loss carryovers) exceeds \$1 Billion

- Believed to impact @150-200 corporations
 - 30% of the Fortune 500
- Generating **@\$313 Billion** in Revenue !

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Corporate Minimum Tax



Adjusted financial statement (book) income

- The 15% minimum tax applies after adjustments for the AMT, foreign tax credits and tax depreciation in excess of book depreciation

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Stock Buyback Tax

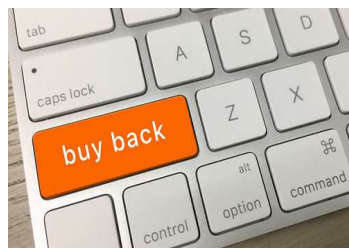
The Act imposes a nondeductible 1% excise tax on the FMV of any stock which a corporation repurchases



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Stock Buyback Tax

Applies to any corporation whose stock is traded on an established securities market

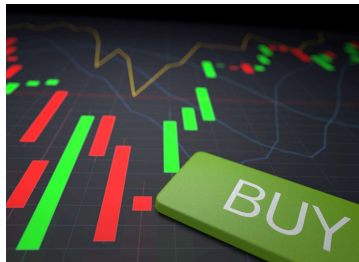


- *And to subsidiaries that are >50% owned by a publicly traded parent*
- *Applies to repurchases of stock after December 31, 2022*

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Stock Buyback Tax

The excise tax does not apply if repurchases are less than \$1,000,000

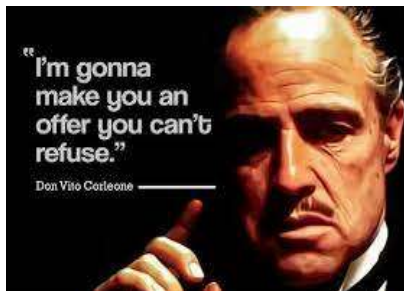


- Or if contributed to an employee pension plan or ESOP
- Applies to repurchases of stock after December 31, 2022

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Drug Pricing

The Act imposes a new excise tax on drug manufacturers who fail to enter into drug pricing agreements



The excise tax ranges from 185.71% to 1,900% of the selected drug's price!

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Green Energy Credits

The Act includes @\$370 Billion in tax credits and other climate change provisions



Goal of reducing greenhouse gas emissions by @40% by the end of the decade

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Green Energy Credits

The IRA introduces two new requirements to be eligible to receive the maximum amount for many of the tax credits

- 1) Compliance with Prevailing wage requirements (*Davis-Bacon Act*)
 - And Apprenticeship programs
- 2) Domestic Content Requirements



MADE IN USA

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Green Energy Credits

Renewable Energy Credits

- Section 45 Production Credit
- Section 48 Energy Credit
- Extended through 2024

Must conform to wage and hour, apprenticeship and domestic content requirements



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Green Energy Credits

Carbon Capture and Sequestration Credit



- Extended for construction and planning beginning before 2033
- Potential credit increased to \$60 per ton

Must conform to prevailing wage and apprenticeship requirements

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Green Energy Credits

Clean Fuel Credits

- Credits for biodiesel, renewable diesel, biodiesel mixtures and second generation biofuels
- Retroactively extended through **2024**



New credit for sustainable aviation fuels and for clean hydrogen after 2022

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Green Energy Credits

Section 179D Energy Efficient Commercial Buildings Credit modified & extended



- Previously only commercial building owners and designers qualified
- Now designers of HVAC, lighting and building envelope systems can also qualify

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Green Energy Credits

Section 179D Energy Efficient Commercial Buildings Credit modified & extended

Lowered the threshold for energy savings from 50% to 25%

- Starts at 25% at \$0.50 sq ft
- Increased by 0.02 sq ft for each 1% up to \$1.00 sq ft



Green Energy Credits

Section 179D Energy Efficient Commercial Buildings Credit modified & extended

- Contractors get a \$2.50 bonus for meeting prevailing wage and apprenticeship requirements at 25%
- *Increasing 10 cents sq ft, up to a \$5 maximum*



Green Energy Credits

Energy Efficient Homes Credit modified & extended



- The credit can be \$500, \$1,000, \$2,500 or \$5,000
- Credit is determined by the level of energy efficiency

Green Energy Credits

Energy Efficient Homes Credit modified & extended

- Must either meet prevailing wage requirements; **or**
- Pay each affected worker an amount equal to the **difference** between the amount actually paid and the amount which would have been paid under the prevailing wages rules, plus interest, **and pay a \$5,000 penalty per affected worker.**



Clean Vehicle Credits

Effective on the date of enactment, the tax credit is only available if the vehicle final assembly was in North America

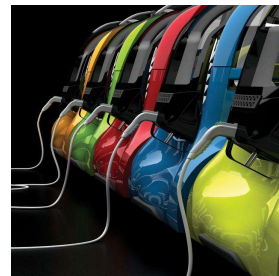


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Clean Vehicle Credits

There is a two-step process to verify final assembly

- First check on the Department of Energy's website listing 2022 and 2023 vehicles that MAY be eligible



<https://afdc.energy.gov/laws/electric-vehicles-for-tax-credit>

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Clean Vehicle Credits



There is a two-step process to verify final assembly

- Second, enter the vehicle's 17 character VIN into the NHTSA's VIN Decoder tool and view the "plant information" field

<https://www.nhtsa.gov/vin-decoder>

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Green Energy Credits

Clean Vehicle Credit

- **\$3,750** credit for meeting the critical minerals requirement
- **\$3,750** credit for meeting the battery component requirement

Vehicles placed in service
after **12/31/2022!**



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Green Energy Credits

Qualified Commercial Clean Vehicle Credit



There is also a new credit for commercial clean vehicles

Vehicles placed in service after **12/31/2022!**

Green Energy Credits

Qualified Commercial Clean Vehicle Credit

The credit per vehicle is the lesser of:

- 1) 15% of the vehicle's basis (30% for vehicles not powered by a gasoline or diesel engine) or
- 2) The "incremental cost" of the vehicle over the cost of a comparable vehicle powered solely by a gasoline or diesel engine.



Green Energy Credits

Qualified Commercial Clean Vehicle Credit



The maximum credit per vehicle is \$7,500 for vehicles with gross vehicle weight ratings of less than 14,000 pounds, or \$40,000 for heavier vehicles.

Green Energy Credits

Qualified Commercial Clean Vehicle Credit

- The vehicle must be acquired for use or lease by the taxpayer, and not for resale.
- It must be manufactured for use on public streets, roads, and highways, or be "**mobile machinery**" as defined in Section 4053(8).
- The vehicle must have a battery capacity of not less than 15 kilowatt hours (7 kilowatt hours for vehicles weighing less than 14,000 pounds) and be charged by an external electricity source.
- Qualified commercial fuel cell vehicles are also eligible for the credit.
- Qualifying vehicles must be depreciable property.
- Only vehicles made by qualified manufacturers can qualify.

Green Energy Credits

Section 30C Alternative Fuel Refueling Credit

- Credit retroactively extended through 2032
- Includes bidirectional charging equipment and electric charging stations for 2 and 3 wheel vehicles intended for use on public roads
- Beginning in 2023 the maximum credit is increased from \$30,000 to \$100,000
 - *Computed per unit, not per location*

Green Energy Credits

- **Section 48C Advanced Energy Project Credit**
- **Advanced Manufacturing Production Credit**



Green Energy Credits



**Reinstates the
Superfund tax on
petroleum**

*Rate of 16.4 cents per barrel
Effective January 1, 2023*

IRS Funding

*The Act provides an additional \$80 Billion in
funding to the IRS*

- Spread over 9 years
- The current IRS annual budget is @ \$12.7 Billion



\$80 Billion IRS Funding

About \$46 Billion (57%) is allocated to tax enforcement.

The increased IRS funding is estimated to bring in an additional **\$200 Billion** in revenue.



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IRS Funding

It's the Tax Accountant's Economic Relief Act!

How are you going to step up – and price – your taxpayer representation services ?



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Inflation Reduction Act

The Act extends the Section 461(l) limitation for an additional two years

- **2027 and 2028**



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Pending Legislation

Will we get an “Extenders Bill” after the midterm elections?



The September 30 Continuing Resolution funds the government through December 16...

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Expired Tax Provisions

- In January the Joint Committee on Taxation (JCT) put out its annual report on Federal tax provisions that expired at the end of 2021
- And those that are scheduled to expire in the future...



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Expiring Tax Provisions

Expiring at 12/31/2022:

- 100% deduction for food and beverages provided by a restaurant
- **100% Bonus Depreciation!**

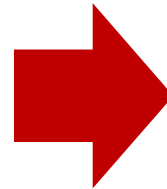


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§168(k) Bonus Depreciation

The TCJA retained Section 168(k) Bonus Depreciation

- Temporarily increases it to
- **100% after September 27 2017 thru 2022**
 - And extends it to include used property



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§168(k) Bonus Depreciation

Then phases it out:

- **80% Bonus in 2023 !**
- 60% Bonus in 2024
- 40% Bonus in 2025
- 20% Bonus in 2026
- -0-% in 2027



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§168(k) Bonus Depreciation

Get it “Placed In Service” by 12/31 !!!

Property is considered placed in service in the tax year in which the property is first placed in a condition or state of readiness and availability for a specifically assigned function.



Delayed Tax Provisions Take Effect



Research & Experimentation

In 2022 the TCJA change from immediate expensing to amortization of R&D costs hits our returns...



Delayed Tax Provisions Take Effect



Beginning in 2022 Research and Experimental expenses are now to be amortized over

- **5 years**
- 15 years for foreign research

§163(j) Business Interest Expense



TCJA

§163(j) Business Interest Expense

Code Section 163(j) limits business interest expense to 30% of **adjusted taxable income**.

- **Tax EBIT**



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§163(j) Business Interest Expense

Until 2022 you are allowed to use:

Tax EBITDA

- Earnings before Interest, taxes, depreciation and amortization.
- A critical advantage when using 100% bonus!

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§163(j) Business Interest Expense

I think 2022 will be **brutal!**



- You will still have full 100% bonus
- But no addback under §163(j)!

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Concluding Thoughts



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Thank You

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