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Tax Provisions in the Inflation Reduction Act of 2022

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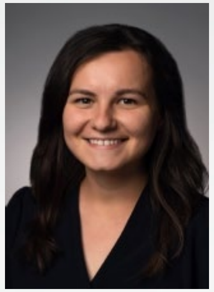

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Agenda

- Introduction
- Corporate Alternative Minimum Tax, stock buyback excise tax, and other tax provisions for businesses
- Clean transportation tax credits
- Other notable tax credits
- Increased IRS funding
- Questions

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Inflation Reduction Act of 2022 (IRA)

- Based on the Build Back Better framework
  - Passed by the House in November 2021
  - Originally included the Biden Administration's policy goals
  - Passed by the Senate in August 2022 after months of negotiations by Senate Democrats and Senator Joe Manchin
  - Signed into law on August 16, 2022, by President Biden
- Includes social, tax, and climate provisions
  - Medicare prescription drug pricing
  - Extension of health insurance premium subsidies under the Affordable Care Act
  - Tax provisions
  - Climate & energy provisions

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Corporate Alternative Minimum Tax (AMT)

- Old Code Section – New Tax

APPLICABLE CORPORATION	OTHER CORPORATIONS*
(15% * AFSI) minus AMT FTC	$0
AFSI = Applicable Financial Statement FTC = Foreign Tax Credit	*except RICs or REITs

Foresight: AMT applies to all corporations (except S-corporations, RICs and REITs) only rate of tax impacted by classification as Applicable Corporation. Consider the future implications of this for corporations who will not immediately be Applicable Corporations.

Corporate Alternative Minimum Tax (AMT)

- **Adjusted Financial Statement Income (AFSI)** – three different paradigms depending upon application.
    1. Compute AMT
    2. Applicable Corporation - $1B test not member of foreign parented group/$100M test member of foreign parented group
    3. Applicable Corporation - $1B test member of foreign parented group

Corporate Alternative Minimum Tax (AMT)

- **Applicable Financial Statements (AFS) –** same definition as for §451(b)(3) or as specified by the Secretary in guidance.

Foresight: The AMT statutes make frequent reference to guidance or determinations by the Secretary. Future guidance and determinations by the Secretary will impact application of AMT to taxpayers including in some instances whether the zero tax is applicable to taxpayer.

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Corporate Alternative Minimum Tax (AMT)

- **AFSI for computing tax**
  - Net income or loss Applicable Financial Statement (AFS)
  - +/- items in the 14 categories of adjustments from 59A(c)
  - Reduction for aggregate financial statement net operating loss (FSNOL) carryovers to taxable year, not to exceed 80% of AFSI before reduction for FSNOLs

- AFSI for computing AMT is with respect to taxpayer, i.e. corporation or if consolidated return entities joining in consolidated return.

Corporate Alternative Minimum Tax (AMT)

APPLICABLE CORPORATION	TEST	AFSI FOR PURPOSES OF TEST
NOT member of Foreign-Parented Multinational Group (FPMG)	3-Year Average Annual AFSI >$1 Billion	Net income or loss of **corporation (and all others treated as single employer under 52(a) or (b))** set forth AFS +/- Adjustments from 59A(c) EXCEPT for: partnership adjustment – 56A(c)(2)(D)(i), and defined benefit pensions adjustment – 56A(c)(11)
Member of FPMG	3-Year Average Annual AFSI > $1 Billion	Net income or loss of **all members of the FPMG** set forth in AFS +/- Adjustments from 59A(c) EXCEPT for: partnership adjustment - 56A(c)(2)(D)(i); defined benefit pensions adjustment - 56A(c)(11); certain items foreign income adjustment - 59A(c)(3) and effectively connected income adjustment - 59A(c)(4).
	AND	
	3-Year Average Annual AFSI >$100 Million	Net income or loss of **corporation (and all others treated as single employer under 52(a) or (b))** set forth in AFS +/- Adjustments from 59A(c) EXCEPT for: partnership adjustment - 56A(c)(2)(D)(i), and defined benefit pensions adjustment - 56A(c)(11)

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Corporate Alternative Minimum Tax (AMT)

- Applicable Corporation – once and forever
  - Except:

Change in ownership **OR** Specified consecutive years below test	AND	**Secretary determines** it would not be appropriate to continue to treat as applicable corporation

Foresight: Consider implications for certain acquisitions by taxpayers that would otherwise not be Applicable Corporations.

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Corporate Alternative Minimum Tax (AMT)

- Timing
  - Effective for taxable years beginning after December 31, 2022
    - Will need information to determine preceding 3-year average for testing
  - Estimated tax requirements include AMT liability

Foresight: Taxpayers will need to proactively consider data needs for testing and computations if there is potential zero rate will not apply and may need to implement certain tax transformation projects to be prepared.

Excise Tax on Repurchase of Stock

- Applies to stock of domestic corporations that are traded on an established securities market
- Excise tax = 1% fair market value of stock repurchased by corporation during tax year
  - Not applicable if total value of stock repurchased for tax year doe not exceed $1M
  - Some carveouts and netting provisions
  - Anti-abuse provisions
- Effective for purchases of stock after December 31, 2022

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Research Credit

- Expanded ability of certain small businesses to utilize R&D credits against employer payroll taxes
- Effective for tax years beginning after December 31, 2022
  - Expands applicable payroll taxes against which the credit may be applied to include employer Medicare tax (§3111(b))
  - Increases maximum election amount by allowing taxpayers to elect to apply an additional $250k against employer Medicare tax (§3111(b)).

Extensions: Excess Business Loss and SALT

- Extended application of the excess business loss limitations for non-corporate taxpayers by two years so that rules are applicable for tax years beginning after December 31, 2020 and before January 1, 2029.
- Extended and then unextended the $10,000 SALT Cap all in the same law. Bottom line is SALT Cap appears to have emerged unchanged.

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New Clean Vehicle Credit

- Updates the new qualified plug-in electric drive motor vehicle credit under Sec. 30D(a)
- Requires final assembly of the vehicle to occur in North America (applies to vehicles sold after August 16, 2022)
- Changes how credit is calculated after issuance of guidance
  - $3,750 credit for meeting the critical minerals requirements and
  - $3,750 credit for meeting the battery component requirement
- Eliminates the per manufacturer limitation on the number of vehicles eligible for the credit (applies to vehicles sold after December 31, 2022)
- Credit may only be claimed for vehicles made by a qualified manufacturer with a MSRP below certain amounts, and by taxpayers with modified adjusted gross income below the limits (applies to vehicles sold after December 31, 2022)

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New Clean Vehicle Credit

- The taxpayer who acquires a new clean vehicle can elect, on or before the purchase date, to transfer the clean vehicle credit to the dealer who sold the vehicle in return for full payment of the credit amount
  - Dealers must register with the IRS and meet other requirements to offer the election to their purchasers,
  - IRS will make advance payments to dealers,
  - Applies to vehicles placed in service after December 31, 2023

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Qualified Commercial Clean Vehicles

- New qualified clean vehicle credit for qualified vehicles acquired and placed in service after December 31, 2022
- A component of the Sec. 38 general business credit
- Credit equal to lesser of
  - 15% of the vehicle's basis (30% for vehicles not powered by a gasoline or diesel engine) or
  - The "incremental cost" of the vehicle over the cost of a comparable vehicle powered solely by a gasoline or diesel engine
- Maximum credit is $7,500 for vehicles with gross vehicle weight ratings of less than 14,000 pounds or $40,000 for heavier vehicles

Qualified Commercial Clean Vehicles

- Vehicle must be acquired for use or lease by the taxpayer, and not for resale
- Must be manufactured for use on public streets, roads, and highways or be “mobile machinery” as defined in Sec. 4053(8)
- Must have battery capacity of not less than 15 kw hours and be charged by an external electricity source (7 kw hours if gross vehicle weight rating is less than 14,000 pounds)
- Qualified fuel cell vehicles are also eligible (as defined in Sec. 30B(b)(3))
- Must be depreciable property
- Only vehicles made by qualified manufacturers, who have written agreements with and provide periodic reports to Treasury
- IRS will issue guidance, including how to determine incremental cost of a qualified commercial clean vehicle
- Applies to vehicles acquired after December 31, 2022, through December 31, 2032

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Credit for Previously-Owned Clean Vehicles

- New income tax credit equal to the lesser of $4,000 or 30% of the vehicle's sale price
- No credit allowed if the lesser of the taxpayer's modified AGI for the year of purchase or the preceding year exceeds $150,000 for joint returns and surviving spouse, $122,500 for head of household, or $75,000 for others
- Qualifying vehicles must be:
  - At least two model years earlier than the calendar year in which the taxpayer acquires the vehicle,
  - The original use starts with a person other than the taxpayer,
  - Is acquired in a qualified sale,
  - Meets certain clean vehicle requirements for new vehicles, or is a clean fuel-cell vehicle with a gross weight rating of less than 14,000 pounds

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Credit for Previously-Owned Clean Vehicles

- Qualified sale by a dealer for a price of $25,000 or less, which is the first transfer since the Act's enactment to a qualified buyer other than the original buyer of the vehicle
- Qualified buyer = individual who purchases the vehicle for use and not for resale, who is not a tax dependent of another taxpayer, and has not been allowed a credit for previously-owned vehicle during the 3-year period ending on the sale date

Credit for Previously-Owned Clean Vehicles

- Applies to vehicles acquired after December 31, 2022, through December 31, 2032
- Similar credit transfer provisions as seen in the Clean Vehicle Credit applies to vehicles acquired after 2023

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Alternative Fuel Vehicle Refueling Property Credit

- Tax credit for the cost of any qualified alternative fuel vehicle refueling property (charging stations) placed in service by a business or a taxpayer's principal residence before January 1, 2022
  - IRA extends the credit through January 1, 2033 (old rules for 2022)
- Starting in 2023 -
  - Extends the credit for depreciable property at a rate of 6%, increasing to 30% if certain prevailing wage and apprenticeship requirements are met
  - $100,000 per item credit limit for depreciable property, $1,000 for all other property
  - Modifies definition of eligible property to confirm bidirectional charging equipment is included as eligible property
  - Makes the credit available for electric charging stations for two- and three-wheeled vehicles intended for use on public roads
  - Charging or refueling property will only be eligible for the credit if placed in service within a low-income or rural census tract

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Other Energy Related Credits

- Section 45 Renewable Electricity Production Tax Credit (PTC)
  - Generally extends the required construction commencement date to the end of 2024 from the end of 2022 for six types of facilities
  - Extends to the end of 2024, the ability to elect to treat certain PTC eligible facilities as qualifying for the Section 48 investment tax credit instead.
  - Base amount of credit is reduced from 1.5 cents per kilowatt hour produced to .3 cents per kilowatt hour produced.
  - Base amount would increase if certain employment and wage criteria are met.

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Other Energy Related Credits

- Section 48 Energy Investment Tax Credit (ITC).
  - Credit closely tied to the PTC credit mentioned earlier. Same beginning of construction extension in addition, for geothermal property, the beginning of construction requirement is extended to the end of 2034.
  - Reduces the credit base of each classification by 80%, but provides for incentive increases base on employment, wage and “domestic content”.
  - Expanded the definition of eligible energy property for property placed in service after 2022

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Other Energy Related Credits

- The Section 48 energy ITC is expanded to include certain wind and solar facilities located in low-income communities or on American Indian land or are part of a low income residential building project or low income economic benefit project.

- The Section 45Q Carbon Oxide Sequestration Credit (CSC) is extended to and enhances the CSC for qualified industrial facilities if construction begins before 2033. The minimum carbon capture requirements for the CSC are lowered. Similar to prior provisions, incentives to the credit amount are added for certain employment and wage targets.

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Other Energy Related Credits

- The Section 40A Credit for Biodiesel, Renewable Diesel and Alternative Fuels is extended through December 31, 2024. Was slated to terminate at the end of 2022.
- Same extension applies to the Section 40 Second Generation Biofuel Credit.
- Creates a new Sustainable Aviation Fuel Credit, Section 40B and eliminates the previous biodiesel aviation fuel credit under Section 40A. Base credit is $1.25 per gallon of sustainable aviation fuel sold or used in a qualified fuel mixture in 2023 and 2024. Credit is included in taxable income.

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Other Energy Related Credits

- Adds a Credit for Production of Clean Hydrogen, Code section 45V.
  - Credit amount per kilogram of clean hydrogen is based on emissions rates and is a percentage of a base rate of $.60 per kilogram.
  - The credit is for a ten-year period beginning when the facility is placed in service.
  - Incentive rates apply for meeting certain employment and wage targets.

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Other Energy Related Credits

- The Section 25C Nonbusiness Energy Credit is increased from 10% to 30% for both energy efficient improvements and residential energy property expenditures.
  - Replaces a $500 lifetime limit with an annual credit limit of $1,200
  - Credit is extended through 2032, had terminated at the end of 2021. Existing credit will apply to expenditures made in 2022, the new credit provision will apply to expenditures made after 2022.
  - Starting in 2024, taxpayers claiming the credit will be required to include a product identification number with the tax return claiming the credit.

Other Energy Related Credits

- The Section 25D Residential Energy Efficient Property Credit is extended through 2034, it was originally scheduled to end at the end of 2023.
  - Credit is renamed as the Residential Clean Energy Credit.
  - Includes a new provision for credit related to battery storage technology expenditures at a taxpayer’s personal residence.
  - Credit amount
    - 30% for property placed in service from 2022 through 2032
    - 26% for property placed in service during 2033, and
    - 22% for property placed in service during 2034

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Other Energy Related Credits

- The Section 45L New Energy Efficient Home Credit is extended through 2032. The credit had expired at the end of 2021, but the old 45L credit is extended for homes sold by the contractor in 2022. The new credit amounts and other modifications apply for dwelling units acquired from the contractor after 2022.
  - Creates a new category of eligible dwelling unit eligible for a $5,000 credit. This is a home that is a qualified as a zero energy ready home under Department of Energy Guidelines.
  - Most other single-family units that qualify will receive a $2,500 credit.
  - Dwelling units that are part of a multi-family building are eligible for smaller credits unless certain employment and wage standards are met.
  - Under the prior rules, the maximum credit was $2,000.

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Other Energy Related Credits

- The Section 179D Energy Efficient Commercial Buildings Deduction is modified in a number of manners:
  - The prior credit amount of $1.80 per square foot is modified to a base of $.50, plus $.02 for each percentage point by which the total annual energy costs of the building are certified to be reduced by a percentage greater that 25%. The total amount cannot be in excess of $1.00.
  - If certain employment and wage requirements are met by the contractor for its laborers and mechanics, the factors above increase to $2.50 from $.50, $.10 from $.02 and $5.00 from $1.00.

Other Energy Related Credits

- The prior rules allowing a partial deduction where the 50% annual energy cost reduction test was not met has been eliminated.
- A new alternative to the Efficient Commercial Building Deduction is allowed. Called the Alternative Deduction for Energy Efficient Building Retrofit Property (Retrofit Deduction)
  - Building must have been in service at least five year before the retrofit plan is established
  - Building must be in the United States.
  - Eligible costs include interior lighting, HVAC and hot water systems or building envelope (roof/windows).

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Other Energy Related Credits

- The retrofit plan must call for a 25% or more reduction in the building’s energy use intensity. The plan must also call for certification of milestones by a qualified professional.
- The Retrofit Deduction is based on that specific building’s reduction in energy use intensity.
- Retrofit Deduction can only be claimed after in service for one year and the reduction in the energy use intensity is known.
- The Retrofit Deduction is capped at the cost of the retrofit expenditures made.

Other Energy Related Credits

- The Retrofit Deduction is effective for property placed in service after December 31, 2022 while all other provisions are effective for taxable years beginning after December 31, 2022.

IRS Funding

- IRA gives the IRS an additional $80 billion over the course of 10 years to fund:
  - Taxpayer services
  - Tax enforcement activities
  - Business system modernization
- Instructs the IRS to establish a task force to design an IRS-run, free, mobile-friendly “direct-file” tax return system, and to provide an initial report to Congress within nine months.

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IRS Enforcement Priorities

- The IRS Strategic Plan for FY2022-2026 includes an objective to effectively and efficiently identify and address non-compliance
  - Focuses on non-compliant, high-income and high-wealth taxpayers, business partnerships and large corporations
  - Increased use of data and other enforcement tools and increasing community presence
- Will take time to hire and train new employees and increase audit rates

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Questions?

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