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WINTER 2025 ROUNDUP OF RECENT TAX DEVELOPMENTS

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ROUNDUP OF RECENT TAX DEVELOPMENTS

- Tax Legislative Process
- TCJA's major provisions
- Project 2025: Stage I tax reform
- Individuals
- Business
- Inflation Reduction Act
- Corporate Transparency Act
- Retirement
- SECURE Act 2.0
- Estate Planning
- Michigan

TAX LEGISLATIVE PROCESS

TAX LEGISLATIVE PROCESS

Budget Reconciliation:

- Created by the Congressional Budget Act of 1974
- Reconciliation allows for expedited consideration of certain tax, spending, and debt limit legislation
- In the Senate, reconciliation bills aren't subject to filibuster

TAX LEGISLATIVE PROCESS

Reconciliation Process:

- House and Senate pass budget resolutions
- Typically include "reconciliation instructions" to the tax writing committees
  - House Ways and Means Committee
  - Senate Finance Committee
- Reconciliation instructions instruct specified House and Senate committees to prepare and report legislation by a certain date that does one or more of the following:
  - Increases or decreases spending (outlays) by specified amounts over a specified time;
  - Increases or decreases revenues by specified amounts over a specified time; or
  - Modifies the public debt limit

TAX LEGISLATIVE PROCESS

Reconciliation Process:

- Tax committees write the legislation
- House and Senate approve by floor vote
- Any differences are sent to a conference committee
- The resulting conference agreement is then voted upon by the House and Senate
- The resulting bill is signed by President
- Example: In 2017, it took several months to agree on how much to allow the deficit to increase, but once an increase of $1.5 trillion over 10 years was agreed upon, it only took 50 days from introduction to enact the TCJA

TAX LEGISLATIVE PROCESS

Limitations on the Reconciliation Process:

- Must relate directly to tax or spending issues
  - E.g. – can't be used to change the minimum wage
- Can't be used to make changes to Social Security
  - Either on the revenue or spending side
- May not worsen the deficit outside the 10-year budget window
  - So-called "Byrd Rule"
  - E.g. – that's why the 2001 Bush tax cuts sunset in 2010, and why the individual tax provisions of the TCJA sunset in 2025

TAX LEGISLATIVE PROCESS

How many reconciliation bills can you have?

- One budget resolution each for 2025 and 2026
- a single budget resolution can potentially generate only two reconciliation bills:
  - A tax-and-spending bill or a spending-only bill and, if desired,
  - A separate debt limit bill

TAX LEGISLATIVE PROCESS

Issues for 2025:

- One reconciliation bill or two?
  - Defense, energy and border security
  - Tax
- CBO has estimated that the full cost of extending the TCJA is $4.6 trillion
  - The original cost in 2017 was $1.5 trillion

TAX LEGISLATIVE PROCESS

Issues for 2025 – con't:

- Some in Congress, such as the House Freedom Caucus, want deficit reduction
- Others in Congress want SALT reform
- Still others split on matters such as repealing the energy credits depending on the extent to which the IRA has increased jobs in their districts
- Possible revenue raisers like tariffs can't be taken into account
  - Congress has the authority to impose tariffs under Article 1, Section 8 of the Constitution
  - But Congress has repeatedly shifted its powers regarding tariffs to the president
  - Thus, tariffs are not part of the reconciliation process

TAX LEGISLATIVE PROCESS

Current law versus Current Policy Baseline:

- Current law baseline:
  - Assumes that if the law says a tax cut is going to expire, then extending it is a revenue loser
  - General practice since the Congressional Budget Act of 1974
- Current policy baseline:
  - Ignores expiration dates and assumes any tax cuts in place when a law is enacted are permanent
  - Used by the Bush and Obama administrations, and favored by the incoming chair of the Senate Finance Committee

TCJA'S MAJOR PROVISIONS

TCJA'S MAJOR PROVISIONS: INDIVIDUALS

- Cut tax rates (e.g., 37% vs. 39.6% at top)
- Expanded child tax credit and eliminated personal exemptions
- Doubled standard deduction and limited itemized deductions (e.g., home mortgage interest deduction & SALT)
- Raised alternative minimum tax (AMT) exemption and phase outs
- Doubled the estate tax exemption
- Created "Opportunity Zones"
- For pass-through businesses, created a new 20% deduction on qualified business income

TCJA'S MAJOR PROVISIONS: CORPORATIONS

- Reduced top rate (21% vs. 35%)
- Eliminated AMT
- Allowed full expensing of equipment investment and limited deductions for business interest, net operating losses
- Required amortizing of research and experimentation expenditures
- Repealed Domestic Production Deduction
- Changed international rules (GILTI, FDII, BEAT)

PROJECT 2025
STAGE I TAX REFORM

PROJECT 2025: STAGE I TAX REFORM

Individuals and Employers:

- Continue combined payroll tax of 15.3%
- After a standard deduction, tax income at 15% up to the payroll tax cap of $168,600, and then 30% on the excess
- Capital gains and qualified dividends indexed and taxed at 15%
- Repeal “most deductions, credits and exclusions” (e.g., SALT)
- Repeal the 3.8% net investment income tax
- Estate and gift tax rate set at 20% and current exemption (indexed) made permanent

PROJECT 2025: STAGE I TAX REFORM

Individuals and Employers – con't:

- Universal savings accounts similar to a Roth IRA, but without restrictions
  - Individuals allowed to contribute up to $15,000 (indexed) on an after-tax basis
  - Funds can be withdrawn tax-free at any time for any reason
- Employers could deduct no more than $12,000 (not indexed) of most non-wage benefits per employee per year
  - Includes employer sponsored health insurance
  - Does not include retirement benefits and some HSA contributions

PROJECT 2025: STAGE I TAX REFORM

Corporations:

- Tax rate reduced from 21% to 18%
- Capital expenditures could be written off in the first year
- Repeal
  - ❑ Inflation Reduction Act
  - ❑ Tax breaks for clean energy
  - ❑ Corporate alternative minimum tax
  - ❑ Tax on stock buybacks

INDIVIDUALS

REPORTING THIRD PARTY PLATFORM PAYMENTS

Issue:

- 1099-K reporting for payments through eBay, PayPal®, Square®, Venmo, Uber, etc.

Background:

- American Rescue Plan required reporting payments over $600 starting in 2022
- Confusing, e.g., does not apply to personal transactions such as birthday or holiday gifts, sharing the cost of a car ride or meal, or paying a family member or another for a household bill

Implementation:

- Notice 2023-10 delayed reporting until 2023
- Notice 2023-74 delayed reporting until 2024
- Notice 2024-85 delays reporting until after 2025
- $5,000 threshold for 2024
- $2,500 threshold for 2025

BASIS IDENTIFICATION RELIEF FOR DIGITAL ASSETS

- Definition of "broker" in IRC 6045 modified by Infrastructure Investment and Jobs Act to incorporate cryptocurrency transactions
  - Final regs issued in July 2024
  - Require taxpayers to make adequate identification of digital assets in custody of a broker
- In October 2024, Coinbase requested delay of adequate identification rule to January 1, 2026, to develop and build systems
- Notice 2025-7 grants the relief by allowing taxpayers to use additional methods to identify cryptocurrency transactions:
  - Identifying the units by reference to any identifier that would identify the basis and holding period such as the purchase date or purchase price, or
  - Recording a standing order on the taxpayer's books and records that provides information on the units sold, disposed of, or transferred

DIGITAL ASSETS

Form 1099-DA, *Digital Asset Proceeds from Broker Transactions*

- Draft version of this new form released by IRS
- Intended for 2025 tax year
- Beginning in 2025, brokers are required to report proceeds digital asset sales
- Basis is also required to be reported, but brokers can check box 10a if it is unknown, or the digital assets were acquired prior to 1/1/2023 or sold prior to 1/1/2026
- Taxpayers may be required to recognize gain

DIRECT-FILE PROGRAM

IR-2024-151, May 30, 2024

- IRS has announced that it will make Direct File a permanent option starting with the 2025 tax season
- Inviting all states to partner with Direct File next year
- Based on survey data:
  - Taxpayers liked using Direct File
  - Direct File made filing easier
  - Direct File served as a catalyst for the IRS' digital transformation
  - Provided IRS with an opportunity to test customer service innovations on a larger scale

DIRECT-FILE PROGRAM

Will the Direct-File Program Survive?

- IRS' authority for the program:
  - Congress provided funds to "design" the system – include establishing it?
  - IRC 7803(a) provides general authority to "administer" the tax laws
- Cost:
  - $34.7 million to $42.5 million for the 2025 filing season
  - 920,000 to 3.7 million expected users

CASES

TIP CREDIT FOR WAGES

Restaurant Law Center v. U.S. Dept. of Labor,
-- F.4th --, 2024 WL 3911308 (5th Cir. Aug. 23, 2024)

Issue:

- Validity of DOL's 2021 rules regarding the "tip credit" for wages

Background:

- The tip credit allows employers to pay tipped employees $2.13 per hour instead of the $7.25 minimum wage due to their compensation being largely based on tips
- The employer must make up any difference
- A "tipped employee" is anyone receiving more than $30 per month in tips

TIP CREDIT FOR WAGES

Background:

- The DOL had a rule that if an employee spends more than 20% of their time performing non-tipped job duties the employer must pay the employee the full minimum wage for the time spent on the "directly supporting work"
- In 2021, the DOL expanded the requirements and record-keeping obligations:
  - Creation of three categories of work
    - Tip-producing work (e.g., waiter/waitress)
    - Work supporting tip-producing work (e.g., bussing tables)
    - Work not part of tip-producing work (e.g., preparing food)
  - Limited to 30 minutes the amount of continuous time during a shift a tipped employee could spend performing non-tipped activities that support tipped work

TIP CREDIT FOR WAGES

Court:

- The 2021 rules created arbitrary classifications inconsistent with the FLSA
- Reflects *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024) in which the Supreme Court overturned *Chevron USA Inc. v. Natural Resources Defense Council, Inc*., 467 U.S. 837 (1984)—which had required courts to defer to an agency's reasonable interpretation of an ambiguous statute even if the reviewing court would have interpreted the statute differently

Result:

- If an employee works in both a tipped and non-tipped role, only the wages paid for the tipped work will qualify for the tip credit

BUSINESS

ALLOCATION OF LIABILITIES AMONG PARTNERS

T.D. 10014

Final regulations released November 29, 2024, relating to the allocation of recourse liabilities of a partnership among its partners under Section 752:

- Situations in which multiple partners have overlapping risk of loss;
- The application of Section 752 to tiered partnership structures; and
- The application of various related party rules in Section 752

ALLOCATION OF LIABILITIES AMONG PARTNERS

Overlapping Risk of Loss:

- Economic risk of loss borne by each partner is calculated by multiplying the total liability by a fraction, where the numerator is the partner's individual economic risk of loss and the denominator is the total economic risk of loss borne by all partners

Tiered Partnership Structures:

- When a partner in an upper-tier partnership (UTP) also holds an interest in a lower-tier partnership (LTP) and bears the economic risk of loss for an LTP liability, the LTP must allocate that liability directly to the partner at the level of the LTP

Related Party Rules:

- Partnership attribution rules modified to reflect feeling that UTP partners should not be treated as having the economic risk of loss solely because they indirectly (through the UTP) own the interest in the LTP or the stock in the subsidiary

ADDITIONAL TIME TO FURNISH FORM 8308

Form 8308

- "Report of a Sale or Exchange of Certain Partnership Interests"
- Attachment to Form 1065
- Required when a Section 751(a) exchange takes place
- Money or FMV of property received by a partner in exchange for all or part if his/her partnership interest attributable to:
  - Unrealized receivables; or
  - Inventory
- The gain realized that is attributable to those items is treated as ordinary income instead of capital gain

ADDITIONAL TIME TO FURNISH FORM 8308

- **Copy of Form 8308 must be provided to the transferor and transferee by the later of:**
  - January 31st of the year following the calendar year in which the exchange takes place; or
  - 30 days after the partnership receives notice of the exchange
- **Can provide the same information in another format than Form 8303**

ADDITIONAL TIME TO FURNISH FORM 8308

- **Notice 2024-19: Provided penalty relief for 2023**
- **Notice 2025-2: Extends relief to 2024 provided that:**
  - Partnership provides Parts I,II & III of Form 8308 to the transferor and transferee by the later 1/31/2025 or 30 days after the partnership is notified of the exchange
  - Partnership provides a complete copy, including Part IV, by the later of the due date of Form 1065 (including extensions) or 30 days after the partnership is notified of the exchange
- **Relief does not extend to a partner's failure to notify the partnership or the failure to include Form 8308 with Form 1065**

NEW FORM 7217 FOR PARTNERSHIP DISTRIBUTIONS

Form 7217, Partner's Report of Property Distributed by a Partnership (IRC 732)

Background:

- Current distribution:
  - Does not completely retire a partner's interest in the partnership
  - Can reduce either the partner's capital account or partnership interest
  - Gain not recognized unless money is distributed
  - Gain recognized only if money distributed exceeds partner's adjusted basis in the partnership
  - Partner's basis in property received is same as partnership's adjusted basis in the property
  - Property's basis is limited to the partner's basis in the partnership reduced by any money received in the distribution

NEW FORM 7217 FOR PARTNERSHIP DISTRIBUTIONS

- Liquidating distribution:
  - Retires a partner's interest in the partnership
  - Includes a series of payments made as part of a liquidation
  - Gain recognized to the extent money distributed exceeds the partner's adjusted basis in his or her partnership interest
  - Loss recognized if cash, unrealized receivables or inventory received is less than the partner's adjusted basis
  - Cannot recognize a loss if any other property is received

NEW FORM 7217 FOR PARTNERSHIP DISTRIBUTIONS

Form 7217:

- Beginning for tax year 2024
- Must be filed by any partner receiving a distribution of property from a partnership in a liquidating or nonliquidating distribution in order to report the basis of the distributed property, including an adjustment required by IRC 732(a)(2) or (b)
- Must be filed regardless of whether there is an adjustment as a result of the distribution
- Not filed if only money or marketable securities treated as money is distributed
- Not filed to report a guaranteed payment under IRC 707
- Must be attached to the partner's tax return for the year the property is actually (not constructively) received

FORM 8300, *REPORT OF CASH PAYMENTS OVER $10,000*

IR-2023-157:

- Starting January 1, 2024, businesses are required to e-file Form 8300, *Report of Cash Payments over $10,000*

Exceptions:

- Fewer than 10 information returns for the calendar year
- Can request a waiver for hardship by filing Form 8508, but the waiver applies to all information returns

BUSINESS TAX ACCOUNT

FS-2024-27, August 19, 2024

- Launched by IRS last fall with funding from the Inflation Reduction Act
- Goal:
  - ❑ Check tax history
  - ❑ Make payments
  - ❑ View notices
  - ❑ Authorize powers of attorney
  - ❑ Conduct other business with the IRS

BUSINESS TAX ACCOUNT

Who was able to use initially:

- Sole proprietor with an EIN
- Individual partner or shareholder with both:
  - Social Security number or individual tax i.d. (ITIN)
  - Schedule K-1
    - 2012-2023 for partners
    - 2006-2023 for shareholders

BUSINESS TAX ACCOUNT

FS-2024-31, December 2024

IRS Announced program now open to:

- C corporations
- Persons who can legally bind a C or S corporation (“Designated Official”)
  - President
  - VP
  - CEO
  - CFO
  - COO
  - Secretary
  - Treasurer
  - Managing member of an LLC

BUSINESS TAX ACCOUNT

New expansion provides access to:

- Tax return
- Tax account
- Entity transcripts for current year and some prior years
- View and pay tax balances
- Make Federal Tax Deposits (“FTDs”)

CASES

POWER OF FEDERAL AGENCIES

Loper Bright Enterprises v. Raimondo, 144 S. Ct. 2244 (2024)

Background:

- Magnuson-Stevens Act requires fisheries operating within 200 nautical miles off the U.S. coast to allow federal observers onboard its vessels to collect data for preventing overfishing
- The National Marine Fisheries Service adopted a rule requiring the fishing industry to pay the salaries of the observers
- A group of fisheries from New England are challenging the National Marine Fisheries Service's interpretation of the Magnuson-Stevens Act
- The Supreme Court previously ruled in *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, Inc., 467 U.S. 837 (1984), that courts must defer to the authority of an administrative agency's interpretation of a statute whenever both the intent of Congress was ambiguous and the agency's interpretation is reasonable or permissible
- Lower courts upheld the agency action based on *Chevron*

POWER OF FEDERAL AGENCIES

Supreme Court Holding:

- Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous
- Overrules *Chevron*
- Potentially wide-ranging consequences

LIMITED PARTNER EXCEPTION TO SELF-EMPLOYMENT TAX

Soroban Capital Partners LP v. Commissioner, 161 T.C. No. 12 (2023):

- On November 28, 2023, the U.S. Tax Court issued its opinion
- Held that a "functional analysis test" must be applied in determining whether the limited partner exception to the imposition of SECA tax under section 1402(a)(13) applies to limited partners
- Thus, a limited a partner in a limited partnership is not per se excluded from SECA tax

LIMITED PARTNER EXCEPTION TO SELF-EMPLOYMENT TAX

Denham Capital Management LP v. Commissioner, T.C. Memo. 2024-114 (December 23, 2024)

- First case to interpret and apply the functional test in *Soroban*
- Involved five limited partners of Denham Capital Management LP, a Boston-based private equity firm organized as a Delaware limited partnership
- **Findings:**
  - Denham's income for 2016 and 2017 consisted solely of fees it received in exchange for services provided to investors such as advising and operating the private investment funds
  - Lack of capital contributions by four of the five partners
  - All five partners were crucial and active parts of Denham's business as evident by their participation in the firm's management, investment and valuation committees
  - Denham's employees made up the deal teams that analyzed and executed transactions
- **Result:**
  - Applying a functional analysis showed that the five limited partners acted as self-employed persons rather than passive investors, and therefore don't qualify for the limited partner exception to self-employment tax

SUBSTANTIATING DEDUCTIONS

Patricia Marcello Anderson et al. v. Commissioner; T.C. Memo. 2024-95

Issue:

- Can accounting records (cash disbursements journals and account registers) be used to substantiate reported business expenses where evidence of actual payment is too voluminous to produce?

Facts:

- Taxpayers were self-employed, engaged in company management, commercial real estate, and the medical industry
- Failed to file returns for several years, so the IRS prepared substitute returns
- Taxpayer provided accounting records to evidence deductions, because the boxes containing the records of actual payment were claimed to be too voluminous to produce or tied up in other litigation

Result: Court disallowed the deductions

- Treating profit and loss statements without source documents is argument — not evidence
  - *See, e.g.*, *Barrios v. Commissioner*, T.C. Memo. 2023-32
- Because proper record keeping was feasible and, apparently, proper records were maintained, Court declined to exercise its authority under the *Cohan* doctrine, to estimate the taxpayer's expenditures.
  - *See Vanicek v. Commissioner*, 85 T.C. 731, 742-43 (1985) (citing *Cohan v. Commissioner*, 39 F.2d 540 (2d Cir. 1930))

PRIOR YEAR DEPRECIATION DOES NOT ESTABLISH BASIS

Pak, T.C. Memo 2024-86

Facts:

- Taxpayer owned and operated a Japanese steakhouse
- Paid for a substantial build-out, but had no records
- Paid preparer filed a 2008 tax return showing depreciation on these improvements
- Taxpayer prepared his own returns in some of the ensuing years
- Some years showed no depreciation deductions
- No returns filed for 2014-2016

PRIOR YEAR DEPRECIATION DOES NOT ESTABLISH BASIS

IRS:

- Prepared substitute returns
- Taxpayer hired CPA who extrapolated depreciation deductions from basis figures reported on 2008 return
- IRS did not accept any of the returns

Cohan Rule (*Cohan v. Commr*., 39 F.2d 540 (2d Cir. 1930)):

- Court should estimate deductions
- Assuming it has a reasonable evidentiary basis
- Yet, bearing heavily on a taxpayer "whose inexactitude is of his own making"

PRIOR YEAR DEPRECIATION DOES NOT ESTABLISH BASIS

Court:

- Satisfied taxpayer had incurred expenses for a buildout
- Recognized that the statute has run on the 2008 return and what it reveals about basis for 2008
- But, not binding on subsequent years, and court unwilling to accept the 2008 return without “corroborating evidence”
- Found taxpayer entitled to depreciation deductions based on 1/2 of the basis estimates reported on the 2008 return

SECOND CLASS OF STOCK

Maggard, T.C. Memo 2024-77

Facts:

- Taxpayer, an inventor, formed an S corporation with an investor
- Taxpayer owned 40% and the investor 60%
- The investor later sold 40% of his interest to one person, and 20% to another
- Those two persons began misappropriating funds by inflating their expense reimbursements and taking disproportionate distributions from the company's earnings
- Taxpayer sued for embezzlement claiming over $1 million in damages
- The case eventually settled

SECOND CLASS OF STOCK

Tax Court:

- Taxpayer filed a tax court petition claiming the unequal distributions had created a second class of stock revoking the S election

Result:

- The disproportionate distributions did not create a second class of stock
- Under the regulations, you look at the shareholders' rights under the corporation's governing documents, not what the shareholders actually do
- Taxpayer must include in income a proportionate share of the corporation's earnings despite the disproportionate distributions made to the two other shareholders

INFLATION REDUCTION ACT

INFLATION REDUCTION ACT OF 2022

Many Tax Credits and Related Provisions:

- Clean Energy Tax Credits
- Carbon Management
- Residential Energy Efficiency
- Energy Innovation
- Offshore Wind and Oil & Gas Systems
- Community Investment and Energy Justice
- Investments in the Permitting Process
- Clean Energy Financing
- Agriculture & Forestry

PREVAILING WAGE AND APPRENTICESHIP REQUIREMENTS

IR-2024-168

- Increased credit amounts and deductions may be available to certain taxpayers satisfying prevailing wage and apprenticeship requirements
  - Increased credits: IRC §30C, 45, 45Q, 45V, 45Y, 45Z, 48, 48C and 48E
  - Increased deductions: IRC §179D
  - Increased credits also available under IRC §45L and 45U if just a prevailing wage requirement is satisfied
- The prevailing wage requirement is met if laborers and mechanics are paid at rates not less than the prevailing rates for construction, alteration or repair of similar character in the locality where the facility is located as determined by the Secretary of Labor

TRANSFERABILITY OF CREDITS

IRC 6418; TD 9992, 4/30/2024

Background:

- For tax years beginning after December 31, 2022, taxpayers may elect under IRC 6418 to transfer eligible tax credits to an unrelated third party
- Under the election:
  - The transferee gets the credit
  - The amount received by the transferor is excludable from gross income
  - The election is made at the partnership or S corporation level
- Investors and developers are structuring and negotiating transactions to transfer energy tax credits

TRANSFERABILITY OF OTHER CREDITS

Eleven credits eligible:

- Credits for alternative fuel vehicle refueling property (Section 30C)
- Renewable electricity production credit (Section 45)
- Credit for carbon dioxide sequestration (Section 45Q)
- Zero-emission nuclear power production credit (Section 45U)
- Clean hydrogen production credit (Section 45V)
- Advanced manufacturing production credit (Section 45X)
- Clean energy production credit (Section 45Y)
- Clean fuel production credit (Section 45Z)
- Energy investment tax credit (Section 48)
- Qualifying advanced energy project credit (Section 48C)
- Clean electricity investment credit (Section 48E)

TRANSFERABILITY OF OTHER CREDITS

Final Regulations:

- Election must be made on an original (i.e., not amended) return filed by the due date, including extensions
- Once made, cannot be revoked
- IRS online pre-filing registration process required to get a registration number for the eligible credit property
- Recapture may apply if the qualifying energy asset is disposed of, sold, or ceases operations within the first five years after being placed in service
- A transferee claiming more credits than are allowable may be liable for a tax equal to the excess, plus 20%

CLEAN ENERGY TAX CREDIT SCAM

IR-2024-182

- IRS warned taxpayers on July 10, 2024, about falling victim to a new emerging scam involving buying clean energy tax credits
- Unscrupulous tax return preparers are targeting individual 1040 filers and having them improperly claim energy credits that offset income from other sources like wages, Social Security and retirement withdrawals
- Individuals purchasing tax credits are subject to the passive activity loss rules
- Thus, they can generally only use the purchased credits to offset income from a passive activity

CORPORATE TRANSPARENCY ACT

CORPORATE TRANSPARENCY ACT

***Texas Top Cop Shop, Inc., et al., v. Merrick Garland, AG, et al*., 4:24-CV-478 (E.D Tx. Dec. 3, 2024)**:

- On December 3, 2024, a federal district court in Texas issued a preliminary injunction that applies nationally
- Under the injunction, the CTA cannot be enforced, and reporting companies need not comply with the January 1, 2025, reporting deadline
- The preliminary injunction was stayed by the Fifth Circuit Court of Appeals on December 23, 2024

CORPORATE TRANSPARENCY ACT

Following the stay, FINCEN extended some of the filing deadlines:

- Reporting companies that were created or registered prior to January 1, 2024 have until January 13, 2025 to file their initial beneficial ownership information reports with FinCEN. (These companies would otherwise have been required to report by January 1, 2025.)
- Reporting companies created or registered in the United States on or after September 4, 2024 that had a filing deadline between December 3, 2024 and December 23, 2024 have until January 13, 2025 to file their initial beneficial ownership information reports with FinCEN.
- Reporting companies created or registered in the United States on or after December 3, 2024 and on or before December 23, 2024 have an additional 21 days from their original filing deadline to file their initial beneficial ownership information reports with FinCEN.
- Reporting companies that qualify for disaster relief may have extended deadlines that fall beyond January 13, 2025. These companies should abide by whichever deadline falls later.
- Reporting companies that are created or registered in the United States on or after January 1, 2025 have 30 days to file their initial beneficial ownership information reports with FinCEN after receiving actual or public notice that their creation or registration is effective.

CORPORATE TRANSPARENCY ACT

Court of Appeals subsequently reversed itself on December 27, 2024

- Vacated its stay of the district court's preliminary injunction
- The government has appealed to the U.S. Supreme Court

Smith v. Treasury, No. 6:24-cv-336 (January 7, 2025)

- U.S. District Court for the Eastern District of Texas in a second case has granted a motion for a preliminary injunction staying enforcement of the CTA
- Case involves two plaintiffs who had formed limited liability companies to hold real property

CORPORATE TRANSPARENCY ACT

What if there's an unfavorable decision in the courts?

- The Alabama district court in *National Small Business Association v. Yellen* suggested that the CTA's Commerce Clause problem could be cured if a filing requirement were triggered by "engaging in commerce" rather than the mere formation of an entity under state law, so amend the CTA's implementing regulations to apply more narrowly only to covered entities engaged in some form of commerce
- The Treasury Department has the authority under the CTA to exempt "any entity or class of entities," so amend the CTA's regulatory reach to exclude entities "not engaging in commerce"

Predictions?

- Court's decide (or Circuit Courts split and it goes to the Supreme Court)
- President decides (e.g., refuses to appeal an adverse court decision)
- Congress decides (e.g., modifies or repeals the law)

RETIREMENT

FINAL REGULATIONS ON RMD'S

Final Regulations:

- The 2024 final regulations focus on the SECURE 1.0 changes covered in the 2022 proposed regulations, and certain SECURE 2.0 changes

Effective Date:

- Final Regs are applicable beginning with the 2025 calendar year
- Years before 2025 require a good faith interpretation of the SECURE Act and SECURE 2.0 changes
- 2022 proposed regulations represent a good faith interpretation of the SECURE Act rules

FINAL REGULATIONS ON RMD'S

Required minimum distribution ages:

Effective for individuals attaining	RMD age	
Age 70½ before 1/1/2020 (born before July 1, 1949)	70½	Prior to the SECURE Act*
Age 70½ after 12/31/2019 and age 72 before 1/1/2023 (born on or after July 1, 1949 and before January 1, 1951)	72	Change with the SECURE Act
Age 72 after 12/31/2022 and age 73 before 1/1/2033 (born on or after January 1, 1951 and before January 1, 1960**)	73	Change with the SECURE 2.0 Act
Age 73 after 12/31/2032 (born on or after January 1, 1960)	75	Change with the SECURE 2.0 Act

** The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act).*
*** The proposed RMD regulations clarify that the applicable RMD age for individuals born in 1959 is age 73.*

FINAL REGULATIONS ON RMD'S

Eligible Designated Beneficiaries ("EBD"):

- The participant's surviving spouse
- The participant's child who has not yet reached the "age of majority"
- "Disabled"
- "Chronically ill"
- Not more than 10 years younger than the participant

FINAL REGULATIONS ON RMD'S

Surviving Spouse:

- Determined as of the date of the participant's death

Child:

- Includes a stepchild, an adopted child, and an eligible foster child

Age of Majority:

- Age 21

FINAL REGULATIONS ON RMD'S

"Disabled" (determined as of the participant's death):

- Individual has a medically determinable physical or mental impairment that results in marked and severe functional limitations and that can be expected to result in death or to be of long-continued and indefinite duration

Safe Harbor:

- Individual considered disabled by the Social Security Administration as of the date of the participant's death will be deemed to meet the disability criteria of an EDB

Simplified Definition for Individuals Under Age 18:

- "Marked and severe functional limitations" rather than an inability to engage in substantial gainful activity

FINAL REGULATIONS ON RMD'S

Chronically ill (determined as of the date of the participant's death):

- Individual is unable to perform (without substantial assistance from another individual) at least two activities of daily living for a period that is indefinite and reasonably expected to be lengthy in nature as of the date of a certification, which is to be provided by a licensed health care practitioner

Documentation:

- An individual who is an EDB because of disability or chronic illness must provide the plan administrator with acceptable documentation no later than October 31 of the calendar year following the calendar year of the participant's death

FINAL REGULATIONS ON RMD'S

Not more than 10 years younger than the participant:

- The determination of whether an individual is 10 years younger is based on actual dates of birth
- Not based on attained ages at the end of the calendar year

FINAL REGULATIONS ON RMD'S

RMDs for EBDs:

- Participant died prior to RBD:
  - The account is paid over the life expectancy of the EDB, provided that the first RMD is distributed by December 31 of the calendar year following the calendar year in which the participant died
- Participant died on or after RBD:
  - RMD must satisfy the "at least as rapidly" methodology (using the life expectancy of the participant or EDB, based on whoever was younger in the year of the participant's death)

FINAL REGULATIONS ON RMD'S

Special Rules:

- Spouse is the sole EDB and the participant dies before RBD:
  - The spouse may defer taking RMD until the later of December 31 of the calendar year following the calendar year of the participant's death or December 31 of the calendar year in which the participant would have reached his or her RBD
  - If a participant dies before RBD and the spousal beneficiary's first RMD over life expectancy commences in or after 2024, a spousal beneficiary is deemed to have irrevocably elected to have RMDs calculated using the Uniform Lifetime Table, if permitted under the plan
- Minor child is an EDB and reaches age 21:
  - The child is considered to have reached the age of majority in the year that that child reaches age 21. Once the child is no longer a minor, the entire account must be distributed to the child by December 31 of the 10th calendar year after the calendar year of the child's majority, unless the child satisfies other EDB criteria

FINAL REGULATIONS ON RMD'S

Individuals who are beneficiaries, but not EDBs:

- ***"Designated Beneficiary"***
  - The final regulations retain the concept of a designated beneficiary, defined as an individual entitled to receive a portion of the participant's interest in the account

FINAL REGULATIONS ON RMD'S

Individuals who are beneficiaries, but not EDBs:

- ***Not a "Designated Beneficiary"***
  - Since only an individual can be a designated beneficiary, a participant who names a non-living entity as beneficiary is treated as having no designated beneficiary for RMD purposes
  - Examples:
    - participant's estate
    - Charities
    - Trusts that do not qualify as see-through trusts under the final regulations

FINAL REGULATIONS ON RMD'S

Individuals who are designated beneficiaries, but not EDBs:

- Participant died prior to RBD:
  - The entire account must be distributed by December 31 of the calendar year containing the 10th anniversary of the participant's death
- Participant died on or after RBD:
  - RMD must satisfy the "at least as rapidly" methodology of the RMD during the participant's lifetime (using the life expectancy of the participant or designated beneficiary, based on whoever was younger in the year of the participant's death); and
  - Entire account must be distributed by December 31 of the 10th calendar year after the calendar year of the participant's death

FINAL REGULATIONS ON RMD'S

No designated beneficiary:

- Participant died prior to RBD:
  - The entire account must be distributed by December 31 of the 5th calendar year after the calendar year of the participant's death
- Participant died on or after RBD:
  - RMDs continue based on the life expectancy of the participant

FINAL REGULATIONS ON RMD'S

See-through trusts as beneficiaries:

- Two types:
  - Conduit trust
  - Accumulation Trust
- RMDs are based on the oldest beneficiary's life expectancy
- Requirements:
  - Trust is a valid trust under state law
  - Trust is irrevocable or will become irrevocable upon the death of the participant
  - Beneficiaries of the trust are identifiable from the trust instrument
  - Trust Documentation has been provided to the plan administrator

FINAL REGULATIONS ON RMD'S

Changes under the final regs to see-through trusts:

- Changes to the separate share rule:
  - A trust can use the separate share rule if it qualifies as an immediately divided trust
  - Upon the participant's death, the immediately divided trust is split into sub-trusts and is thereupon terminated
  - The main trust and the sub-trusts must all be see-through trusts
  - There can be no discretion as to how the participant's balance will be allocated to the sub-trusts after death

FINAL REGULATIONS ON RMD'S

Changes under final regs to see-through trusts:

- Changes to the trust documentation requirements:
  - Trustee can provide list of trust beneficiaries with description of conditions on entitlement to benefits instead of the actual trust
  - A trust that is a beneficiary of an IRA is not required to provide documentation

FINAL REGULATIONS ON RMD'S

- **See-through trust that is a special needs trusts with charitable remainder beneficiaries:**
  - SECURE Act 2.0 includes a clarification that a third-party special needs trust (e.g., a trust established by a parent for a child with a disability) may have a charitable organization as the remainder beneficiary
  - Concern was that it might preclude qualification for lifetime distributions to the disabled beneficiary of the SNT after the account holder's death
  - Effective starting in 2023

Deaths before the SECURE effective date:

- **Only one designated beneficiary who was alive on the SECURE effective date:**
  - Following the death of that designated beneficiary, the remaining account must be distributed by December 31 of the 10th calendar year following the calendar year of the death of that designated beneficiary
- **More than one designated beneficiary who was alive on the SECURE effective date:**
  - The remaining account must be distributed by December 31 of the 10th calendar year following the calendar year of the death of the oldest designated beneficiary unless separate accounting rules apply
- **Spouse was the sole designated beneficiary, was alive on the SECURE effective date, and dies before the participant would have attained RBD**:
  - The remaining account must be distributed to the spouse's designated beneficiary by December 31 of the 10th calendar year following the death of the spouse

Note: The distribution of the account within the 10-year period is determined in accordance with IRS Notice 2020-51, which provided guidance for the waiver of the 2020 RMD for certain beneficiaries in accordance with the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

FINAL REGULATIONS ON RMD'S

Automatic waivers of 25% excise tax:

- Under SECURE 2.0, the 50% excise tax on the amount that is not taken timely as an RMD is reduced to 25%
- The excise tax is reduced to 10% for taxpayers who receive a corrective distribution and file a return reflecting the distribution by the earliest of:
  - The date a notice of deficiency is mailed
  - The date on which the excise tax is assessed
  - The last day of the second taxable year that begins after the end of the taxable year in which the excise taxis imposed

FINAL REGULATIONS ON RMD'S

Two additional automatic waivers in final regs:

- Participant dies before RBD and the participant's EDB did not affirmatively elect to take RMD over life expectancy:
  - An EDB who has not satisfied the RMD requirements may elect the 10-year payout rule no later than December 31st of the 9th calendar year following the calendar year of the participant's death, provided that the entire account is distributed to the EDB by December 31st of the 10th calendar year following the year of the participant's death
- Participant died on or after RBD and failed to satisfy the RMD in the calendar year of the participant's death:
  - The beneficiary must take the RMD attributable to the year of the participant's death no later than the later of the beneficiary's federal individual income tax filing deadline (including extensions) for the tax year containing the calendar year of the participant's death or the end of the following calendar year

OUTSTANDING PROPOSED REGS ON RMD'S

- In addition to the final regs, 2024 proposed regs covered the following topics:
  - Determination of the applicable age for employees born in 1959
  - Partial annuitization of an individual's account in a defined contribution plan
  - Distributions from designated Roth accounts
  - Treatment of corrective distributions following missed RMDs
  - Surviving spouse's election to be treated as the employee
  - Effect of divorce after the purchase of a QLAC
  - Distribution to a trust beneficiary
- Announcement 2025-2 indicates that when finalized these proposed regs are expected to apply to 2026

SECURE ACT 2.0

SECURE ACT 2.0: CHANGES EFFECTIVE IN 2025

Automatic Enrollment:

- New 401(k) and 403(b) plans with a deferral feature are required to include an automatic enrollment and escalation feature in their plan
  - Minimum of 3% compensation (but not more than 10%)
  - Increasing 1% as of the start of each plan year following one year of participation up:
    - At least 15% for safe harbor plans
    - At least 10% (15% for plan years after 2025) for non-safe harbor plans
- Must allow permissible withdrawals within 90 days of the initial contribution and use a qualified default investment alternative for investments if the participant does not affirmatively elect his or her own investments
- Exceptions:
  - Businesses with 10 or fewer employees
  - New businesses that have been in existence less than 3 years (including any predecessor employers)
  - Church plans
  - SIMPLE Plans
  - Governmental plans

Automatic Enrollment – con't:

- IRS Notice 2024-2 addresses the "newly established" plan rules in the context of mergers and spinoffs
  - In the case of the merger of two single employer plans, each of which includes a pre-enactment qualified cash or deferred arrangement (CODA), the treatment of the qualified CODA included in the ongoing plan as a pre-enactment qualified CODA is unaffected by the merger.
  - If a plan that includes a qualified CODA that is not a pre-enactment qualified CODA is merged with a plan that includes a pre-enactment qualified CODA, the qualified CODA included in the ongoing plan will generally not be treated as a pre-enactment qualified CODA after the merger.
  - However, if, in connection with a business acquisition that meets certain requirements, a single employer plan that includes a qualified CODA that is not a pre-enactment qualified CODA is merged with another single employer plan that includes a pre-enactment qualified CODA, and the plan that includes the pre-enactment qualified CODA is designated as the ongoing plan, then the qualified CODA included in the ongoing plan continues to be treated as a pre-enactment qualified CODA after the merger, provided that the merger occurs by the end of the first plan year beginning after the year of the transaction.
  - If an employer with a plan that is NOT a pre-enactment qualified CODA merges its plan into a multiple-employer or pooled-employer plan which IS a pre-enactment qualified CODA, only the merging employer plan is considered a post-enactment qualified CODA; the rest of the plan maintains its pre-enactment exemption.
  - If a plan that includes a qualified CODA is spun-off from a plan that includes a pre-enactment qualified CODA, generally the qualified CODA included in the new spun-off plan is also treated as a pre-enactment qualified CODA.

SECURE ACT 2.0: CHANGES EFFECTIVE IN 2025

Increased Catch-up Contribution for Participants Ages 60-63:

- Catch-up contributions increase to $10,000 in 2025 for participants age 60-63

Long-term Part-Time Workers:

- Employees working 500+ hours in 2 consecutive years must be eligible to defer
- Also applies to 403(b) plans
- Counts as a year of vesting for individuals who become participants under these rules

Note: Under SECURE 1.0 there was a similar 3-year rule starting in 2024

SECURE 2.0: PLAN OVERPAYMENTS

Notice 2024-77 (October 15, 2024)

Background: Recovery of Plan Overpayments

- "Inadvertent benefit overpayment":
  - Exceeds amount allowed under the plan; or
  - Is made before allowed under the terms of the plan
- Does not include payments to disqualified persons
- SECURE 2.0 provides that inadvertent benefit overpayments will not cause a plan to lose its tax-qualification or fail ERISA
- Overpayment is treated as an eligible rollover distribution
- Plan must either seek recovery of the overpayment or reduce the individual's benefits

SECURE 2.0: PLAN OVERPAYMENTS

Guidance on Recovery of Plan Overpayments:

- Employers do not have to make corrective contributions for overpayments in many situations that contributions were previously required
- While a corrective payment generally is not required for an inadvertent benefit overpayment, other failures may occur as the result of an inadvertent benefit overpayment that could require a corrective payment
- **Rollovers**
  - an individual who receives an inadvertent benefit overpayment and rolls over that overpayment pursuant to a direct or 60-day rollover will keep the tax-favored status of the overpayment for the portion of it for which a recoupment is not sought
  - The portion of an inadvertent benefit overpayment for which recoupment is sought that is not returned to the plan is not treated as an eligible rollover distribution

ESTATE PLANNING

BASIS CONSISTENCY FINAL REGULATIONS

T.D. 9991 (September 17, 2024)

Consistent Basis Requirement under IRC 1014(f):

- Taxpayer's initial basis in property acquired from a decedent cannot exceed:
  - The property's final value for estate tax purposes; or
  - If no final value has been determined, then the basis is the property's reported value on the federal estate tax return or on Form 8971
- Requirement applies until the entire property is sold, exchanged, or otherwise disposed of in a recognition transaction for income tax purposes or the property becomes includible in another gross estate

BASIS CONSISTENCY FINAL REGULATIONS

Required Information Return:

- Form 8971
- Filed with IRS (and Schedule A with beneficiaries) on or before the earlier of:
  - 30 days after the due date of the estate tax return or
  - 30 days after the date on which the estate tax return is filed with the IRS
- If a beneficiary acquires property after the due date of the estate tax return, the Statement must be furnished to the beneficiary by January 31 of the year following the acquisition of that property
- Executors have a duty to supplement the Information Return or Statements upon the receipt, discovery, or acquisition of information that causes the information to be incorrect or incomplete

BASIS CONSISTENCY FINAL REGULATIONS

Penalties:

- May be imposed under:
  - Reg. §301.6721-1(h)(2)(xii) for filing an incorrect Information Return; and
  - Reg. §301.6722-1(e)(2)(xxxv) for filing incorrect Statements (i.e., Schedule A)
- In addition, an accuracy-related penalty can be imposed under Reg. §1.6662-9 on the portion of the underpayment of tax relating to property subject to the consistent basis requirement that is attributable to an inconsistent basis

BASIS CONSISTENCY FINAL REGULATIONS

Effective Date:

- Final Regs are effective for estate tax returns filed after September 17, 2024
- But, the basis consistency requirements in general apply to estate tax returns filed after July 31, 2015, which is the date Section 2004 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Public Law 114-41, 129 Stat. 443, enacted sections 1014(f), 6035, 6662(b)(8), 6662(k), 6724(d)(1)(D), and 6724(d)(2)(II) of the Internal Revenue Code

CASES

BUY-SELL AGREEMENTS & LIFE INSURANCE

Connelly v. United States, 602 U.S. ___ (2024)

Facts:

- Mike & Tom Connelly were sole shareholders
- Mike and Tom collectively owned 500 shares
  - Mike owned 385.9 shares (77.18%)
  - Tom owned 114.1 shares (22.82)

Facts – con't:

- Buy-sell agreement provided two ways of determining stock value:
  1) Certificate of Agreed Value
  2) Appraisal
- Neither were utilized
- Company maintained $3.5 million in life insurance, and when Mike died it paid $3 million to his estate
- During the audit, the company obtained an appraisal from its CPA who valued the company at $3.86 million simply because that amount multiplied by Mike's interest equaled the $3 million paid

BUY-SELL AGREEMENTS & LIFE INSURANCE

Supreme Court:

- Held that a corporation's contractual obligation to redeem shares under a buy-sell agreement is not a liability that reduces a corporation's value for purposes of the federal estate tax
- Sticking point for the Court appears to have been the result implicit in the estate's position that the company's redemption of Mike's shares left Tom with a larger ownership stake in a company with the same value as before the redemption
- According to the Court, "That cannot be right: A corporation that pays out $3 million to redeem shares should be worth less than before the redemption"
- Overrules *Estate of Blount v. Commr.*, 428 F.3d 1398 (2005)

LAST MINUTE FLP DISREGARDED

Estate of Fields v. Comm'r (T.C. Memo. 2024-090)

Facts:

- Anne Fields inherited an oil business from her husband when he died in the 1960s and successfully managed it herself for years
- In 2011, she was diagnosed with Alzheimer's and shortly thereafter broke her hip and had multiple surgeries
- She had named her great nephew, Bryan, in whom she had great confidence, as executor of her estate and durable power of attorney
- In 2015, Bryan consulted an attorney pursuant to which he established two LLCs for Anne using his durable power of attorney naming himself as manager
- One LLC held cash, notes and collectible guitars, and the other held real estate
- Anne died one month later

LAST MINUTE FLP DISREGARDED

Tax Court:

- Anne didn't retain sufficient assets outside of the LLCs for her own support and the bequests under her will
- There was an implied agreement that the partnership would make distributions to Anne for her expenses and, after her death, to fulfill the bequests in her estate plan resulting in inclusion of the partnership assets in her estate pursuant to Section 2036(a)(1)
- She also retained the right to dissolve the partnership in conjunction with Bryan, giving her the right to designate the persons who would enjoy the property causing estate tax inclusion under Section 2036(2)

LAST MINUTE FLP DISREGARDED

Tax Court – con't.

- No evidence of any business purpose for the LLCs:
  - There was no change in her wealth or composition of the estate that would generate a non-tax reason for asset management
  - The assets transferred didn't require active management
  - The assets were all very different, with no obvious synergies from pooling them in a single entity
- The transfer of the assets to the LLC was not a bona fide sale for full consideration

LAST MINUTE FLP DISREGARDED

Tax Court – con't.

- Amount included in gross estate under Sections 2033, 2036 and 2043 determined using formula from *Estate of Moore*, T.C. Memo. 2020-40:

  1) Date-of-death value of consideration received from the transfer to the LLC that remained in Anne's estate (the LLC units), plus

  2) Date-of-death value of the LLC's assets included in her estate under Section 2036, less

  3) Value of the consideration received at the time of transfer to the LLC (the value of the LLC units received when the LLC was initially funded)

- #1 & 3 netted out in this case due to the absence of appreciation in the short period between when the LLC was formed and when Anne died

MICHIGAN

MINIMUM WAGE AND PAID SICK LEAVE

Mothering Justice v. Attorney General, Docket #165325 (July 31,2024)

Background:

- In 2018, advocacy groups successfully placed the Improved Workforce Opportunity Wage Act and the Earned Sick Time Act on the legislative agenda through popular initiatives
- Effect would be to increase the minimum wage and paid sick leave
- The Michigan Legislature adopted these proposals before the election to avoid a public vote
- After the election, the legislature amended the acts, significantly modifying the provisions in the original ballot proposals
- This led to a legal challenge questioning the constitutionality of such legislative amendments under the Michigan Constitution

MINIMUM WAGE AND PAID SICK LEAVE

The Michigan Supreme Court:

- The legislature's “adopt-and-amend” approach in enacting and subsequently amending voter-initiated proposals within the same legislative session was unconstitutional
- Violated Article 2, Section 9 of the Michigan Constitution, which only allows the legislature to enact a law without change, reject it and place it on the ballot, or propose an alternative measure for a vote
- By adopting and then amending the initiatives for the Improved Workforce Opportunity Wage Act and the Earned Sick Time Act, the legislature undermined the people’s reserved power to propose and enact laws directly

MINIMUM WAGE AND PAID SICK LEAVE

Minimum Wage Increases:

Original Year	Original Minimum Wage	Adjustment Value	New Year	New Minimum Wage	Tipped Workers' Minimum Wage
2019	$10.00	1.24752	February 21, 2025	$12.48	48% of minimum wage
2020	$10.65	1.24752	February 21, 2026	$13.29	60% of minimum wage
2021	$11.35	1.24752	February 21, 2027	$14.16	70% of minimum wage
2022	$12.00	1.24752	February 21, 2028	$14.97	80% of minimum wage
			February 21, 2029	$14.97 + CPI	90% of minimum wage
			February 21, 2030	2029 Minimum Wage + CPI	100% of minimum wage

MINIMUM WAGE AND PAID SICK LEAVE

Earned sick time:

- The Earned Sick Time Act requires employers to provide employees with 1 hour of paid sick time for every 30 hours worked, with annual caps
- The amended version only affected employers with 50 or more employees, limited paid sick leave to 40 hours per year (with certain differences for accrual versus front-loaded policies), and contained several broad exceptions
- As of February 21, 2025:
  - Employers with fewer than 10 employees will be required to allow workers to accrue one hour of paid sick leave for every 30 hours worked, with an annual cap of 40 hours, and
  - Larger employers will be required to allow accrual of up to 72 hours

MINIMUM WAGE AND PAID SICK LEAVE

Subsequent Developments:

- The Michigan Legislature has introduced a bill (Senate Bill No. 991) that, if enacted, would scale back the newly scheduled wage increases while preserving the tip credit
- SB 991 was referred to the Senate Committee on Labor on September 11, 2024
- In their final weeks of control over the House, Senate and governorship, Democrats didn't move forward any bills to potentially halt the impending tipped wage changes

CREDIT CARD SURCHARGE SUBJECT TO SALES TAX

Michigan Department of Treasury Update (May 2024)

Background:

- Seller accepting a credit card payment pays a fee or percentage of the payment to the processor (e.g., Visa or Mastercard)
- Example: Processor takes a $1 fee on a restaurant credit card charge of $50
- Some sellers are passing the fee along to the customer turning the $50 charge into $51

Issue:

- Is the $1 subject to sales tax?

CREDIT CARD SURCHARGE SUBJECT TO SALES TAX

Law:

- Sales price includes “service cost[s] . . . And any other expenses of the seller.” MCL 205.51(1)(d)(2)

Result:

- The fee is subject to sales tax

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THANK YOU

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