

Tax Update – Recent and Coming Federal and State Tax Changes

Presented by:
GYF TAX SERVICES GROUP

GYF Annual CPE Day – November 9, 2023



MICHAEL WEBER
Partner – Tax Services Group



REBEKAH FLANDERS
Senior Manager – Tax Services Group

GYF Annual CPE Day – November 9, 2023



Tax Update – Introduction



GYF Annual CPE Day – November 9, 2023



Tax Update – Introduction

On this episode of Press Your Luck:

- Employee Retention Credit Developments
- Federal Corporate Transparency Act
- Pennsylvania Annual Reporting Requirement
- Research and Experimental Expenditures
- Pass-through Entity Tax Election
- Potpourri

GYF Annual CPE Day – November 9, 2023



Employee Retention Credit (ERC) Developments

GYF Annual CPE Day – November 9, 2023



Tax Update – ERC Developments

ERC Basics

- **Refundable Federal employment tax credit**
 - *First enacted in March 2020 with the CARES Act*
 - *Various modifications since March 2020*
- **Incentivized businesses that paid employees during the Covid-induced government shutdown, and while revenues lagged compared to 2019**
 - *Credit for wages paid during March 2020 through September 2021*
 - \$5,000 maximum credit per employee in 2020
 - \$21,000 maximum credit per employee in 2021

GYF Annual CPE Day – November 9, 2023



Tax Update – ERC Developments

ERC Statistics

- **Approximately 3.6 million claims filed since inception**
 - *\$230 billion paid out*
 - *849,000 Forms 941-X in unprocessed inventory as of early October*
 - *Long processing times for claims*

GYF Annual CPE Day – November 9, 2023



Tax Update – ERC Developments

Aggressive marketing by ERC promoters

- **IRS Dirty Dozen**
- **Red flags**
 - *Unsolicited calls or letters*
 - *Easy application process*
 - *Large upfront fees and fees based on percentage of credit*
 - *Anonymous preparers*
 - *Leaving out facts*
- **Identity theft**

GYF Annual CPE Day – November 9, 2023



Tax Update – ERC Developments

Increased fraud concerns

- **Audits of claims**
 - *Likely that many audits will be pushed to 2024*
- **Criminal cases**
 - *As of July 2023, investigations of 252 claims and \$2.8 billion in ERC*
 - **15 federally charged cases**
 - 6 cases with convictions
 - 4 cases reached sentencing with average sentence of 21 months

GYF Annual CPE Day – November 9, 2023



Tax Update – ERC Developments

Moratorium on processing new claims

- **IRS News Release IR-2023-169**
 - [IRS News Release IR-2023-169](#)
 - *Effective for new claims as of September 14, 2023*
 - *Increased scrutiny*
 - *Longer processing time for claims previously filed*
 - From goal of 90 days to 180 days

GYF Annual CPE Day – November 9, 2023



Tax Update – ERC Developments

Moratorium on processing new claims (cont.)

- **Implementation of 2 ERC Compliance options**
 - *ERC Settlement Program – IRS to release more details*
 - *ERC Withdrawal Process*
 - Allows taxpayers who filed an ERC claim but have not yet received their refund to withdraw their submission and avoid future repayment, interest, and penalty
 - If all of the following apply, taxpayers are eligible for the withdrawal process:
 - A claim for refund was made on an adjusted employment tax return
 - The adjusted return was filed only to claim the ERC, no other adjustments
 - The taxpayer wants to withdraw the entire ERC amount claimed
 - The IRS has not paid the claim, or if the IRS has paid, the refund check has not been cashed or deposited

GYF Annual CPE Day – November 9, 2023



Tax Update – ERC Developments

Moratorium on processing new claims (cont.)

- **House of Representatives Committee on Ways and Means posed 10 questions to IRS, e.g:**
 - *Processing time for existing claims?*
 - *Expectations for eliminating the backlog of claims?*
 - *Fraud prevention measures?*
 - *Legislative proposal for addressing the ERC fraud?*
 - *“Status-check” portal?*

GYF Annual CPE Day – November 9, 2023



Tax Update – ERC Developments

Employee Retention Credit Developments (cont.)

- **Impact to M&A transactions**
 - *Buyer concern for validity of claims*
 - *Withdrawal process – available to a buyer?*

GYF Annual CPE Day – November 9, 2023



Tax Update – ERC Developments

Employee Retention Credit Developments (cont.)

- **IRS Tools**
 - [*Eligibility Checklist*](#)
 - [*FAQs*](#)
 - [*General Information*](#)
 - [*ERC Claim Withdrawal Process*](#)

GYF Annual CPE Day – November 9, 2023



Federal Corporate Transparency Act (CTA)

GYF Annual CPE Day – November 9, 2023



Tax Update – Federal CTA

Overview

- Passed in late 2020, with the goal of addressing concerns about money laundering, financial corruption, terrorism financing, and foreign espionage
- Requires certain reporting entities to file beneficial ownership information (BOI) reports to the Financial Crimes Enforcement Network (FinCEN)
 - *Estimated to include 33 million companies initially, then 5 million additional companies each year*

GYF Annual CPE Day – November 9, 2023



Tax Update – Federal CTA

Effective Date

- For companies formed prior to January 1, 2024, initial report is due January 1, 2025
- For companies formed after January 1, 2024, initial report is due 30 days after formation
- If any change to information previously submitted in a report, updated report must be filed within 30 days

GYF Annual CPE Day – November 9, 2023



Tax Update – Federal CTA

Who must file?

- **Reporting company**
 - Corporation
 - Limited liability company, limited liability partnership, limited partnership
 - Other entity formed by filing documents with a secretary of state or similar office
 - Other entity formed under the laws of a foreign country and registered to do business in the United States

GYF Annual CPE Day – November 9, 2023



Tax Update – Federal CTA

Exemptions from Filing

- **23 Exemptions**

- *Governmental authority*
- *Bank*
- *Investment company or investment adviser*
- *Venture capital fund adviser*
- *Insurance company*
- *Accounting firm*
- *Public utility*
- *Tax-exempt entity*
- *Large Operating Company*

GYF Annual CPE Day – November 9, 2023



Tax Update – Federal CTA

Large Operating Company

- **If all 6 of the following apply:**

- *Employs more than 20 full-time employees*
- *More than 20 full-time employees are employed in the United States*
- *The entity has an operating presence at a physical office in the United States*
- *The entity filed a Federal income tax return for the previous year reporting more than \$5,000,000 in gross receipts (net of returns)*
- *The greater than \$5,000,000 amount was reported on Form 1120, 1120-S, 1065 or other applicable form*
- *The \$5,000,000 threshold must be met with U.S. sales only*

GYF Annual CPE Day – November 9, 2023



Tax Update – Federal CTA

Beneficial Owner

- **Any individual who directly or indirectly:**
 - *Exercises substantial control over a reporting company OR*
 - *Owns or controls at least 25% of the ownership interests of a reporting company*
- **There is no maximum number of beneficial owners**

GYF Annual CPE Day – November 9, 2023



Tax Update – Federal CTA

Substantial Control

- **4 General Criteria:**
 - *Senior officer*
 - *Authority to appoint or remove any senior officer or a majority of the board of directors*
 - *Important decision-maker regarding company's business, finances, structure*
 - *Any other substantial control (catch-all)*

GYF Annual CPE Day – November 9, 2023



Tax Update – Federal CTA

Ownership Interest

- Equity, stock or voting rights
- Capital or profit interest
- Convertible instruments
- Option or privilege
- Catch-all

GYF Annual CPE Day – November 9, 2023



Tax Update – Federal CTA

Beneficial Owner Exceptions

- Minor child
- Nominee, intermediary, custodian, agent
- Employee who is not a senior officer
- Inheritor (future)
- Creditor

GYF Annual CPE Day – November 9, 2023



Tax Update – Federal CTA

Company Applicant Reporting

- **Required to be reported for companies formed or registered on or after January 1, 2024**
- **Not required to be reported for companies formed or registered prior to January 1, 2024**
- **Individuals**
 - *Direct filer (actual filer of the organization documents) and/or*
 - *Directs or controls the filing action*

GYF Annual CPE Day – November 9, 2023



Tax Update – Federal CTA

Information to Be Reported

- **Reporting company**
 - *Full legal name and DBA as applicable*
 - *Current U.S. address*
 - *Jurisdiction of formation*
 - *IRS TIN (EIN)*

GYF Annual CPE Day – November 9, 2023



Tax Update – Federal CTA

Information to Be Reported (cont.)

- **Beneficial owner and company applicant**
 - *Full legal name*
 - *Date of birth*
 - *Current address (residential)*
 - *Identifying number; issuing jurisdiction, image of one of the following:*
 - U.S. passport
 - State driver's license
 - State ID document
 - Foreign passport (if none of the above are applicable)

GYF Annual CPE Day – November 9, 2023



Tax Update – Federal CTA

How to File

- **Electronic only through a secure FinCEN filing system**
 - *System is not available until January 1, 2024*
 - *No filing fees*
 - But substantial civil and criminal penalties may be imposed for failure to comply
- **Caution**
 - *FinCEN notes an alert of fraudulent attempts to collect information*
 - May be titled “Important Compliance Notice” and provides a URL or QR code

GYF Annual CPE Day – November 9, 2023



Tax Update – Federal CTA

Resources

- **Small Entity Compliance Guide**

https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide_FINAL_Sept_508C.pdf

- **FAQs**

<https://www.fincen.gov/boi-faqs>

GYF Annual CPE Day – November 9, 2023



Pennsylvania Annual Reporting Requirement

GYF Annual CPE Day – November 9, 2023



Tax Update – PA Annual Reporting Requirement

Act 122 of 2022

- **New annual report required to be filed**
 - *Repeal of decennial report*
 - *The primary goal is that the PA Department of State maintains the most current listing of entities formed and registered to do business within the commonwealth*

GYF Annual CPE Day – November 9, 2023



Tax Update – PA Annual Reporting Requirement

Important Dates

- **Effective as of January 1, 2024**
 - *First filing will be due in 2025, for any relevant entity in existence as of December 31, 2024*
 - *Report due date*
 - June 30 – corporations (for profit and nonprofit)
 - September 30 – limited liability companies
 - December 31 – all other entities

GYF Annual CPE Day – November 9, 2023



Tax Update – PA Annual Reporting Requirement

Who Must File

- All domestic entities formed in PA
- All foreign entities registered to do business in PA
- Includes:
 - Corporation
 - Nonprofit
 - LLP, LP, LLC
 - Professional association
 - Business trust

GYF Annual CPE Day – November 9, 2023



Tax Update – PA Annual Reporting Requirement

What to Report

- Business name
- Jurisdiction of formation
- Registered office address (PA address)
- Name of at least one governor (director, member, partner, etc.)
- Names and titles of principal officers
- Address of the principal office (main administrative office)
- Entity number issued by PA D.O.S.

GYF Annual CPE Day – November 9, 2023



Tax Update – PA Annual Reporting Requirement

How to file

- **Fee is \$7.00 (nonprofits pay \$0)**
- **Electronic or hard copy**
- **Other information**
 - *Critical to have the correct address on file*
 - *Transition/grace period*
 - No consequences imposed until annual reports that are due in 2027
 - After that, administrative dissolution/termination/cancellation six months after the due date of the report

GYF Annual CPE Day – November 9, 2023



Tax Update – PA Annual Reporting Requirement

Reinstatement

- **Eligibility**
 - *Domestic entities may apply for reinstatement for a fee and must become current on delinquent filings and fees*
 - *Foreign entities may NOT apply for reinstatement and must go through the registration process again*
- **Entity name (both domestic and foreign entities)**
 - *If the entity has been administratively dissolved/terminated/cancelled, the entity name is available to any other entity*
 - *Not guaranteed to be available to the original entity*

GYF Annual CPE Day – November 9, 2023



Specified Research & Experimental Expenditures (SREs)

GYF Annual CPE Day – November 9, 2023



Tax Update – SRE Treatment

Background (pre-TCJA)

- **Research and experimental expenditures could be treated as follows:**
 - *Deducted currently*
 - *Capitalized and amortized over 60 months*
 - *Charged to capital account (no amortization)*
 - *Capitalized and amortized over 120 months*

GYF Annual CPE Day – November 9, 2023



Tax Update – SRE Treatment

Background (post-TCJA)

- **Changes enacted by the TCJA, passed in December 2017**
 - *Effective for tax years beginning after 12/31/21*
 - *Requires amortization of specified research and experimental expenditures (SREs) over a 5-year period (domestic) or 15-year period (foreign), using a half-year convention*
 - *Includes software development costs*
 - *Change in accounting method*

GYF Annual CPE Day – November 9, 2023



Tax Update – SRE Treatment

Pressure to rescind or amend TCJA changes

- **Tax community was hopeful for a repeal of the treatment**
 - *No repeal in sight*
- **IRS interim guidance**
 - *[Notice 2023-63](#)*
 - *Released September 8, 2023*
 - *Clarifies various provisions in Section 174*

GYF Annual CPE Day – November 9, 2023



Pass-through Entity (PTE) Tax

GYF Annual CPE Day – November 9, 2023



Tax Update – PTE Tax

TCJA SALT Cap

- **Imposed a \$10,000/\$5,000 limitation on the Schedule A itemized deduction for state and local taxes**
 - *In response, many states now permit pass-through entities (PTEs) to pay the state tax on behalf of owners*
 - *Known as the “SALT Cap Workaround”*
 - Tax deduction is realized at the PTE level
 - Credit for taxes paid is passed through to the owners and offsets tax liability on owners’ state tax return

GYF Annual CPE Day – November 9, 2023



Tax Update – PTE Tax

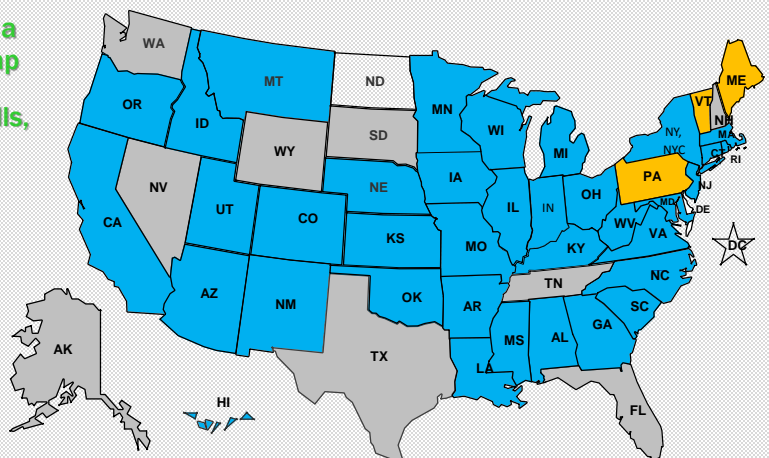
IRS Response

- **IRS Notice 2020-75**
 - *The deduction at the entity level is permissible for Specified Income Tax Payments*
 - *Intent to issue proposed regulations were announced, but none issued yet*

Tax Update – PTE Tax

States with Enacted or Proposed PTE Level Tax (as of 8/10/23)

- **36 states & 1 locality** enacted a PTE tax since the TCJA SALT cap
- **3 states** have proposed PTE bills, including Pennsylvania
 - *PA legislation introduced in 2023 (SB 659 and HB 1584)*
- **3 states** that have owner-level PIT on PTE income have not yet proposed or enacted PTE taxes
- **9 states** have no owner-level PIT on PTE income



Source: [State PTE Level Approach \(aicpa.org\)](http://State PTE Level Approach (aicpa.org))

Update Potpourri

GYF Annual CPE Day – November 9, 2023



Tax Update – Potpourri

State News

- **PA Corporate net income tax phasedown**

- *(Act 53, passed in 2022)*

- **OH CAT changes**

- *Exclusion of gross receipts increases from \$1 million to \$6 million in 2024-25*

- *Calendar year CAT filing and \$150 minimum tax are eliminated*

Tax year	CNIT rate
Jan. 1 to Dec. 31, 2023	8.99%
Jan. 1 to Dec. 31, 2024	8.49%
Jan. 1 to Dec. 31, 2025	7.99%
Jan. 1 to Dec. 31, 2026	7.49%
Jan. 1 to Dec. 31, 2027	6.99%
Jan. 1 to Dec. 31, 2028	6.49%
Jan. 1 to Dec. 31, 2029	5.99%
Jan. 1 to Dec. 31, 2030	5.49%
Jan. 1, 2031, and each year there after	4.99%

GYF Annual CPE Day – November 9, 2023



Tax Update – Potpourri

Federal News

- **Bonus Depreciation phase-down**
 - 2023 – 80%
 - 2024 – 60%
 - 2025 – 40%
 - 2026 – 20%
 - Thereafter – none
- **RMD age increased to 73 (if you reach age 72 after 12/31/22)**

GYF Annual CPE Day – November 9, 2023



Thank you for your attention!

Please contact the presenters directly with questions:

Michael Weber
weber@gyf.com

Rebekah Flanders
flanders@gyf.com

GYF Annual CPE Day – November 9, 2023

