Small Entities Must File New Beneficial Ownership Information Reports in 2024

November 30, 2023 | Kristine A. Tidgren

Update: On March 1, 2024, in the case of *National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala.), a federal district court in the Northern District of Alabama, Northeastern Division, entered a final declaratory judgment, concluding that the Corporate Transparency Act exceeds the Constitution's limits on Congress's power and enjoining the Department of the Treasury and FinCEN from enforcing the Corporate Transparency Act against the plaintiffs. FinCEN has stated that it will follow this ruling as it applies to the plaintiffs. All others must continue to comply with the CTA's reporting requirements. On March 11, the government filed its notice of appeal to the Eleventh Circuit. We will continue to follow this issue.

Update: FinCEN opened the online portal for filing Beneficial Ownership Information reports on January 1, 2024. You can access it here: https://boiefiling.fincen.gov/fileboir.

Beginning January 1, 2024, most small entities—including single member LLCs—must file online reports with the federal government, disclosing information about the beneficial owners of the entities. This new reporting requirement—estimated to impact at least 32.6 million entities in 2024—was created by the Corporate Transparency Act (CTA). Existing entities will have until January 1, 2025, to make their first beneficial ownership information (BOI) report. Entities first created or registered in 2024 will have 90 days from creation to get their first reports filed. Any entity that has already filed a report will generally have 30 days to make updates required by the CTA.

Background

The CTA was enacted as part of the Anti-Money Laundering Act of 2020 in the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283. The CTA was enacted to prevent money laundering, corrupt financial transactions, and financial terrorism. It requires the Financial Crimes Enforcement Network (FinCEN) (a bureau of the U.S. Treasury) to establish and maintain a national registry of beneficial owners of entities that are otherwise not subject to disclosure regulations. Specifically, FinCEN has stated that collection of BOI will "help to shed light on criminals who evade taxes, hide their illicit wealth, and defraud employees and customers and hurt honest U.S. businesses through their misuse of shell companies." In furtherance of these goals, the CTA authorizes FinCEN to share the collected information with government agencies, financial institutions, and financial regulations, subject to safeguards and protocols. Unauthorized use or disclosure of BOI may be subject to criminal and civil penalties. On September 22, 2022, FinCEN issued final regulations, 31 CFR § 1010.380, which go into effect January 1, 2024.

Who Must File a Report?

The rule identifies two types of reporting companies: domestic and foreign. Domestic reporting companies are corporations, limited liability companies (LLCs), or any entities created by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe. This generally means that limited liability partnerships, limited liability limited partnerships, business trusts in certain states, and most limited partnerships are also required to file reports if they are not otherwise excepted from the reporting requirement. Single-member LLCs, disregarded for tax purposes, **are** subject to BOI reporting requirements.

Foreign reporting companies are corporations, LLCs, or other entities formed under the law of a foreign country that is registered to do business in any state or tribal jurisdiction by the filing of a document with a secretary of state or any similar office.

Entity Type	Reporting Entity (unless exempted?)
LLC	Yes
SMLLC	Yes
General Partnership	No
Sole Proprietorship	Not unless corporation or LLC
Limited Partnership	Yes
S Corporation	Yes
C Corporation	Yes
Trust	Not unless required to file with Secretary of State, but trustees or beneficiaries may be beneficial owners of other reporting entities

Exceptions to Reporting

The following entities are specifically excepted from the BOI reporting requirements by the FinCEN rules:

1. Certain types of securities reporting issuers.
2. A U.S. governmental authority.
3. Certain types of banks.
4. Federal or state credit unions as defined in section 101 of the Federal Credit Union Act.
5. Bank holding company as defined in section 2 of the Bank Holding Company Act of 1956, or any savings and loan holding company as defined in section 10(a) of the Home Owners' Loan Act.
6. Certain types of money transmitting or money services businesses.
7. Any broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934, that is registered under section 15 of that Act (15 U.S.C. 78o).

8. Securities exchanges or clearing agencies as defined in section 3 of the Securities Exchange Act of 1934, and that is registered under sections 6 or 17A of that Act.
9. Certain other types of entities registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.
10. Certain types of investment companies as defined in section 3 of the Investment Company Act of 1940, or investment advisers as defined in section 202 of the Investment Advisers Act of 1940.
11. Certain types of venture capital fund advisers.
12. Insurance companies defined in section 2 of the Investment Company Act of 1940.
13. State-licensed insurance producers with an operating presence at a physical office within the United States, and authorized by a State, and subject to supervision by a State's insurance commissioner or a similar official or agency.
14. Commodity Exchange Act registered entities.
15. Any public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002.
16. Certain types of regulated public utilities.
17. Any financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010.
18. Certain pooled investment vehicles.
19. Certain types of tax-exempt entities.
20. Entities assisting a tax-exempt entity described in 19 above.
21. Large operating companies with at least 20 full-time employees, more than $5,000,000 in gross receipts or sales, and an operating presence at a physical office within the United States.
22. The subsidiaries of certain exempt entities.
23. Certain types of inactive entities that were in existence on or before January 1, 2020, the date the CTA was enacted.

Additional information about entities exempt from reporting is detailed in the Beneficial Ownership Information Reporting Regulations at 31 CFR § 1010.380(c)(2) and in the Small Entity Compliance Guide. Businesses must review the specific criteria for an exemption before determining that the exemption applies.

What Must Be Reported?

A reporting company must disclose:

- Its full legal name and any trade name or DBA;
- A complete address, including the street address of the principal place of business for U.S. companies and primary U.S. location for other businesses;
- The State, Tribal, or foreign jurisdiction in which it was formed or first registered, depending on whether it is a U.S. or foreign company; and
- Its Taxpayer Identification Number (TIN).
- For domestic entities, this is the IRS TIN, including an employee identification number (EIN). For foreign entities without a TIN, a tax identification number issued by a foreign jurisdiction and the name of that jurisdiction should be entered.

Additionally, for each **beneficial owner** and each **company applicant** (see below), the company must provide the individual's:

- Full legal name;
- Birthdate;
- A complete address; and
  - For company applicants who form or register an entity in the course of the company's business, this includes the street address of the company applicant. For all individuals, beneficial owners and applicants, the address must be the residential street address of the individual.
- An identifying number from a non-expired driver's license, passport, or other approved document for each individual, as well as an image of the document from which the document was obtained.

Beneficial Owners

In general, beneficial owners are individuals who:

1. directly or indirectly exercise "substantial control" over the reporting company, or
2. directly or indirectly own or control 25% or more of the "ownership interests" of the reporting company.

Substantial Control

Individuals have substantial control of a reporting company if they direct, determine, or exercise substantial influence over important decisions of the reporting company. [31 CFR §1010.380(d)(1)]. Those deemed to exercise substantial control over a reporting company include:

- Senior officers such as chief financial officers, chief executive officers, general counsel, chief operating officers, or any other similar positions, regardless of title
- An individual with authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body)
- An individual who directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding:
  - The nature, scope, and attributes of the business of the reporting company, including the sale, lease, mortgage, or other transfer of any principal assets of the reporting company;
  - The reorganization, dissolution, or merger of the reporting company;
  - Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company;
  - The selection or termination of business lines or ventures, or geographic focus, of the reporting company
  - Compensation schemes and incentive programs for senior officers;
  - The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts;

- Amendments of any substantial governance documents of the reporting company
- An individual with any other form of substantial control over the reporting company

An individual may directly or indirectly, including as a trustee of a trust or similar arrangement, exercise substantial control over a reporting company through:

- Board representation (determined on a case-by-case basis);
- Ownership or control of a majority of the voting power or voting rights of the reporting company;
- Rights associated with any financing arrangement or interest in a company;
- Control over one or more intermediary entities that separately or collectively exercise substantial control over a reporting company;
- Arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees; or
- Any other contract, arrangement, understanding, relationship, or otherwise.

Based on the breadth of the substantial control definition, FinCEN has stated that it expects a reporting company will identify at least one beneficial owner under that definition, regardless of whether (1) any individual satisfies the ownership definition, or (2) exclusions to the definition of beneficial owner apply.

Ownership Interests

Ownership interest (for purposes of determining whether an individual directly or indirectly owns or controls 25% or more of the "ownership interests" of the reporting company) is defined as follows:

- Any equity, stock, or similar instrument; preorganization certificate or subscription; or transferable share of, or voting trust certificate or certificate of deposit for, an equity security, interest in a joint venture, or certificate of interest in a business trust; in each such case, without regard to whether any such instrument is transferable, is classified as stock or anything similar, or confers voting power or voting rights;
- Any capital or profit interest in an entity;
- Any instrument convertible, with or without consideration, into any share or instrument described in above, any future on any such instrument, or any warrant or right to purchase, sell, or subscribe to a share or interest described above, regardless of whether characterized as debt;
- Any put, call, straddle, or other option or privilege of buying or selling any of the items described above without being bound to do so, except to the extent that such option or privilege is created and held by a third party or third parties without the knowledge or involvement of the reporting company; or
- Any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.

An individual may also directly or indirectly own or control an ownership interest of a reporting company through any contract, arrangement, understanding, relationship, or otherwise, including:

- Joint ownership with one or more other persons of an undivided interest in such ownership interest;
- Through another individual acting as a nominee, intermediary, custodian, or agent on behalf of such individual;
- With regard to a trust or similar arrangement that holds such ownership interest:
    - As a trustee of the trust or other individual (if any) with the authority to dispose of trust assets;
    - As a beneficiary who:
        - Is the sole permissible recipient of income and principal from the trust; or
        - Has the right to demand a distribution of or withdraw substantially all of the assets from the trust; or
        - As a grantor or settlor who has the right to revoke the trust or otherwise withdraw the assets of the trust; or
        - Through ownership or control of one or more intermediary entities, or ownership or control of the ownership interests of any such entities, that separately or collectively own or control ownership interests of the reporting company.

The rules provide that beneficial owners **do not include**:

- A minor child, provided the reporting company reports the required information of a parent or legal guardian of the minor child and states that the individual is the parent or legal guardian of a minor (once the minor child reaches the age of majority, the report must be updated)
- An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual
- An employee of a reporting company, acting solely as an employee, provided that such person is not a senior officer
- An individual whose only interest in a reporting company is a future interest through a right of inheritance
- A creditor of a reporting company

Company Applicants

Companies created or registered **on or after** January 1, 2024, must report the company applicants, in addition to beneficial owners. Company applicants include (1) the individual who directly files the document that creates, or first registers, the reporting company; and (2) the individual that is primarily responsible for directing or controlling the filing of the relevant document. Companies created or registered before January 1, 2024, are required to report only beneficial owners.

FinCen Identifier

An individual or reporting company may obtain a FinCEN identifier by submitting an application at or after the time that the reporting company submits its initial report. Each identifier is specific to the individual or reporting company. If an individual has obtained a FinCEN identifier, the reporting company may use that identifier in its report instead of reporting all of the required information for the individual.

A reporting company uses its FinCEN identifier to submit updated reports, as required.

When Must Reporting Companies File Reports?

Reporting companies created or registered before January 1, 2024, must file their first BOI report no later than January 1, 2025. Reporting companies created or registered on or after January 1, 2024, but before January 1, 2025, must file their first BOI report within 90 calendar days of receiving actual or public notice from the state's secretary of state or similar office that the company was created or registered. Reporting companies created or registered on January 1, 2025, or later must file their initial reports within 30 days.

Once a reporting company has filed its first report, it must file a new report any time the reported information changes, making the prior report inaccurate. Reporting companies will have 30 days to report any changes or updates to reported information. The 30 days begins after the company becomes aware of or has reason to know of an inaccuracy in a prior report. Likewise, any reporting company that no longer meets the requirements of an exemption from reporting shall file its report within 30 calendar days after it no longer qualifies for the exemption.

If an individual becomes a beneficial owner by virtue of rights transferring at the death of another, a change is deemed to occur when the estate of the deceased beneficial owner is settled, either through the operation of intestacy laws or through a testamentary disposition. An updated report must identify any new beneficial owners. FinCEN has state that a change must be reported with respect to a document image when the name, date of birth, address, or unique identifying number of the document changes.

How Will Reports be Filed?

All BOI reports must be filed electronically. FinCEN will begin accepting reports on January 1, 2024. No reports may be filed before that time. The person filing the report will be required to certify that the report is true, correct, and complete.

What are the Penalties for Noncompliance?

The rule states that it shall be unlawful for any person to willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN in accordance with this section, or to willfully fail to report

complete or updated beneficial ownership information to FinCEN in accordance with the new law.

The CTA authorizes civil reporting failure penalties of not more than $500 (inflation adjusted to $591) for each day that the violation continues or has not been remedied and criminal penalties up to $10,000. The statute also calls for possible imprisonment of up to two years. In the preamble to the rule, FinCEN states that it "intends to prioritize education and outreach to ensure that all reporting companies and individuals are aware of and on notice regarding their reporting obligations." The final rule clarifies that a person is considered to have failed to report complete or updated BOI if the person causes the failure or is a senior officer of the entity at the time of the failure. A penalty safe harbor applies to companies that discover an inaccuracy and file a corrected report within 90 days of the filing of an initial report.

Example

In 2020, George and Marge formed GM, LLC, an entity to manage their farmland. They each own 50% of the LLC. George and Marge are the only officers of the entity, which has no employees.

George and Marge are both beneficial owners of GM, LLC. By January 1, 2025, the LLC must file an online beneficial ownership information report with FinCEN, reporting the required information for the company, George, and Marge.

If GM, LLC. is not formed until January 5, 2024, it will have 90 days to file its BOI report.

Can Reporting Companies Solicit Help with Filing Reports?

FinCEN guidance clarifies that reporting companies can enlist third-party service companies to file BOI reports on their behalf. Those seeking assistance may ask whether the attorney who set up the business structure is providing this service. At this time, it is unclear whether or to what extent making determinations regarding BOI reporting requirements constitutes the practice of law. To the extent that a determination may cross that line, accountants and non-attorney tax professionals will be unable to assist with these reports.

Resources

The following are several helpful links providing more information about BOI reporting requirements.

Small Entity Compliance Guide

Frequently Asked Questions

Final Rule and Other Regulations

Four-Page Brochure

AICPA Considerations for Non-Attorney Tax Professionals

Expired and Expiring Tax Provisions Impacting Agriculture

2022/2023 Changes

Bonus Depreciation

The TCJA allowed 100 percent bonus depreciation through 2022 for qualifying property acquired and placed into service after September 27, 2017. [IRC § 168(k)(6)(A)]. It then established a phase-out over the next four years, in increments of 20%. [IRC § 168(k)(A)]. For assets placed in service in 2023, the phase-out limits the bonus depreciation deduction to 80% of the basis. The phase-out will continue as follows:

- 2023: 80 percent bonus,
- 2024: 60 percent bonus,
- 2025: 40 percent bonus, and
- 2026: 20 percent bonus.

After 2026, bonus depreciation is scheduled to end.

Note: Although the bonus depreciation provisions of the TCJA were set to sunset, the TCJA's increase of the Section 179 deduction was a permanent change. The deduction will remain at its current level, indexed for inflation, after 2025. In 2023, the maximum Section 179 deduction is $1,160,000, reduced dollar for dollar for qualifying purchases above $2.8 million.

Income Tax Provisions Expiring at the End of 2025

Lower Individual Tax Rates

Most farm businesses are sole proprietorships, partnerships, or S Corporations. This means that business income passes through to the owners, who pay taxes based upon individual income tax rates. From 2018 to 2025, the TCJA lowered individual income tax rates across the board. [IRC § 1(j)].

The graduated rates that apply to ordinary income were also restructured to include the following brackets: 10%, 12% (down from 15%), 22% (down from 25%), 24% (down from 28%), 32% (down from 33%), 35%, and 37% (down from 39.6%). IRC § 1(j)(2).

On January 1, 2026, the tax rates and brackets will reset to pre-2018 levels.

Increased Standard Deduction

Taxpayers only itemize deductions if the amount they can deduct on 1040, Schedule A, is more than their standard deduction. The TCJA has significantly decreased the number of taxpayers who itemize deductions by nearly doubling the standard deduction. In 2018, it increased the standard deduction from $13,000 to $24,000 for married filing jointly taxpayers and from $6,500 to $12,000 for single taxpayers. [I.R.C. § 63]. In 2023, these standard deduction amounts are $27,700 for married filing jointly and $13,850 for singles.

The increased standard deduction is in place through 2025 and will reset to prior levels, indexed for inflation, in 2026.

Increased Child Tax Credit

The TCJA raised the child tax credit from $1,000 to $2,000 per qualifying child for tax years 2018 through 2025. [I.R.C. § 24(h)(2)]. Of this credit, $1,400 per child is refundable. The TCJA also created a new $500 nonrefundable credit for each dependent who does not qualify for the child tax credit, including those over the age of 16. [I.R.C. § 24(h)(4)]. In addition to receiving a larger child tax credit, more families have qualified for the child tax credit under the TCJA because the phase-out of the credit does not begin until a married filing jointly couple reaches adjusted gross income of $400,000 or a single taxpayer reaches an adjusted gross income of $200,000. Under prior law, the $1,000 credit per child began to phase out when the married filing jointly couple had modified adjusted gross income above $110,000 and the single taxpayer had modified adjusted gross income above $75,000.

In 2026, the child tax credit is scheduled to reset to pre-2018 levels.

Qualified Business Income Deduction

For tax years 2018 through 2025, the TCJA allows most individuals receiving income from a sole proprietorship or a pass-through business—including an S corporation or a partnership—to take a 20% qualified business income deduction (QBI deduction). [I.R.C. § 199A]. Additionally, agricultural cooperatives are allowed to take a 9% I.R.C. § 199A(g) deduction or pass that deduction through to their patrons, similar to the old domestic production activities deduction (DPAD) under I.R.C. § 199.

Section 199A is set to expire in 2026. This will significantly impact small businesses, as well as agricultural cooperatives and their patrons. The DPAD deduction provided by I.R.C. § 199, was permanently repealed by the TCJA in 2018, and it is not scheduled to be reinstated in 2026.

Note: In contrast to the pass-through tax deduction, the TCJA provision lowering the top corporate tax rate from 35% to 21% was a permanent change.

Employer-Provided Meals

The TCJA reduced the deduction for meals provided for the convenience of the employer from 100% to 50% through 2025. In 2026, the deduction is fully eliminated.

End of the Personal Exemption

In 2017, taxpayers could generally take a personal exemption of $4,050 for themselves, their spouse, and each of their dependents. In conjunction with increasing the standard deduction and lowering individual income tax rates, the TCJA suspended the personal exemption from 2018 through 2025. [I.R.C. § 151(d)(5)(A)]. Personal exemptions are scheduled to return in 2026.

End of the State and Local Tax Deduction Limit

For tax years 2018 through 2025, the TCJA limits the amount of combined state and local income and property taxes taxpayers can claim as an itemized deduction to $10,000 ($5,000 for

married filing separately). [I.R.C. § 164(b)(6)(B)].

This SALT deduction limit is scheduled to end in 2026. In the meantime, many states have passed pass through entity (PTE) provisions allowing state income tax to be paid by pass through entities, thereby allowing a deduction at the entity level and an offsetting credit to the individual owner.

Lower Home Mortgage Interest Deduction Limits

Through 2025, the TCJA lowered the home mortgage interest deduction from $1 million ($500,000 married filing separately) to $750,000 ($375,000 married filing separately). [I.R.C. § 163(h)(3)(F)]. The TCJA also suspended the deduction for interest paid on a home equity loan, unless that loan is used to buy, build, or substantially improve the taxpayer's home that secures the loan. [I.R.C. § 163(h)(3)(B)].

These provisions are scheduled to disappear in 2026.

Suspended Miscellaneous Itemized Deductions

For tax years 2018 through 2025, the TCJA has suspended all miscellaneous itemized deductions subject to the 2% floor, including, for example, unreimbursed employee expenses, hobby expenses, and investment fees. [I.R.C. § 67(g)].

These deductions are scheduled to return in 2026.

Other TCJA Income Tax Changes and Their Impact

Like-Kind Exchange

The TCJA retained the I.R.C. § 1031 like-kind exchange gain recognition deferral for real property, but eliminated it for personal property, such as farm equipment or livestock. [I.R.C. § 1031(a)(1)]. This was a permanent change.

Excess Business Loss Limits

The TCJA implemented an excess business loss rule that replaced (and expanded upon) the excess farm loss rule. Under I.R.C. § 461(l)(3)(A), an "excess business loss" is one that exceeds $500,000 (married filing jointly) or $250,000 (single). These limit amounts have been indexed for inflation, so that in 2023, loss limits are $578,000 for MFJ and $$289,000 for singles. Any loss disallowed by this rule is treated as a net operating loss and subject to NOL carryover rules.

Although 2025 was originally the last year for this provision, intervening legislation has further extended this provision through December 31, 2028.

Vehicle Depreciation

For passenger automobiles placed into service after December 31, 2017, the TCJA significantly increased the dollar limitations on depreciation and expensing for passenger automobiles. [I.R.C. § 280F]. These limits are not set to sunset in 2026. For more information on these limits, see Chapter 8, Depreciation and Expensing, of this Workbook.

Net Operating Losses

The TCJA reduces the five-year carryback of net operating losses for a farming business to two years. [I.R.C. § 172(b)(1)(B)]. It also limits the net operating loss deduction to 80 percent of taxable income for losses incurred after December 31, 2017. [I.R.C. § 172(a)(2)]. The law also allows indefinite carryovers, instead of the 20-year carryover allowed under prior law. [I.R.C. § 172(b)(1)(A)(ii)]. Net operating losses incurred prior to 2018 are still allowed to be deducted against 100 percent of taxable income.

The NOL changes are not scheduled to sunset.

Cash Accounting

I.R.C. § 448(b)(1) excepts a "farming business" from its general requirement that C corporations and partnerships with a C corporation partner use the accrual method of accounting. For this purpose, "farming business" means the trade or business of farming within the meaning of I.R.C. § 263A(e)(4). [I.R.C. § 448(d)(1)(A)]. I.R.C. § 447(a), however, generally requires that taxable income arising from the trade or business of farming for a C corporation or a partnership with a C corporation partner is to be computed using the accrual method.

The TCJA significantly expanded the availability of the cash method of accounting to farming C corporations and partnerships with a C corporation partner. Beginning in 2018, the I.R.C. § 447 accrual accounting requirement does not apply to any farming corporation that meets the gross receipts test of I.R.C. § 448(c). For purposes of the I.R.C. § 447(a) accrual accounting requirement, a C corporation that meets the gross receipts test for any taxable year is not treated as a corporation at all for that taxable year. [I.R.C. § 447(c)(2)]. This means that partnerships with such C corporations as partners are also not required to use the accrual method of accounting. Farming S Corporations continue to be wholly excluded from an accrual accounting requirement, regardless of gross receipts.

These provisions are not scheduled to sunset.

Farm Machinery or Equipment Depreciation

Beginning in 2018, the TCJA required new farm machinery or equipment to be depreciated over a period of five years, instead of seven. [I.R.C. § 168(e)(3)(B)(vii)]. This change does not apply to grain bins, cotton ginning assets, fences, or other land improvements. The TCJA also allows farmers to use the 200% declining balance method of MACRS depreciation for many farming assets. [I.R.C. § 168(b)(2)]. These changes were permanent and will not end in 2026.

Tax Bill Passes House in Early 2024

January 23, 2024 | Kristine A. Tidgren

On January 31, 2024, the House passed H.R. 7024, the "Tax Relief for American Families and Workers Act of 2024," by a vote of 357-70. A summary of the bill's provisions follows. As of June of 2024, the bill has stalled in the Senate.

Child Tax Credit

The proposal would increase the child tax credit for some tax filers, through 2025.

The current child tax credit is $2,000 per qualifying child under the age of 17. The credit begins to phase out if income exceeds $400,000 for married filing joint couples and $200,000 for other filers. The credit is primarily designed to offset income; however, a portion of the credit is refundable, meaning that tax filers do not have to have any income to claim that portion of the credit. This is called the "additional child tax credit."

Under current law, the additional child tax credit is 15 percent of earned income that exceeds $2,500. Earned income includes wages, salaries, tips, net earnings from self-employment, and other taxable employee compensation. Alternatively, tax filers with three or more qualifying children may calculate the additional child tax credit by subtracting the earned income tax credit from the amount of their Social Security taxes. Regardless of the formula used, the current additional child tax credit is limited to $1,600 per child for the 2023 tax year and $1,700 per child in 2024.

Proposed Change

The proposal would allow tax filers to multiply the amount calculated for the additional child tax credit by the number of children before applying the limit. Additionally, the refundability limit of the credit would be increased to $1,800 per child for 2023, $1,900 per child for 2024, and $2,000 per child in 2025. The proposal would also apply inflation adjustments to the $2,000 credit, beginning in 2024. Finally, the proposal would allow tax filers to use their earned income from the current or prior year (whichever is greater) when calculating the 2024 and 2025 credit.

Example:

In 2023, a parent with two qualifying children and earned income of $10,000 would qualify for a $4,000 child tax credit. However, the additional child tax credit or refundable portion of the credit would be limited to $1,125 (Fifteen percent of [10,000 earned income minus $2,500]). This means the parent would be limited to a total refund of $1,125.

Under the proposal, this same parent would receive a $2,250 refund because the calculated additional child tax credit would be multiplied by the number of children ($1,125 x 2).

The proposal would change the child tax credit only through 2025. In 2026, when the Tax Cuts and Jobs Act has expired, the credit is scheduled to fall back to $1,000 per qualifying child. Additionally, the credit would begin to phase out at $110,000 of MAGI for married filing joint taxpayers and $75,000 of MAGI for single, non-married taxpayers.

In comparison to these proposals, the 2021 COVID-era child tax credit was increased to $3,000 for children ages 6-17 and $3,600 for children ages 5 and under. It was fully refundable and payable in advance.

Bonus Depreciation

Additional first-year depreciation (usually called bonus depreciation) allows taxpayers to immediately deduct an increased percentage of the adjusted basis of qualified property in the year the asset is placed into service. Bonus depreciation is automatic unless the taxpayer elects out. Taxpayers must elect out by class. Bonus depreciation is available for most farming assets with a recovery period of 20 years or less, including general purpose farm buildings, equipment, and drainage tile.

Although the Tax Cuts and Jobs Act provided 100 percent bonus depreciation for a time, the applicable percentage has begun to phase down:

Tax Year Placed in Service Date	Percentage of Bonus Depreciation
September 18, 2017 through December 31, 2022	100 percent
2023	80 percent
2024	60 percent
2025	40 percent
2026	20 percent
2027 and later	None

Proposed Change

The proposal would restore bonus depreciation to 100 percent for qualified property placed in service in 2023 through 2025. In 2026, the applicable percentage would fall to 20 percent (as currently scheduled), and bonus depreciation would not exist in 2027 or later. For Congress, the discussion of bonus depreciation after 2025 would be folded into the larger discussion of other Tax Cuts and Jobs Act provisions expiring at the end of 2025.

Section 179

Perhaps more favored by the agricultural sector because of its flexibility, the Section 179 deduction allows taxpayers with an active business to immediately expense the cost of qualifying assets instead of depreciating them over a number of years. The Section 179 deduction is available for most assets used by the taxpayer in an active farming business. Although it applies

to single purpose agricultural and horticultural buildings, it does not apply to multi-purpose farm buildings.

For taxable years beginning in 2023, the maximum Section 179 deduction is $1,160,000. That deduction is phased out, dollar-for-dollar, when the value of qualified property placed in service that tax year exceeds $2,890,000. In 2024, the maximum Section 179 deduction is $1,220,000 and the phaseout threshold amount is $3,050,000.

The Section 179 deduction and phaseout threshold are adjusted for inflation each year. The Tax Cuts and Jobs Act made the Section 179 deduction permanent. It is not scheduled to expire after 2025. These deduction limits are applied at the entity level, as well as the owner level. As equipment costs have increased, more farming operations are exceeding the threshold limit. For these farms, bonus depreciation is the only accelerated cost recovery method available. As noted above, in 2024, only 60 percent of the adjusted basis may be deducted using bonus depreciation.

Taxpayers may take the Section 179 deduction for a particular asset (it doesn't have to apply to the entire class) for any amount they choose and then apply bonus depreciation to the remaining basis. If bonus depreciation is not 100 percent, the taxpayer will take appropriate MACRS depreciation deductions for the remaining basis.

Proposed Change

The proposal would increase the Section 179 deduction for the 2024 tax year to $1,290,000, with a phaseout threshold of $3,220,000. These amounts would be indexed for inflation after tax year 2024.

Deduction for Research and Experimental Expenditures

Before 2022, Section 174 generally allowed businesses that incurred domestic research or experimental (R&E) expenditures to presently deduct those expenses in the year they were incurred or to capitalize the expenses and recover them ratably over five years. A 10-year amortization option was also provided. Deductions were reduced by any research credit claimed under Section 41.

In 2017, Congress included a provision in the Tax Cuts and Jobs Act stating that beginning after 2021, R&E expenses must be capitalized and amortized ratably over a period of five years. That change went into effect at the beginning of 2022, meaning that many companies that had been able to presently deduct R&E expenses faced significantly higher tax bills. R&E expenditures are generally all costs incident to the development or improvement of a product, including the salaries of those developing or improving the product. Expenditures for developing new software are included in the definition of R&E expenditures that must be amortized.

Proposed Change

The proposal would create Section 174A to temporarily restore the ability of taxpayers to presently deduct domestic R&E expenditures incurred in 2022 through 2025. The proposal includes transition and implementation rules.

Business Interest Deduction Limit

The Tax Cuts and Jobs Act created Section 163(j) to generally restrict the business interest deduction, beginning in 2018, to the sum of (1) business interest income, 30 percent of adjusted taxable income, and floor plan financing interest. This limit applies only to businesses that exceed the gross receipts amount set in Section 448(c). In 2024, this means that businesses with $30 million or less in gross receipts are generally not subject to the business interest deduction limit. Tax shelters are subject to the limit, regardless of gross receipts. Farming businesses (as defined in IRC § 263A(e)(4)) and agricultural cooperatives may elect not to be subject to the business interest limitation. Such farming businesses, however, are then required to use the alternative depreciation system to depreciate any property used in the farming business with a recovery period of 10 years or more.

When created, the law provided that through tax year 2021, adjusted taxable income was computed without a reduction for depreciation, amortization, or depletion. In other words, these amounts were included in the adjusted taxable income against which the 30 percent business interest deduction was calculated.

For tax years after 2021, however, the law provided that adjusted taxable income included the deductions for depreciation, amortization, and depletion. This significantly reduced the business interest deduction allowable to businesses subject to the Section 163(j) limit.

Proposed Change

The proposal would calculate adjusted taxable income without including depreciation, amortization, and depreciation through the end of 2025. This provision would allow taxpayers to elect to apply this rule to tax years after 2021.

Information Reporting

Under current law, a Form 1099-MISC or a Form 1099-NEC is generally required for certain payments totaling $600 or more in a tax year.

Proposed Change

The proposal would increase the threshold for the 1099-MISC and 1099-NEC to $1,000 per taxpayer per tax year, beginning with tax year 2024. This amount would be indexed for inflation for calendar years after 2024. The threshold for backup withholding would be adjusted to correspond to the new information reporting threshold.

Employee Retention Credit

The employee retention credit (ERC) has spawned billions of dollars of fraudulent claims (see IRS Unveils Voluntary Disclosure Program for Erroneous ERC Claims for more information). Under current law, taxpayers can file claims for 2020 through April 15, 2023, and claims for 2021 through April 15, 2025. A five-year statute of limitations applies to ERC claims filed for quarters three and four of 2021. The standard three-year statute of limitations applies to claims for periods before that time.

Proposed Change

The proposal provides that no credit or refund of the ERC will be allowed or made **unless the claim is filed on or before January 31, 2024.** Additionally, the proposal would extend the statute of limitations for assessments relating to ERC claims to six years after the latest of:

- The date the original return was filed,
- The date on which the return is treated as filed under present statute of limitations rules, OR
- The date on which the credit or refund of the ERC is made.

The proposal would also extend the period for taxpayers to claim deductions for wages attributable to invalid ERC claims that are corrected after the standard period of limitations.

Finally, the proposal would significantly increase potential penalties for ERC promoters. A promoter is defined as any person who provides aid, assistance, or advice with respect to an affidavit, refund, claim, or other document relating to an ERC, if the person charges fees based on the amount of the credit or meets a gross-receipts test.

Other Provisions

Many provisions within the proposal are related to Taiwan. It also includes several provisions for location-specific disaster relief and several provisions designed to incentivize affordable housing.

Considerations

It appears that the proposed tax package has widespread support, although no one in Washington appears to be satisfied with all of the provisions. It is not certain at this time whether the bill will pass or if it will pass without significant amendment. If the bill does pass, the timeframe for its passage is unclear. The individual filing season is set to open January 29, 2024, so the clock is certainly ticking.

Taxpayers who would be impacted by these changes may consider waiting to file until it is known whether this bill will become law. Farmers planning to file their returns and pay their taxes by March 1 to avoid estimated tax penalties (which will be higher this year because of

inflation adjustments) will face difficulty, even if the bill does not pass, because of uncertainty so close to the deadline. If the bill does pass, necessary software changes and recalculations may make the March 1 deadline impossible for impacted filers.