



# Tax Planning in Turbulent Times: A Panel Discussion

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## Tax Planning in Turbulent Times: A Panel Discussion

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Ben Isley, Tax Senior Manager, Dallas  
Craig Lammlin, Tax Director, Dallas  
Daniel Kemp, R&D Tax Senior Manager, Dallas  
Mo Huda, SALT Tax Senior Manager, Dallas



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# Today's Presenters



Ben Isley, Tax Senior Manager



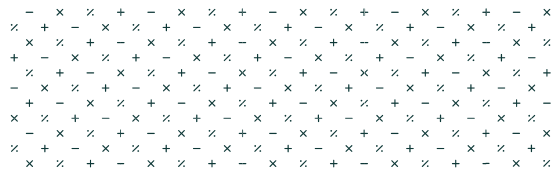
Daniel Kemp, R&D Tax Senior Manager



Craig Lammlin, Tax Director



Mo Huda, SALT Tax Senior Manager



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## Agenda

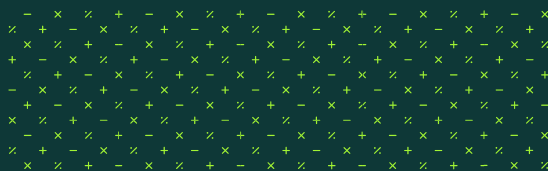
- Recent Tax Developments
- Research and Development Tax Benefits
- ERC and Other Tax Credits
- Sales and Use Tax and Other State Considerations

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# Recent Tax Developments



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## Inflation Reduction Act (IRA)

- When?  
Signed into law on August 16, 2022
- What?  
Slimmed-down version of the Build Back Better bill  
The largest investment in combating climate change in U.S. history
- Why?  
Hopes to achieve ambitious social and climate objectives
- How?  
Making large investments in making health care and prescription drugs more affordable  
Taxing “wealthy” corporations

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# IRA - Overview

- Prescription drug price reform
- Affordable Care Act funding extension
- Clean Energy Investments
- IRS tax enforcement
  - invests \$80 billion in the nation's tax agency over the next 10 years
- Creation of a 15% corporate minimum tax rate
  - AMT on Book Income of Corporations with more than \$1B of income
  - 1% Excise Tax on Corporate stock buybacks

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# The CHIPS and Science Act of 2022 (P.L. 117-167)

- When?
  - Signed into law on August 9, 2022
- What?
  - Creating Helpful Incentives to Produce Semiconductors (CHIPS)
- Why?
  - The stated objective is to reduce U.S. reliance on overseas chip supply chains, and increased authorizations to boost the nation's science and technology base and make the US more competitive in the global market for semiconductors
- How?
  - Directing \$280 billion in spending over the next ten years

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# CHIPS Act - Overview

## Federal Subsidies

- \$200 billion for scientific R&D and commercialization
- \$52.7 billion for semiconductor manufacturing, R&D, and workforce development

## Credits

- \$24 billion worth of tax credits for chip production
- \$3 billion for programs aimed at leading-edge technology and wireless supply chains



# CHIPS Act - Overview

## Amount

The credit amount may be up to 25% of the investment in “qualified property” placed into service during a taxable year.

- Qualified property is most often facilities and related manufacturing equipment, but certain tangible personal property may also count. Buildings or portions thereof used solely for offices, administrative services, and other non-manufacturing functions, however, are not included in the definition.

## Eligibility

Any qualified taxpayer making investments related to manufacturing semiconductors is eligible to apply for and receive the credit, with a few exceptions.

## Timeframe

The credit can be claimed with respect to qualifying investments placed into service after December 31, 2022. Construction of qualified property must begin before December 31, 2026, in order for that property to be eligible to receive the credit.

If construction of qualified property begins before January 1, 2023, the credit will only apply to qualified investments made between August 9, 2022, and December 31, 2026.



# CHIPS Act – Election and State Incentive Considerations

## Election

Some taxpayers in the manufacturing space have difficulty monetizing large credits for which they are eligible. The CHIPS Act offers the taxpayer an election to treat the credit as a payment against tax.

- With the election, excess credit may be paid directly to the taxpayer in the same taxable year as the credit was claimed in the form of a refund.
- If no election is made, excess credit would be carried forward to other taxable years.

## Related State Incentives

In the wake of the CHIPS Act, several States have enacted similar credit and incentive legislation.

- Idaho, Illinois, Massachusetts, New York, and Ohio have enacted complementary CHIPs legislation; other similar programs are likely to follow (e.g., Oregon)..
- Other States may leverage existing programs to attract semiconductor manufacturing (e.g., Arkansas, Arizona, Alabama, Texas, Washington, and Wyoming).

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# Not So Recent Tax Law Changes - TCJA

- When?  
Signed into law on December 22, 2017
- What?  
Tax Cuts and Jobs Act (TCJA)
- Why?  
Stated goal of incentivizing economic growth, specifically domestic producers of tangible goods
- How?  
Corporate Tax Rate to 21%  
Bonus Depreciation  
Changes to Net Operating Loss Carryover rules

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# So why are talking about it?

- Every tax cut includes some kind of offset(s) to pay for the initial loss of tax revenue

- How?

## Phase out of Bonus Depreciation benefit

2022 – 100%

2023 – 80%

2024 – 60%

...

2027 – 0%

## Changes to the deductibility of Section 174 costs

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# R&D Activities



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# R&D Costs – New Capitalization Rules

- For tax years beginning after December 31, 2021, taxpayers are now required to capitalize and amortize R&D expenses.
- Section 174 expenses are no longer eligible to be expensed as incurred. R&D expenses incurred in the U.S. will now be amortized over five years, and those incurred outside of the U.S. will be amortized over fifteen years.

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# ERTC Eligibility & Changes

2020 Qualification Guidelines March 13–December 31	2021 Qualification Guidelines January 1–September 30 (Q4 2021 is No Longer Available)
<p><b>Who is Eligible</b></p> <p>Employers whose business was fully or partially suspended due to a governmental order from an appropriate government authority (federal, state or local) that limited commerce, travel, or group meetings due to COVID-19.</p> <p>Employers who had at least a <b>50%</b> reduction in gross receipts for the current calendar quarter as compared to the same calendar quarter in 2019.</p>	<p>Employers whose business was fully or partially suspended due to a governmental order from an appropriate government authority (federal, state or local) that limited commerce, travel, or group meetings due to COVID-19.</p> <p>Employers who had at least a <b>20%</b> reduction in gross receipts for the current calendar quarter as compared to the same calendar quarter in 2019.</p>
<p><b>Employee Threshold for Determining Qualified Wages</b></p> <p>For employers with <b>100 or fewer</b> full-time employees, measured as average employment in 2019, the credit applies to wages paid to all employees.</p> <p>For employers with more than <b>100</b> full-time employees, the credit only applies to wages paid to employees during the time they were <u>not</u> providing services.</p>	<p>For employers with <b>500 or fewer</b> full-time employees, measured as average employment in 2019, the credit applies to wages paid to all employees</p> <p>For employers with more than <b>500</b> full-time employees, the credit only applies to wages paid to employees during the time they were <u>not</u> providing services.</p>
<p><b>Calculating the Credit</b></p> <p>The credit is equal to <b>50%</b> of qualified wages paid to an employee in each qualifying calendar quarter in 2020. There is a limit on wages of \$10,000 for <u>all quarters</u> for each employee. The maximum credit amount is \$5,000 per eligible employee for the 2020 calendar year.</p> <p>Qualified wages, for purposes of this program, include qualified health plan expenses paid by the employer.</p>	<p>The credit is equal to <b>70%</b> of wages paid to an employee in each qualifying calendar quarter in 2021. There is a limit on wages of \$10,000 for <u>each quarter</u> for each employee. The credit may be worth up to \$21,000 per eligible employee for Q1, Q2 and Q3 2021.</p> <p>Qualified wages, for purposes of this program, include qualified health plan expenses incurred by the employer.</p>

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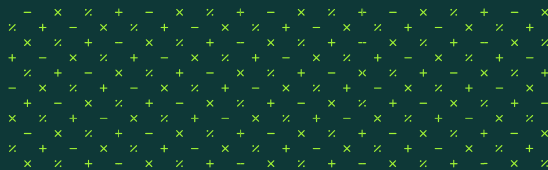


# Recovery Start-Up Business Eligibility for ERC

- Companies who are new in 2020 or 2021
  - Company must have formed after February 15, 2020
  - Note: Need to keep continuation of existing business in mind
- Must have less than \$1M in Gross Receipts
  - Note: There may be controlled group implications that could impact gross receipts.
- Cannot qualify for eligibility for decline of gross receipts or full or partial suspension
- If the Company meets these three tests:
  - They could be eligible in Quarters 3 and/or 4 of 2021
  - Max credit benefit up to \$50,000 per quarter



## ERC and Other Credits and Incentives



# ERC Opportunity

- Refundable Payroll Tax Credit
- Substantial Decline in Gross Receipts
- Partial or Full Suspension of Business Operations (More Than Nominal Safe Harbor)
  - Supply Chain
  - Trade Shows
- Calculating the Credit
  - 2020 credit may be worth up to \$5,000 per eligible employee
  - 2021 credit may be worth up to \$21,000 per eligible employee
    - Recovery Start Up Business – extends ERC to Q4 2021

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# IRA – Credits

- \$386B in green credits (2022-32)
- Clean fuels
- Reduction of carbon emissions
- Clean electricity
- Manufacturers
- Clean vehicles
- Building and construction
- Change in base and bonus rates
  - Bonus rate 5x base rate
  - Prevailing Wage and Apprenticeship requirements
  - Domestic Content +10%
    - ITC OR PTC
  - Energy Community +10%
    - ITC OR PTC
  - Low-Income Community +20%
    - ITC FOR SOLAR
- Monetization

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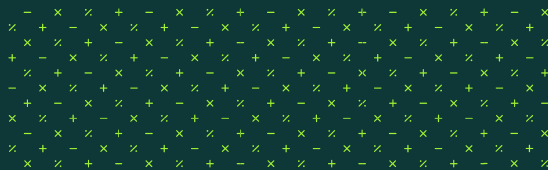
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# Nexus

- 45 states and DC have a sales or gross receipts tax
- Nexus is a sufficient presence with a state where they can enforce sale tax
  - Sellers with a physical presence (Employees, independent contractors, property)
  - Sellers with specific volume thresholds (All states have now adopted, some cities; Most states \$100K or 200 transactions)
  - Marketplace sellers
    - Physical or electronic
    - May or may not be required to process payment
    - May or may not involve a commission



# Sales and Use Tax and other State Considerations



# Taxability

Once you've determined in which states you have nexus for sales and use tax purposes, you need to determine whether your products/services are subject to sales and use tax in those states.

- Software delivered electronically -- taxable in ~34 states
- “Software as a service” or cloud-based solutions -- taxable in at least ~18 states
- Voice over Internet Protocol (telecommunications services) -- taxable in ~41 states
- Information services -- taxable in ~13 states

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# Exposure Mitigation

- Track sales volume for nexus trigger
- Note hiring of remote workers for nexus trigger
- Voluntary registration and compliance
- Tax decision engine
- Voluntary Disclosure agreements
- Register and file back due returns
- Third party tax compliance

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# Compliance and Audit challenges

- Capturing sourcing data appropriately
- Assigning proper taxability to product/service classes
- Registration in correct jurisdictions
- Managing certificates – resale, exemption, direct pay
- Tracking pre-payments and credits
- Volume of returns

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# M&A

- Evaluating the registration and filings
- Reviewing the taxability
- Historic unidentified obligations
- Remediation obligation
- purchase price adjustment
- indemnification

Even if not 100% compliance, having an idea of risk and exposure documented is valuable to buyers and sellers.

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# Best Practices

Being prepared to collect and remit the appropriate taxes when nexus is triggered is ideal. This can be achieved by:

- Regularly reviewing nexus triggers
- Keeping tax decisions current
- Local level sourcing to collect appropriate sales tax
- Obtaining and maintaining certificates
- Timely filing returns

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## QUESTIONS

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