

75th Annual West Virginia Tax Institute

Pipestem Resort State Park
Pipestem, WV

Sunday, October 27, 2024 –
Tuesday, October 29, 2024

2024 Federal Law Tax Update

Sunday October 27, 2024

WEST VIRGINIA TAX INSTITUTE

75th ANNUAL PROGRAM

OCTOBER 27-29, 2024

Pipestem Resort State Park, Pipestem, WV

David R. Croft

Spilman Thomas & Battle, PLLC
1233 Main Street, Suite 4000
Wheeling, WV **26003-8731**

O 304.230.6952

M 304.280.5076

dcroft@spilmanlaw.com

www.spilmanlaw.com

West Virginia | North Carolina
Pennsylvania | Virginia | Florida



What lies behind the
2024 -2025 Door?



Here's Your Next President



- Expand child tax credit to \$3,600 from \$2,000 per dependent and provide \$6,000 credit for newborns.
- Expand Earned Income Tax Credit for workers without children.
- Extend enhanced premium tax credits under the Affordable Care Act.
- **Exempt tip wages from federal income taxes**; payroll taxes for Social Security and Medicare would remain.



- Make expiring individual income tax cuts from the Republicans 2017 tax overhaul permanent.
- **Eliminate taxes on tip wages** and Social Security payments.
- VP nominee JD Vance floated expanding child tax credit to \$5,000.



- Increase the top tax rate on long-term capital gains to 28 % for taxable income above \$1 million.
- Increase the net investment income tax (NIIT) to reach 5 % on income above \$400,000.
- The Medicare tax would increase from 3.8% to 5.0% for taxpayers with more than \$400,000 of earnings.
- Treat transfers of appreciated property by gift or on death as realization events; gain on unrealized appreciation also would be recognized by every trust, partnership, or other non-corporate entity if the property has been held on or after January 1, 1942 and has not been the subject of a recognition event within 90 years.
- Impose a 25% (up from 20% in the FY23 Greenbook) minimum tax on the income (generally including unrealized gains) on wealthiest taxpayers (similar to what has been referred to as the "Billionaire Income Tax")

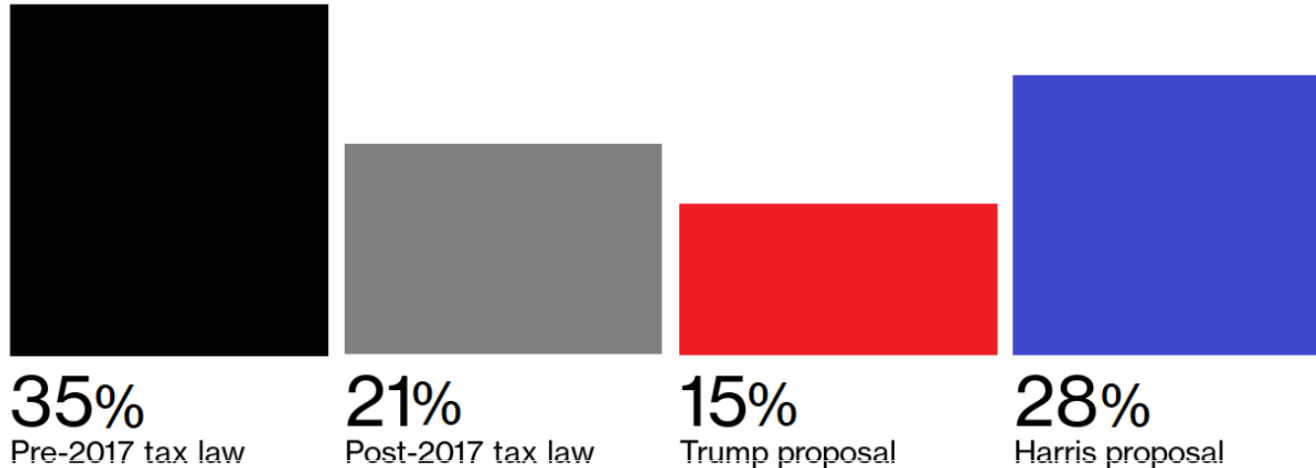


- Make the expiring individual income tax cuts from the 2017 Tax Cuts and Jobs Act permanent.
- Consider replacing personal income taxes with increased tariffs.
- Reinstate an unlimited itemized deduction for state and local taxes (SALT) paid or discontinue the cap as part of TCJA extension.

Corporate Tax Rates a Key Difference Between Candidates

- 2017 tax law reduced corporate tax rate to 21%, from 35%, **without an expiration**

Note: Trump has proposed a 20% corporate tax rate while also saying he prefers a 15% rate, but that it would be “hard.”





Here's 2025 TCJA Sunset!

2025 TCJA Expiring or Changing Provisions

- The Tax Cuts and Jobs Act (TCJA; P.L. 115-97) of 2017 brought about significant changes to the U.S. tax system, including provisions affecting both individuals and businesses.
- Many provisions will sunset at the of 2025.

2025 TCJA Expiring or Changing Provisions

Code Section	Description	Relevant Change ¹
§1(j) Tax imposed.	Decrease in marginal tax rates.	Rates increase to pre-TCJA rates.
§24(h) Child tax credit.	Increase in child tax credit.	Decrease in child tax credit and threshold limitations to pre-TCJA amounts.
§24(h)(4) Child tax credit.	Credit for other dependents.	No credit available for other dependents.
§25B(d)(1)(D) Elective deferrals and IRA contributions by certain individuals.	ABLE account contributions eligible for saver's tax credit.	Pre-TCJA rules reinstated.
§455 Employer credit for paid family and medical leave.	Employer credit for paid family and medical leave.	No credit available.
§55 Alternative minimum tax imposed.	Changes to AMT exemption and phaseout.	AMT exemption and phaseout reinstated to pre-TCJA rules.

2025 TCJA Expiring or Changing Provisions

Code Section	Description	Relevant Change
§63(c)(7) Taxable income defined.	Increase in standard deduction.	Standard deduction decreases to pre-TCJA amount.
§67(g) 2-percent floor on miscellaneous itemized deductions.	Suspension of itemized deduction for miscellaneous expenses.	Itemized deduction for miscellaneous expenses restored.
§68(f) Overall limitation on itemized deductions.	Suspension of overall limitation on itemized deductions.	Overall limitation on itemized deductions reinstated.

2025 TCJA Expiring or Changing Provisions

Code Section	Description	Relevant Change ¹
§132(f) Certain fringe benefits.	Suspension of exclusion for reimbursement of bicycle commuting.	Qualified bicycle commuting reimbursements excluded from income.
§132(g)(2) Certain fringe benefits.	Suspension of exclusion for moving expense reimbursement.	Qualified moving expense deduction allowed.
§151(d)(5) Allowance of deductions for personal exemptions.	Suspension of personal exemptions.	Deduction for personal exemptions reinstated.
§163(h)(3)(F) Interest.	Additional limitations on mortgage interest deductions.	Limitations revert to pre-TCJA amounts.
§164(b)(6) Taxes.	Limitation on deductibility of state and local taxes.	Deductions for state and local taxes restored to pre-TCJA amounts.

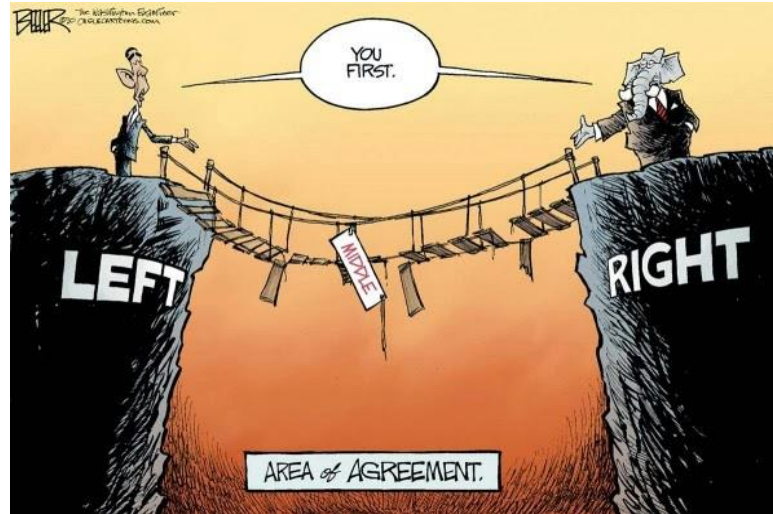
2025 TCJA Expiring or Changing Provisions

Code Section	Description	Relevant Change ¹
§165(d) Losses.	Deduction for wagering losses.	Itemized deductions for losses from gambling allowed but only to the extent of gambling winnings.
§165(h)(5) Losses.	Limitation on personal casualty and theft loss deduction.	Itemized deductions for personal casualty and theft losses reinstated to pre-TCJA rules.
§168(k)³ Accelerated cost recovery system.	100% bonus depreciation.	Additional bonus depreciation reverts to 50% (after phase-downs).
§170(b)(1)(G) Charitable, etc., contributions and gifts.	Increase in percentage limitation on cash contributions to public charities.	Limitation decreases to pre-TCJA amounts.
§199A Qualified business income.	Qualified business income deduction.	No deduction for qualified business income.

2025 TCJA Expiring or Changing Provisions

Code Section	Description	Relevant Change ¹
§217(k) Moving expenses.	Suspension of deduction for moving expenses.	Deduction for moving expenses reinstated.
§274 Disallowance of certain entertainment, etc., expenses.	Deductibility of meals provided at the convenience of the employer.	No deduction allowed.
§461(l) General rule for taxable year of deduction.	Limitation on losses for non-corporate taxpayers.	Pre-TCJA rules for passive loss reinstated.
§529(c)(3)(C)(i)(iii) Qualified tuition programs.	§529 to ABLER rollover.	Pre-TCJA rules reinstated.
§529A(b)(2)(B) Qualified ABLER programs.	Modified ABLER Contribution Limits.	ABLER contribution limits reinstated to pre-TCJA amounts.
§1400Z-1 and §1400Z-2⁶ Opportunity Zones.	Election of special rules for capital gains invested in opportunity zones.	Pre-TCJA rules generally reinstated.
§2010(c)(3)(C)	Increase in estate and gift tax exemption.	Estate and gift tax exemption amounts reinstated to pre-TCJA amounts.

2024 has not seen significant federal tax legislation.



Legislative Developments

- Tax Relief for American Families and Workers Act of 2024
- Passed the House but failed in the Senate 48 - 44
- Enhanced Child Tax Credit (CTC):
 - The 2024 legislation expands the CTC by increasing its refundable portion and adjusting it for inflation, providing more substantial support to working families. Additionally, the income lookback rule allows taxpayers to use either their current or previous year's income to calculate eligibility, giving flexibility in fluctuating economic conditions.

Legislative Developments

- Tax Relief for American Families and Workers Act of 2024
- Passed the House but failed in the Senate 48 - 44
- Employee Retention Tax Credit (ERTC) and Fraud Prevention:
 - The act accelerates the termination of the ERTC, while also implementing stricter penalties to combat fraud, specifically targeting fraudulent claims.

Legislative Developments

- **Tax Relief for American Families and Workers Act of 2024**
- **Passed the House but failed in the Senate 48 - 44**
- **Business Tax Relief:**
 - **Bonus Depreciation:** The bonus depreciation, which allows businesses to fully expense qualifying assets, has been extended to 2025, albeit at reduced rates compared to previous years (100% in 2024, down from 80% in 2023).
 - **R&D Tax Credit:** The R&D tax credit has been expanded, allowing eligible businesses to offset up to \$250,000 of payroll taxes, up from \$150,000

Legislative Developments

- Tax Relief for American Families and Workers Act of 2024
- Passed the House but failed in the Senate 48 - 44
- **Support for Affordable Housing:** The act also addresses affordable housing by increasing the low-income housing tax credit and lowering bond-financing thresholds for related projects.

Legislative Developments

- Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).



Legislative Developments

- [Loper Bright Enters. v. Raimondo](#), 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).
- The Supreme Court **overruled** [Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.](#), 467 U.S. 837 (1984).
- Concurring opinions by Justices Gorsuch and Thomas maintain that Chevron was constitutionally suspect -- in permitting agencies rather than the courts to interpret ambiguous statutes.
- The majority rests its conclusion on the **Administrative Procedure Act** (APA).

Legislative Developments

- Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).
- Loper Bright Enterprises: A group of fishing companies affected by regulations imposed by the National Marine Fisheries Service (NMFS), a federal agency under the National Oceanic and Atmospheric Administration (NOAA).
 - United States/National Marine Fisheries Service (NMFS): The federal agency tasked with managing fisheries under the Magnuson-Stevens Act, the main federal law governing U.S. fisheries management.
- **Issue**: The case centers around a regulation implemented by NMFS that requires fishing vessels to pay the salaries of government-mandated at-sea monitors. These monitors are tasked with overseeing compliance with fisheries management rules.

Legislative Developments

- Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).
- Loper Bright Enterprises challenged the rule, arguing that the Magnuson-Stevens Act does not explicitly authorize the NMFS to require fishing companies to pay for these monitors.
- The key issue involves the application of the Chevron deference doctrine.
- Under Chevron, courts generally defer to agency interpretations of ambiguous statutes, provided the agency's interpretation is reasonable.

Legislative Developments

- Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).
- Under section 706 of the APA,
 - *‘the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.’*
- Because the application of Chevron resulted in the courts giving ‘force of law’ effect to agency interpretations, the Court concluded that it conflicted with the APA’s direction that the court interpret statutes.

Legislative Developments

- Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).
- In Chevron, the Supreme Court set forth the test for determining the validity of agency rules and regulations.
- Under Chevron, the courts were required to defer to the **agency's interpretation** if the statute was ambiguous and the agency's interpretation reasonably resolved the ambiguity.

Legislative Developments

- Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).
- The Chevron deference was applicable to all agencies, resulting in an across-the-board expansion of regulatory authority.
- In Mayo Foundation v. U.S., 562 U.S. 44 (2011), the Court made clear that Chevron applied to **tax regulations**, rejecting the argument that matters of taxation were different from other areas of administrative law.

Legislative Developments

- Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).
- Now, the courts will ask if the interpretation in the regulation is persuasive after taking into the account the relevant factors under Skidmore deference
- Under the Skidmore deference, courts give weight to an agency's interpretation of a statute based on the agency's expertise and reasoning.
- This is a less deferential standard than Chevron deference.

Legislative Developments

- Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).
- With this weaker form of deference, taxpayer challenges to the validity of a regulation will have a better chance of succeeding.
- For instance, while under Chevron, an agency's change in the interpretation of a statute was irrelevant in the deference analysis, lack of consistency cuts against the agency's interpretation under Skidmore.

Legislative Developments

- Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).
- Loper is a transformative decision.
 - It will dramatically alter administrative law, severely diminishing the interpretive authority of the agencies and giving it to the courts instead.
 - The impact will be substantial on all manner of regulation.
 - In the tax area, taxpayers faced with problematic regulations will now have a stronger argument in terms of their validity.

2024 SECURE 2.0 ACT

- Notice 2024-2 Expanding Automatic Enrollment in Retirement Plans
 - Establishes requirements for automatic enrollment of participants and auto-escalation of employee contributions for employers offering 401(k) and 403(b) plans.
 - Failure to comply results in noncompliance penalties.
 - Applicable to plan years beginning after December 31, 2024.

2024 SECURE 2.0 ACT

- Notice 2024-2 Modification of Credit for Small Employer Pension Plan Startup Costs
 - Employers with up to 50 employees are eligible for an increased small employer pension startup costs credit of 100% of administrative costs, up from 50%.
 - An additional credit is available to certain eligible employers, in an amount equal to the percentage of employer contributions to the eligible employer plan.
 - Applies to plan years beginning after December 31, 2022.

2024 SECURE 2.0 ACT

- Notice 2024-63 Treatment of Student Loan Payments as Elective Deferrals for Purposes of Matching.
 - Permits employers to make matching contributions to an employee's 401(k), 403(b), or SIMPLE IRA plan in an amount equivalent to the employee's qualified student loan payments.
 - A qualified student loan payment generally means any debt incurred by an employee to pay qualified higher education costs of the employee.
 - Student loan-related matching contributions may be excluded for nondiscrimination testing for elective contributions.
 - Applies to contributions made for plan years beginning after December 31, 2023.

2024 SECURE 2.0 ACT

- Notice 2024-2 Military Spouse Retirement Plan Eligibility Credit for Small Employers.
 - Provides a tax credit to small employers who offer defined contribution (DC) plans with specific features that benefit military spouses.
 - Maximum credit is \$500 per employee that is a military spouse - \$200 per military spouse that participates in the employer's DC plan, plus 100% of all related employer contributions, up to \$300.
 - Employer credit applies for three years per military spouse.
 - Applies to taxable years beginning after December 29, 2022.

2024 SECURE 2.0 ACT

- Notice 2024-55 Withdrawals for Certain Emergency Expenses.
 - Exempts withdrawals for certain unforeseeable or immediate personal or family emergency expenses made before age 59 ½ from the 10% additional tax on early withdrawals under §72(t)(2). A participant will qualify for an up to \$1,000 penalty-free withdrawal per year if repaid, with restrictions.
 - Alternatively, repayment in full by lump sum or regular installments accelerates eligibility for additional emergency expense withdrawals before the expiration of the 3-year post-withdrawal waiting period after withdrawals that are not repaid.
 - Applies to distributions made after December 31, 2023.

2024 SECURE 2.0 ACT

- Notice 2024-55 Penalty-Free Withdrawal from Retirement Plans for Individual in Case of Domestic Abuse
 - Extends the exception to the 10% tax on early withdrawals to withdrawals by participants that self-certify that they are domestic abuse victims.
 - Applies only to withdrawals in the aggregate of the lesser of \$10,000, indexed for inflation after 2024, or 50% of the employee's accrued benefit.
 - The distribution must be made during the one-year period beginning on any date on which the individual is a victim of domestic abuse by a spouse or domestic partner.
 - Repayment rules similar to those for distributions for the birth or adoption of a child apply.
 - Applies to distributions made after December 31, 2023.

Other Federal Tax Developments

1. Transfer Tax Issues.
2. Individual Income Tax Issues.
3. Business Tax Issues.
4. Case Law and Other Developments.

Transfer Tax

Increased Exemption Amount

- ▶ For gifts made and estates of decedents dying in 2024, the exclusion amount will be **\$13,610,000** or **\$27,220,000** per couple. **2025 - \$13,990,000** or per **\$27,980,000**
- ▶ Generation-skipping transfer (GST) tax exemption. The exemption from GST tax will be **\$13,610,000** for transfers in 2024.
- ▶ Gift tax annual exclusion. For gifts made in 2024, the gift tax annual exclusion will be **\$18,000**. **2025 - \$19,000**
- ▶ Annual exclusion for gifts to noncitizen spouses. For gifts made in 2024, the annual exclusion for gifts to noncitizen spouses will be **\$185,000**. **2025 - \$190,000**.
- ▶ §6166 estate tax deferral 2% amount **\$1,900,000 in 2025, \$1,850,000 2024**.

Transfer Tax

Increased Exemption Amount

- ▶ The increased federal estate tax exemption under the TCJA is set to sunset after 2025, so absent legislative action prior to the sunset the exemption will be reduced to $\frac{1}{2}$ of its then-indexed-for-inflation amount.
 - ▶ The 2024 federal estate tax exemption is \$13,610,000, or \$27,220,000 for a married couple.
 - ▶ The 2026 estimated projected federal estate tax exemption is about **\$7,000,000**, or about **\$14,000,000** for a married couple.

Transfer Tax

Transfer Planning to Utilize "Bonus Exclusion."

- ▶ Will the exclusion amount decrease to \$5 million (indexed) in 2026? No one knows; the answer depends on what Congress does in 2025 (which will depend, in part, on the November 2024 elections).
- ▶ There is a significant chance that Congress will not act to prevent the exclusion amount from going down in 2026.
- ▶ Clients may want to take advantage of the difference (the "**bonus exclusion**") in case the exclusion amount drops in 2026 (from over \$14 million to over \$7 million).

Transfer Tax

Transfer Planning to Utilize "Bonus Exclusion."

- ▶ To make use of the "bonus" amount, the client must make a gift of well over \$7 million;
 - ▶ for example if an individual makes a gift of about \$7 million in 2024 and if the exclusion amount goes down to about \$7 million in 2026, the individual will have simply used up his or her \$7 million amount and will have made no use of the "bonus" amount.
- ▶ For individuals with over about \$30 million or couples with over about \$60 million, they may be able to afford making transfers of the exclusion amount, but clients having less than that will likely want to retain ways to keep some type of retained cash flow from or discretionary access to the transferred assets.

Transfer Tax

Transfer Planning to Utilize "Bonus Exclusion."

- ▶ Many couples with taxable estates will want to use their exemptions before 2026 and many of them will want to create two SLATs, one for the benefit of the husband and one for the benefit of the wife.
- ▶ However, when both spouses create SLATs, especially under a mad rush in the year before the sunset as part of an interrelated plan, the **reciprocal trust doctrine** becomes a real issue.
- ▶ For individuals with over about \$30 million or couples with over about \$60 million, they may be able to afford making transfers of the exclusion amount, but clients having less than that will likely want to retain ways to keep some type of retained cash flow from or discretionary access to the transferred assets.

Transfer Tax

Transfer Planning to Utilize "Bonus Exclusion."

- ▶ **Reciprocal Trust Doctrine**
- ▶ At a simple level, if husband creates a trust for the benefit of wife, and wife creates a substantially identical trust for the benefit of husband, the reciprocal trust doctrine could result in uncrossing the trusts so that husband and wife will each be treated as the grantor of the trust for his or her own benefit, resulting in the trust assets being included in the spouses' gross estates.

Transfer Tax

Transfer Planning to Utilize "Bonus Exclusion."

- ▶ **Reciprocal Trust Doctrine**
- ▶ In United States v. Grace, 395 U.S. 316 (1969)., a decedent transferred assets to a trust that directed the trustees to pay the decedent's wife all the trust's income, granted the trustees discretion to distribute principal to decedent's wife, and granted the decedent's wife a testamentary power to appoint the remaining trust property to the decedent and their children.
- ▶ Fifteen days later, the decedent's wife created a trust for the decedent's benefit that was essentially a mirror image of the trust her husband created.
- ▶ The Supreme Court held that the reciprocal trust doctrine applied in the case and that it only requires that the trusts be interrelated, and that the arrangement, to the extent of mutual value, leaves the settlors in approximately the same economic position as they would have been had they created trusts naming themselves as life beneficiaries.

Transfer Tax

Transfer Planning to Utilize "Bonus Exclusion."

- ▶ **Reciprocal Trust Doctrine**
- ▶ In Lehman v. Commissioner, 109 F.2d 99 (2d Cir. 1940), two brothers created identical trusts for the benefit of one another and their descendants. Upon the death of the first brother to die, the court uncrossed the trusts and ruled that the property the deceased brother could have withdrawn from the trust created for his benefit was includable in his estate.
- ▶ The court found the brothers engaged in a *quid pro quo* where the brothers were considered to have paid one another to create a trust for their own benefit.
- ▶ According to the court, "a person who furnishes the consideration for the creation of a trust is the settlor, even though in form the trust is created by another."

Transfer Tax

Transfer Planning to Utilize "Bonus Exclusion."

- ▶ A SLAT is a trust in which the grantor spouse names his or her spouse as a trust beneficiary, often the primary trust beneficiary while the spouse is alive.
- ▶ The grantor spouse uses his or her gift tax exemption to fund the SLAT with the intention that the trust assets won't be included in either spouse's gross estate.
- ▶ A prime benefit of SLATs is that the beneficiary spouse has access to the trust assets based on the trust's terms, providing the grantor spouse with indirect access to the trust assets through his or her spouse.

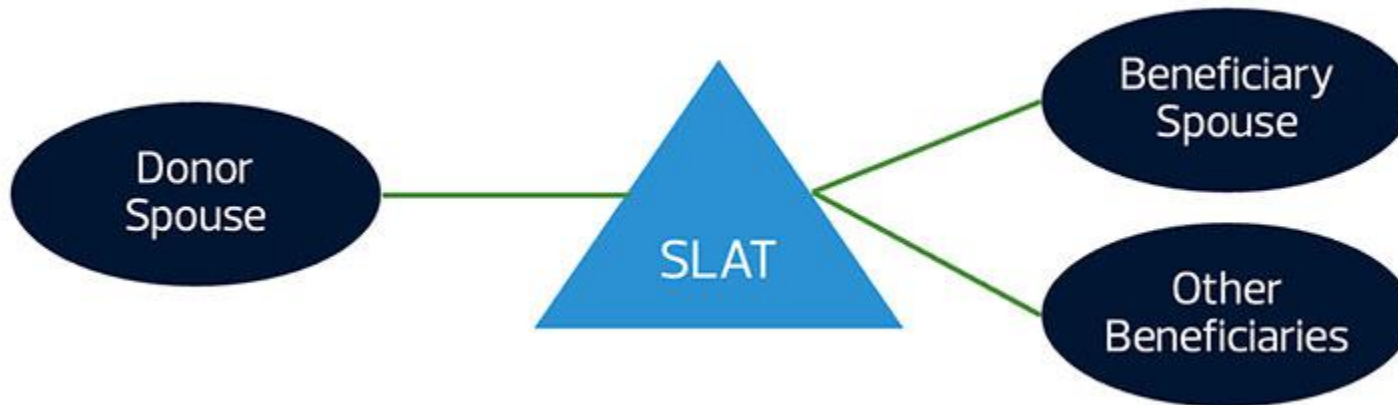
Transfer Tax

Transfer Planning to Utilize "Bonus Exclusion."

- ▶ Beneficiary spouses can be trustees if their power to make distributions to themselves is limited to distributions based on an ascertainable standard, such as health, education, maintenance, and support (HEMS).
- ▶ If there is an independent trustee or co-trustee, that trustee could be given the power to make fully discretionary distributions for any reason.
- ▶ The SLAT would also include children and other descendants as beneficiaries.

Transfer Tax

Transfer Planning to Utilize "Bonus Exclusion."



Transfer Tax

Consistent Basis - (TD 9991, 9/16/2024)

- ▶ The final regulations on consistent basis were issued on September 17, 2024 and are based on Code Secs. 1014 and 6035.
- ▶ The final regulations regarding the statutory consistent basis requirement affect recipients of property acquired from a decedent if the inclusion of the value of the property in the decedent's gross estate increases the federal estate tax liability.
- ▶ The final regulations regarding the statutory basis reporting requirements affect executors and other persons required to file an estate tax return based on the value of the decedent's gross estate and the amount of decedent's lifetime adjusted taxable gifts, as well as trustees making in-kind distributions of property initially acquired from a decedent that was subject to the statutory basis reporting requirements.

Transfer Tax

Consistent Basis

- ▶ Treasury Regulations Section 1.1014-1(a) provides that “the purpose of section 1014 is, in general, to provide a basis for property acquired from a decedent that is equal to the value placed upon such property for purposes of the federal estate tax.”
- ▶ Zero basis rule for unreported property was dropped in final regulations.
- ▶ Reporting of basis is required after assets distributed.
- ▶ The final regulations adopt a suggested interpretation of the term "acquiring" under Sec. 6035(a)(1) for reporting purposes.

Transfer Tax

Consistent Basis

- ▶ The final regs eliminate a reporting requirement for subsequent transfers of property for all beneficiaries other than trustees.
- ▶ The final regs except additional types of property interests from the consistent-basis and Sec. 6035 reporting requirements.
- ▶ Recognition event occurs upon sale of property even if there is no gain/loss on sale.
- ▶ Recognition event removes asset from basis reporting system.

Transfer Tax

Connelly v. United States, U.S., No. 23-146, Opinion 6/6/24.

- ▶ On June 6, 2024, the U.S. Supreme Court issued a unanimous opinion on a closely held business valuation case that may have significant impact on many families and closely held businesses.
- ▶ The case can be found at https://www.supremecourt.gov/opinions/23pdf/23-146_i42j.pdf.
- ▶ The case addressed the valuation of stock in a closely held business and held that the obligation of an entity to buy a deceased equity owner's shares does not reduce the value of the entity or the value of the insurance proceeds received by the entity that were used, in part, to fund the buyout.
- ▶ The Supreme Court's ruling resolves the conflict between the Connelly case) and Estate of Blount v. Commissioner, 428 F.3d 1338 (11th Cir. 2005), which had reached the opposite conclusion.

Transfer Tax

Connelly v. United States, U.S., No. 23-146, Opinion 6/6/24.

- ▶ Two brothers, Thomas and Michael Connelly, owned all of the stock in Crown C Supply, a C corporation that operated a building supply business.
- ▶ They had planned for the risk of either of them dying by putting in place a buyout agreement that set the value of the stock and the requirement for the corporation to buy or redeem a deceased shareholder's shares.
- ▶ They were even prudent enough to address the economic issue of how that requirement to buy out a deceased shareholder's shares would be funded and had the corporation buy life insurance on each shareholder's life.
- ▶ The goal was to keep the business in the family if either of them died.

Transfer Tax

Connelly v. United States, U.S., No. 23-146, Opinion 6/6/24.

- ▶ The key issue, which undermines many closely held and family business redemption buyout arrangements (that is when the entity owns the life insurance and buys the shares from the deceased owner's estate) is that the life insurance the corporation owned to fund the buyout had to be included in the value of the entity's interests being bought out.
- ▶ In other words, the life insurance proceeds were deemed a corporate asset that increased the value of the entity interests held in the decedent's estate, and thereby may increase the estate tax due.
- ▶ This result seemed called for under Treasury Regulation 20.2031-2(f)(2), which requires that non-operating assets, like life insurance, that are not included in the fair market value of the business, to be added to value.

Transfer Tax

Connelly v. United States, U.S., No. 23-146, Opinion 6/6/24.

- ▶ The obligation the entity had to consummate the buyout is not to be treated as a liability which can be applied to reduce the value of the business interests being bought out.
- ▶ An obligation to buy out equity is not a traditional liability and the Supreme Court held that it should not be treated as one.
- ▶ The Court reasoned that: “a fair-market-value redemption has no effect on any shareholder’s economic interest, no hypothetical buyer purchasing [deceased shareholder’s] shares would have treated Crown’s obligation to redeem Michael’s shares at fair market value as a factor that reduced the value of those shares.”

Transfer Tax

Connelly v. United States, U.S., No. 23-146, Opinion 6/6/24.

- ▶ The Court reasoned further: “For calculating the estate tax, however, the whole point is to assess how much Michael’s shares were worth at the time that he died—before Crown spent \$3 million on the redemption payment.
- ▶ See 26 U. S. C. §2033 (defining the gross estate to ‘include the value of all property to the extent of the interest therein of the decedent at the time of his death’).
- ▶ A hypothetical buyer would treat the life-insurance proceeds that would be used to redeem the deceased shareholder’s shares as a net asset.”

Transfer Tax

Connelly v. United States, U.S., No. 23-146, Opinion 6/6/24.

- ▶ The buyout agreement gave the surviving brother the first right to purchase the deceased brother's shares.
- ▶ Thomas elected not to purchase Michael's shares, so that the entity's obligation to purchase the shares was triggered.
- ▶ The deceased equity owner's son and Thomas, the surviving brother/equity owner and executor, agreed that the value of the decedent's shares was \$3 million.
- ▶ The entity paid that amount to the deceased brother's estate.
- ▶ A federal estate tax return was filed for the estate reporting the value of the decedent's ownership interest as \$3 million.

Transfer Tax

Connelly v. United States, U.S., No. 23-146, Opinion 6/6/24.

- ▶ The IRS audited the return.
- ▶ During the audit, the executor obtained an independent appraisal which set the value of the entity at \$3.86 million.
- ▶ That calculation excluded the \$3 million in insurance proceeds used to redeem the shares.
- ▶ The rationale for that was that the life insurance value was offset by the contractual obligation to redeem the deceased brother's share.

Transfer Tax

Connelly v. United States, U.S., No. 23-146, Opinion 6/6/24.

- ▶ The IRS disagreed.
- ▶ It insisted that the entity's obligation to redeem the deceased brother's ownership did not offset the life insurance proceeds.
- ▶ The IRS valued the company at \$6.86 million (\$3.86 million enterprise value + \$3 million life insurance value).
- ▶ The Supreme Court did not rely at all on Section 2703 of the Internal Revenue Code which provides, in general, that a buy-out agreement will not affect the value of a deceased owner's interest in the company.

Transfer Tax

Connelly v. United States, U.S., No. 23-146, Opinion 6/6/24.

- ▶ If including the value of the entity owned insurance will trigger or increase estate tax it might be preferable to restructure the buyout arrangement as a cross-purchase arrangement (rather than a redemption or entity purchase one).
- ▶ With a cross-purchase, the equity holders own life insurance on each other to be used to fund the buyout.
- ▶ In that type of structure, the value of the insurance should not affect the entity value, as it did in Connelly.
- ▶ Also, with a cross-purchase, the surviving equity holders will obtain increased tax basis in the equity they purchase while there will be no effect on basis with a redemption (where the entity purchases the deceased former owner's interest).

Transfer Tax

Trust Commutation

Trust *Modification* and ~~Termination~~

- ▶ A commutation is, generally speaking, splitting the trust according to the relative values of the life (or income interest) in the trust property and the remainder interest in the trust property.

Transfer Tax

Estate of Sally J Anenberg, (5/20/2024) 162 TC No. 9.

- ▶ The IRS issued a Notice of Deficiency, asserting that the termination and sale constituted a taxable disposition under §2519, subjecting the estate to gift tax and an accuracy-related penalty.
- ▶ The estate argued that Sally converted her qualifying income interest in the QTIP into an equivalent interest in other property.
- ▶ Such conversions, the estate said, are not a disposition under Code Sec. 2519.
- ▶ In the alternative, the estate argued that even if there was a disposition when Sally received the trust's assets and later sold the shares, no gift tax is due because Sally didn't make a gift; Sally received full and adequate consideration for the property she transferred.

Transfer Tax

Estate of Sally J Anenberg, (5/20/2024) 162 TC No. 9.

- ▶ The IRS issued a Notice of Deficiency, asserting that the termination and sale constituted a taxable disposition under §2519, subjecting the estate to gift tax and an accuracy-related penalty.

- ▶ Tax Court agreed with the estate.
 - ▶ The Tax Court agreed with the estate that even if the termination of the marital trusts and subsequent distribution of the Al-Sal shares was a disposition, it did not result in gift tax liability for Sally.

- ▶ The court notes that a transfer alone is insufficient to create a gift tax liability.

Transfer Tax

McDougall v. Commissioner, (9/17/2024) 163 TC No. 5.

- ▶ In McDougall v. Commissioner, Clotilde McDougall died in December 2011.
- ▶ She was survived by her spouse, Bruce, and their two children, Linda and Peter.
- ▶ At her death, her gross estate was worth approximately \$60 million.
- ▶ Her estate plan provided for the establishment of a residuary marital trust.
- ▶ Her personal representative made a QTIP election with regard to the marital trust and claimed a \$54 million marital deduction on the Form 706.

Transfer Tax

McDougall v. Commissioner, (9/17/2024) 163 TC No. 5.

- ▶ The marital trust provided for distribution of all of the income to Bruce and discretionary distributions of principal subject to a HEMS standard.
- ▶ Bruce also had a special testamentary power of appointment over the assets of the marital trust remaining at the time of his death.
- ▶ By 2016, the assets in the QTIP trust had more than doubled in value.
- ▶ In October 2016, Bruce, Linda and Peter entered into a non-judicial agreement (the “Agreement”) to to commute the trust (separate the trust's income interest from its remainder interest) and distribute all its assets to Bruce.
- ▶ Bruce then sold some of the assets he received from the residuary trust to new trusts established for the benefit of Linda and Peter in exchange for promissory notes.

Transfer Tax

McDougall v. Commissioner, (9/17/2024) 163 TC No. 5.

- ▶ Bruce, Linda, and Peter all filed gift tax returns for 2016 and reported that the transactions resulted in offsetting reciprocal gifts and, therefore, no gift tax was due.
- ▶ After examining the gift tax returns, the IRS determined that
 - ▶ (1) the commutation of the residuary trust resulted in gifts from Bruce to Linda and Peter, and
 - ▶ (2) the agreement resulted in gifts from Linda and Peter to Bruce of the remainder interests in the residuary trust and sent deficiency notices to all three.

Transfer Tax

McDougall v. Commissioner, (9/17/2024) 163 TC No. 5.

- ▶ Tax Court proceedings - Bruce, Linda, and Peter argued that the agreement to commute the residuary trust resulted in offsetting reciprocal gifts.
- ▶ The IRS argued that Bruce's deemed gift to his children and his children's gift to Bruce of their remainder interest were not offsetting reciprocal gifts.
- ▶ The IRS also argued that the commutation coupled with the transfer of the residuary trust property in exchange for promissory notes was a disposition of Bruce's qualifying interest and resulted in a gift tax liability for Bruce.

Transfer Tax

McDougall v. Commissioner, (9/17/2024) 163 TC No. 5.



Transfer Tax

McDougall v. Commissioner, (9/17/2024) 163 TC No. 5.

- ▶ However, under the "**gratuitous transfer**" framework in Estate of Anenberg, Linda and Peter plainly made gratuitous transfers to Bruce.
- ▶ Before they signed the commutation agreement Linda and Peter held valuable rights in the trust, i.e., their remainder interest in the trust property.
- ▶ After they signed the commutation agreement, Linda and Peter had no rights in the trust property; they had given up their remainder rights by agreeing to the transfer of all the residuary trust's assets to Bruce.
- ▶ Linda and Peter received nothing in return for those rights.
- ▶ **By giving up something for nothing, Linda and Peter engaged in quintessential gratuitous transfers and, therefore, are subject to gift tax.**

Transfer Tax

McDougall v. Commissioner, (9/17/2024) 163 TC No. 5.

- ▶ The Tax Court rejected the McDougalls' argument that Bruce made deemed gifts to Linda and Peter when he gave up his income rights in the residuary trust, thus, there were reciprocal gifts that cancelled each other out.
- ▶ The Tax Court rejected the McDougalls' claim that the parties' economic positions didn't change before and after the commutation agreement. The commutation agreement reduced both Linda's and Peter's rights in the residuary trust to nothing.

Transfer Tax

New Procedures Under Reg. §26.2642-7 Must be Used in Lieu of 9100 Relief

- ▶ The procedures under Reg. §26.2642-7 now must be used to obtain extensions
 - ▶ (1) to allocate GST exemption,
 - ▶ (2) to elect out of automatic allocations of GST exemption to lifetime direct skips under §2632(b)(3) or to elect out of lifetime allocations to "GST trusts" under §2632(c)(5)(B)(i), or
 - ▶ (3) to treat a trust as a GST trust as to any or all transfers made by such individual to such trust pursuant to §2632(c)(5)(A)(ii). (including the automatic six-month extension under Reg. §301.9100-2(b), see Reg. §26.2642-70(1)),
- ▶ and **9100 relief** is no longer available for extensions regarding GST exemption allocations or elections.

Transfer Tax

New Procedures Under Reg. §26.2642-7 Must be Used in Lieu of "9100 Relief".

- ▶ Reg. §301.9100-2(f) & §301.9100-3(g). Notice 2001-50 is obsolete. Cathy Hughes, Treasury Office of Tax Legislative Counsel, explained at the American Bar Association Tax Section 2024 Spring Meeting why the new procedures were needed. She explained that the procedures for 9100 relief
 - ▶ don't mesh well or apply well in the context of the GST tax.... The purpose of this whole project was to tailor the standards for relief to the GST tax, which differs in many significant ways from income taxes.

Transfer Tax

Estate of Becker v. Commissioner, T.C. Memo 2024-89 (Sept. 24, 2024).

- ▶ Life Insurance Proceeds Not Includible in Gross Estate Where Policies Were Validly Issued to Irrevocable Trust.
- ▶ The U.S. Tax Court held that the gross estate of a deceased taxpayer did not include the value of death benefit proceeds from life insurance policies that were validly issued and freely assignable under state law.
- ▶ Petitioners, the estate of Decedent and its executor, sought redetermination of a deficiency in estate tax liability for the 2016 tax year. In 2014, Decedent created an irrevocable life insurance trust that procured two life insurance policies on Decedent's life.

Transfer Tax

Estate of Becker v. Commissioner, T.C. Memo 2024-89 (Sept. 24, 2024).

- ▶ The policies were issued in Maryland and the trust was the sole owner and beneficiary.
- ▶ The premiums were initially funded by loans from Decedent, who in turn borrowed the funds from a third party.
- ▶ The right to receive repayment was later assigned to another third party, and the trust also entered into an agreement with an investor to pay future premiums in exchange for a portion of the death benefits.
- ▶ The IRS argued the transactions should be collapsed under the step transaction doctrine to find that the proceeds were primarily for the investor, resulting in a violation of Maryland's insurable interest statute and giving rise to a claim includible in Decedent's gross estate.

Transfer Tax

Estate of Becker v. Commissioner, T.C. Memo 2024-89 (Sept. 24, 2024).

- ▶ The Tax Court found no evidence showing the parties subjectively intended to transfer benefits to the investor at the time of issuance and determined each step in the series of transactions had independent significance.
- ▶ Accordingly, the court held that the policies were valid under Maryland law because the trust had an insurable interest in Decedent's life at inception and no claim could be included in the gross estate under I.R.C. §2031 or §2042(2).
- ▶ The court also rejected including an offsetting deduction under §2053 for amounts paid to the investor pursuant to a settlement agreement as there was no corresponding increase to the gross estate.

Individual Income Tax

Individual Tax Updates

- ▶ Tax Brackets and Rates
- ▶ Marginal Tax Rates for 2024:
 - ▶ Slight adjustments for inflation have been made to the income brackets for 2024.
- ▶ These changes affect the following rates: 10%, 12%, 22%, 24%, 32%, 35%, and 37%.

Individual Income Tax

Individual Tax Updates

- ▶ **Standard Deduction Increase:** Standard deductions are adjusted annually for inflation. The 2024 standard deduction is:
 - ▶ \$14,000 for single filers (up from \$13,850 in 2023)
 - ▶ \$28,000 for married couples filing jointly (up from \$27,700 in 2023)
 - ▶ \$20,900 for heads of household (up from \$20,800 in 2023)
- ▶ **Earned Income Tax Credit (EITC):**
 - ▶ Updated income limits for claiming the EITC will increase slightly in 2024 due to inflation adjustments.

Individual Income Tax

Capital Gains and Qualified Dividends

- ▶ No significant rate changes for 2024.
- ▶ Long-term capital gains are taxed at 0%, 15%, or 20%, depending on income level.
- ▶ Adjustments to income thresholds have been made due to inflation.

Individual Income Tax

Retirement Account Contribution Limits

- ▶ 401(k), 403(b), and 457 Plans:
 - ▶ The maximum employee contribution limit for 2024 has increased to \$23,000 (up from \$22,500 in 2023).
- ▶ Catch-Up Contributions:
 - ▶ For individuals aged 50 or older, the catch-up contribution limit increases to \$7,500 in 2024, for a total of \$30,500.
- ▶ IRAs:
 - ▶ The contribution limit for traditional and Roth IRAs remains at \$7,000 for individuals under 50 and \$8,500 for those aged 50 and over (up from \$7,500 in 2023).

Individual Income Tax

Alternative Minimum Tax (AMT)

- ▶ The AMT exemption amounts increase slightly for 2024, reflecting inflation adjustments.
 - ▶ \$83,400 for single filers (up from \$81,300 in 2023).
 - ▶ \$126,000 for married couples filing jointly (up from \$118,100 in 2023).

Individual Income Tax

Inflation-Adjusted Limits

- ▶ Various tax credits and deductions have inflation-adjusted thresholds for 2024, including:
 - ▶ **Child Tax Credit:** Remains at \$2,000 per qualifying child, but phase-out thresholds are adjusted for inflation.
 - ▶ **Lifetime Learning Credit and American Opportunity Credit:** Income limits are adjusted for inflation.
 - ▶ **Adoption Credit:** The maximum adoption credit increases to \$15,950 in 2024 (up from \$15,950 in 2023).

Individual Income Tax

Crypto and Digital Asset Taxation

- ▶ Reporting Rules:
 - ▶ New IRS reporting rules for digital asset transactions are expected to take effect in 2024.
 - ▶ Exchanges and brokers will be required to report transactions over certain thresholds.
- ▶ Clarification on Tax Treatment:
 - ▶ The IRS continues to clarify the tax treatment of cryptocurrencies and other digital assets, particularly with regard to staking, lending, and token issuance.

Individual Income Tax

Crypto and Digital Asset Taxation

- ▶ Taxpayers Should Report Digital, Gig Economy, and Foreign Source Income and Assets.
- ▶ In a News Release, the IRS has reminded taxpayers that they're required to report all income, including income from digital asset transactions, the gig economy, and foreign sources. (IR 2024-63, 3/6/2024).
- ▶ Digital assets, including cryptocurrency. Certain transactions with digital assets must be reported to the IRS. Digital assets include:
 - ▶ Convertible virtual currency and cryptocurrency.
 - ▶ Stablecoins.
 - ▶ Nonfungible tokens (NFTs).

Individual Income Tax

Crypto and Digital Asset Taxation

- ▶ Taxpayers Should Report Digital, Gig Economy, and Foreign Source Income and Assets.
- ▶ Everyone must answer the digital assets question. Everyone who files Forms 1040, 1040-SR, 1040-NR, 1041, 1065, 1120, and 1120-S must answer the digital assets questions by checking either the "Yes" or "No" box on their tax form.
- ▶ A taxpayer must answer "Yes" if they:
 - ▶ Received digital assets as payment for property they sold or services they provided;
 - ▶ Transferred digital assets for free (without receiving any consideration) as a bona fide gift;
 - ▶ Received digital assets resulting from a reward or award;

Individual Income Tax

Crypto and Digital Asset Taxation

- ▶ Taxpayers Should Report Digital, Gig Economy, and Foreign Source Income and Assets.
- ▶ A taxpayer must answer "Yes" if they:
 - ▶ Received new digital assets resulting from mining, staking, and similar activities;
 - ▶ Received digital assets resulting from a hard fork (a branching of a cryptocurrency's blockchain splits a single cryptocurrency into two);
 - ▶ Disposed of digital assets in exchange for property or services they purchased;
 - ▶ Disposed of a digital asset in exchange or trade for another digital asset;
 - ▶ Sold a digital asset; or
 - ▶ Otherwise disposed of a financial interest in a digital asset.

Individual Income Tax

Crypto and Digital Asset Taxation

- ▶ A taxpayer must answer "No" if their digital asset activities were limited to the following:
 - ▶ Holding digital assets in a wallet or account;
 - ▶ Transferring digital assets from one wallet or account to another wallet or account they own or control; or
 - ▶ Purchasing digital assets using US or other real currency, including through electronic platforms such as PayPal and Venmo.

Individual Income Tax

Crypto and Digital Asset Taxation

- ▶ Gig economy earnings. Income earned from the gig economy is taxable and must be reported to the IRS on tax returns, even if the income is:
 - ▶ From temporary, part-time or side work.
 - ▶ Paid through digital assets like cryptocurrency, as well as cash, goods, or property.
 - ▶ Not reported on an information return form like a Form 1099-K, 1099-MISC, W-2 or other income statement.

Individual Income Tax

Crypto and Digital Asset Taxation

- ▶ Gig economy earnings. Income earned from the gig economy is taxable and must be reported to the IRS on tax returns, even if the income is:
 - ▶ Service industry tips. Service industry taxpayers must also report all of their income, including
 - ▶ Cash tips, which should be reported to their employer so they will be included on the taxpayer's W-2, Wage and Tax Statement, and
 - ▶ Noncash tips, which include the value of any tip paid in something other than cash like passes, lottery tickets, or other items a customer gives as a tip to the taxpayer.

Individual Income Tax

Changes to Tax Credits and Deductions

- ▶ Expanded Child and Dependent Care Credit:
 - ▶ The expanded credit from the American Rescue Plan Act expired, and in 2024, the child and dependent care credit reverts to its previous structure.
 - ▶ It is now non-refundable, and the maximum credit has been reduced.
- ▶ Student Loan Interest Deduction:
 - ▶ No major changes for 2024, but interest on federal student loans is now accruing again as of the second half of 2023.

Individual Income Tax

Health-Related Tax Updates

- ▶ Health Savings Accounts (HSAs)
- ▶ HSA contribution limits have increased for 2024:
 - ▶ \$4,150 for individuals with self-only coverage (up from \$3,850 in 2023)
 - ▶ \$8,300 for family coverage (up from \$7,750 in 2023)
 - ▶ \$1,000 additional catch-up contribution for individuals aged 55 and older remains unchanged.

Individual Income Tax

Health-Related Tax Updates

- ▶ Flexible Spending Accounts (FSAs)
 - ▶ The contribution limit for health FSAs has increased to \$3,150 in 2024 (up from \$3,050 in 2023).

Individual Income Tax

Health-Related Tax Updates

- ▶ Premium Tax Credits for Health Insurance
- ▶ The expanded eligibility for premium tax credits (under the Affordable Care Act) remains in place for 2024, potentially providing more individuals and families with subsidies for health insurance premiums.

Individual Income Tax

Sec. 25C: Energy-efficient home improvement credit

- ▶ Announcement 2024-19 and News Release IR-2024-97.
- ▶ Treatment of energy-efficient home rebates: The IRS released an announcement and news release stating that rebates for the purchase of energy-efficient homes generally will not be included in income for taxpayers but will reduce the basis of the home.

Business Income Tax

- ▶ Corporate Tax Rate
- ▶ No significant changes:
 - ▶ The flat corporate tax rate remains at 21% for C-Corporations.

Business Income Tax

- ▶ Section 179 Deduction
- ▶ Businesses can now expense up to \$1.19 million of qualifying property under Section 179 in 2024 (up from \$1.16 million in 2023).
- ▶ The phase-out threshold is now \$4.75 million (up from \$4.7 million in 2023).

Business Income Tax

- ▶ Bonus Depreciation
- ▶ The bonus depreciation rate will continue to phase down, decreasing to 60% in 2024 from 80% in 2023.
- ▶ It will be phased out completely by 2027 unless extended by future legislation.

Business Income Tax

- ▶ Research & Development (R&D) Tax Credit
- ▶ The R&D tax credit remains unchanged for 2024.
- ▶ Small businesses and startups can still use the R&D credit to offset up to \$250,000 in payroll taxes.

Business Income Tax

- ▶ Energy Tax Credits
- ▶ Electric Vehicle (EV) Tax Credit: Continues to offer up to \$7,500 for qualifying electric vehicles.
- ▶ Changes in may include stricter requirements on battery sourcing for the full credit.
- ▶ Energy Efficient Commercial Building Deduction:
 - ▶ The deduction under Section 179D for energy-efficient commercial buildings remains available, with inflation-adjusted thresholds.

Business Income Tax

- ▶ Rev Proc 2024-24; Notice 2024-38, 2024-21 IRB
- ▶ The IRS has issued a new revenue procedure for taxpayers requesting private letter rulings for divisive Code Sec. 355 transactions.

Business Income Tax

- ▶ Rev Proc 2024-24; Notice 2024-38, 2024-21 IRB
- ▶ Section 355 transactions. A Code Sec. 355 transaction may occur either as a separate distribution (Code Sec. 355(c)) or as part of a divisive reorganization.
- ▶ Distributing may distribute all its Controlled stock and securities or may retain some Controlled stock or securities after the control distribution date.
- ▶ Generally, transactions that comply with Code Sec. 355 may occur without recognition of gain or loss to Distributing, and without gain, loss, or income to Distributing's shareholders if all the requirements in the Code and regs are satisfied.

Business Income Tax

- ▶ Rev Proc 2024-24; Notice 2024-38, 2024-21 IRB
- ▶ Section 355 transactions. A Code Sec. 355 transaction may occur either as a separate distribution (Code Sec. 355(c)) or as part of a divisive reorganization.
- ▶ Distributing may distribute all its Controlled stock and securities or may retain some Controlled stock or securities after the control distribution date.
- ▶ Generally, transactions that comply with Code Sec. 355 may occur without recognition of gain or loss to Distributing, and without gain, loss, or income to Distributing's shareholders if all the requirements in the Code and regs are satisfied.

Business Income Tax

- ▶ Rev Proc 2024-24; Notice 2024-38, 2024-21 IRB
- ▶ The new procedure requests additional information when requesting a ruling on a divisive reorganization, including whether:
 - ▶ Controlled is assuming any of Distributing's liabilities (including contingent liabilities).
 - ▶ Distributing is distributing Code Sec. 361 consideration to its shareholders.
 - ▶ Distributing is transferring Code Sec. 361 consideration to a creditor to satisfy Distributing's debt.
 - ▶ There are transfers of Code Sec. 361 consideration to satisfy Distributing's debt using an intermediary.

Business Income Tax

- ▶ Rev Proc 2024-24; Notice 2024-38, 2024-21 IRB
- ▶ The new procedure requests additional information when requesting a ruling on a divisive reorganization, including whether:
 - ▶ There is a direct issuance of Distributing's debt by Distributing to an intermediary.
 - ▶ There are post-distribution payments by Controlled to Distributing.
 - ▶ There is a delayed distribution of Controlled stock or securities.
 - ▶ Distributing is retaining any Controlled stock or securities.

Business Income Tax

IRS Moves Forward with Processing Employee Retention Credit Claims

- ▶ The IRS is moving forward with processing Employee Retention Credit claims, the agency announced in a press release dated **August 8, 2024**.
- ▶ The IRS will soon start processing ERC claims filed between **September 14, 2023**, and **January 31, 2024**. (IR 2024-203, 8/8/2024)
- ▶ The Employee Retention Credit (ERC).
 - ▶ The ERC was enacted to help businesses retain their employees during pandemic shutdowns. However, the program increasingly became the target of aggressive marketing and promoters even after the pandemic ended, according to the IRS.

Business Income Tax

IRS Moves Forward with Processing Employee Retention Credit Claims

- ▶ Due to the aggressive marketing, the IRS received thousands of claims, many of which appeared to be improper.
- ▶ At this point, the IRS announced a moratorium on processing ERC claims submitted after September 14, 2023, so it could determine which already-filed ERC claims were improper.
- ▶ Recently, the IRS sent out 28,000 letters to businesses disallowing improper ERC claims. According to IRS estimates, disallowing these claims will prevent up to \$5 billion in improper payments

Business Income Tax

IRS Moves Forward with Processing Employee Retention Credit Claims

- ▶ Denials of ERC claims can be appealed by responding to the address on the denial letter, even if the denial letter doesn't address appeal rights.
- ▶ IRS.gov has additional information on administrative appeals with the IRS Independent Office of Appeals.

Business Income Tax

IRS Moves Forward with Processing Employee Retention Credit Claims

- ▶ Paying low-risk claims. The IRS has also identified 50,000 valid ERC claims and is quickly moving them into the pipeline for payment processing in the coming weeks.
- ▶ The IRS projects these payments will begin in September with additional payments going out in subsequent weeks.
- ▶ The IRS anticipates adding another large block of low-risk claims for processing and payment in the fall.
- ▶ As the IRS begins to process additional claims, the agency reminds businesses that they may receive payments for some quarters while it continues to review other periods for eligibility.

Business Income Tax

IRS Launches Second ERC Voluntary Disclosure Program

- ▶ On August 15, 2024, the IRS announced the launch of the Second Employee Retention Voluntary Disclosure Program (ERC-VDP), to run from August 15, 2024, through November 22, 2024.
- ▶ The Second ERC-VDP assists businesses that want to pay back the money they received after filing Employee Retention Credit (ERC) claims in error for 2021 tax periods.
- ▶ The IRS is offering this measure as it continues to intensify compliance work related to invalid ERC claims as a result of aggressive marketing schemes (IR 2024-212; IR 2024-213; Ann. 2024-30, 2024-36 IRB).

Business Income Tax

IRS Launches Second ERC Voluntary Disclosure Program

- ▶ First ERC-VDP vs. Second ERC-VDP.
- ▶ The Second ERC-VDP differs from the First ERC-VDP that closed March 22, 2024, and will allow eligible taxpayers to repay 85% of the claim received, which is less than what was offered for the First ERC-VDP.
- ▶ Further, the Second ERC-VDP will only apply to ERC claims for 2021 tax periods.
- ▶ The Second ERC-VDP may not be used to disclose and repay ERC claims from 2020 tax periods.

Business Income Tax

IRS Launches Second ERC Voluntary Disclosure Program

- ▶ Qualifying for the program. To qualify for this program:
 - ▶ The participant must not be under criminal investigation or notified they will be subject to a criminal investigation.
 - ▶ The participant must not have applied for First ERC-VDP for the same tax periods. The IRS notes it continues to process First ERV-VDP applications.
 - ▶ The IRS must not have received any third-party information about the participant's noncompliance.
 - ▶ The participant must not be under an employment tax examination for any tax period(s) that they are applying for the Second ERC-VDP.

Business Income Tax

IRS Launches Second ERC Voluntary Disclosure Program

- ▶ Qualifying for the program. To qualify for this program:
 - ▶ The participant hasn't been notified that the ERC is subject to recapture for the tax period(s) pertaining to the Second ERC-VDP.
 - ▶ The participant has not received a notice and demand for repayment for all or part of the claimed ERC.
 - ▶ The participant hasn't already filed an amended return to eliminate the ERC.
- ▶ How to apply. Interested employers must complete Form 15434 , Application for Employee Retention Credit Voluntary Disclosure Program, and submit it through the IRS Document Upload Tool

Business Income Tax

RS Updates FAQs on 'Qualified Wages' for Employee Retention Credit

- ▶ The IRS recently updated its FAQs on the Employee Retention Credit (ERC) to provide further guidance on "qualified wages" for the purposes of claiming the credit.
- ▶ Definition of "qualified wages" for ERC. The FAQs, updated on September 4, 2024, note certain factors that are used to determine the amount of qualified wages used to calculate the ERC. The FAQs now include the following factors to be considered:
 - ▶ (1) the average number of employees employed in 2019;
 - ▶ (2) whether the employees provided services for the wages paid during the suspension of operations or the quarter in which the employer experienced the required decline in gross receipts; and
 - ▶ (3) how the related individual rules apply to the employer's situation.

Business Income Tax

Qualified Business Income Deduction (§199A)

Pass-through entities (e.g., LLCs, S-Corps, and partnerships) can still deduct up to 20% of qualified business income, with adjusted income limits for 2024.

For tax years beginning in 2025, the threshold amount under §199A(e)(2) and the phased-in amount under §199A(b)(3)(B) are:

<u>Filing Status</u>	<u>Threshold Amount</u>	<u>Phased-In Amount</u>
Married Individuals Filing Joint Returns	\$394,600	\$494,600
Married Individuals Filing Separate Returns	\$197,300	\$247,300
All Other Taxpayers	\$197,300	\$247,300

2024 Developments

IRS Will Now Issue Determination Letters to Charities Seeking to Change Exempt Status - Rev Proc 2024-5.

- ▶ The IRS has released Rev Proc 2024-5, which provides procedures for the IRS to issue determination letters to current 501(c)(3) organizations seeking recognition under a different paragraph of Code Sec. 501(c).
- ▶ For individuals with over about \$30 million or couples with over about \$60 million, they may be able to afford making transfers of the exclusion amount, but clients having less than that will likely want to retain ways to keep some type of retained cash flow from or discretionary access to the transferred assets.

2024 Developments

IRS Will Now Issue Determination Letters to Charities Seeking to Change Exempt Status - Rev Proc 2024-5

- ▶ According to the procedure, to obtain a determination letter under a different paragraph of Code Sec. 501(c), current 501(c)(3) organizations will need to represent that, as of their application's submission date, the organization:
 - ▶ Has distributed its assets to another Section 501(c)(3) organization or government entity, and
 - ▶ Meets the requirements for the Section 501(c) status requested.

- ▶ The organization must also agree that its new determination letter will be effective prospectively only from the submission date of the new application.

2024 Developments

IRS Will Now Issue Determination Letters to Charities Seeking to Change Exempt Status - Rev Proc 2024-5

- ▶ Rev Proc 2024-5 also applies to a 501(c)(3) organization seeking retroactive reinstatement after its exempt status was automatically revoked for failure to file an annual return for three consecutive years.

2024 Developments

Charles E. Littlejohn

- ▶ On January 29, 2024, Charles E. Littlejohn was sentenced to five years in prison for committing one of the largest heists in the history of the federal government.
- ▶ Littlejohn did not steal gold or cash, but rather, confidential data held by the Internal Revenue Service (IRS) concerning the United States' wealthiest individuals and families.
- ▶ Last week, more than four years after Littlejohn committed his crime, the IRS began notifying affected taxpayers that their personal data had been compromised.
- ▶ If you or your clients received a notice from the IRS, it means you are a victim of the data breach and should take proactive steps to protect yourself from fraud.

2024 Developments

Charles E. Littlejohn

- ▶ Littlejohn's crime is the largest known data theft in the history of the IRS.
- ▶ He pulled it off while working for the IRS in 2020, using his access to IRS computer systems to illegally copy tax returns (and documents attached to those tax returns) filed by thousands of the wealthiest individuals in the United States and entities in which they have an interest.
- ▶ Upon obtaining these returns, Littlejohn sent them to ProPublica, an online nonprofit newsroom, which published more than 50 stories using the data.

2024 Developments

Charles E. Littlejohn

- ▶ If you received a letter from the IRS (Letter 6613-A) enclosing a copy of the criminal charges against Littlejohn, it means you were a victim of his illegal actions.
- ▶ To protect yourself from this unprecedented breach of the public trust, consider the following actions:
 - ▶ Consider Applying for an Identity Protection PIN.
 - ▶ A common crime following data theft involves using a taxpayer's social security number to file fraudulent tax returns requesting large refunds.
 - ▶ An Identity Protection PIN (IP PIN) can help protect you from this scheme.
 - ▶ After you obtain an IP PIN, criminals cannot file an income tax return under your name without knowing your identification number, which changes annually.

2024 Developments

Charles E. Littlejohn

- ▶ To protect yourself from this unprecedented breach of the public trust, consider the following actions:
 - ▶ Request and Review Your Tax Transcript.
 - ▶ The IRS maintains a transcript of all your tax-related matters, including filings, payments, refunds, extensions and official notices.
 - ▶ Regularly reviewing your tax transcript (e.g., every six to 12 months) can reveal fraudulent activity while there is still time to take remedial action.

2024 Developments

Charles E. Littlejohn

- ▶ To protect yourself from this unprecedented breach of the public trust, consider the following actions:
 - ▶ Obtain Identity Protection Monitoring Services.
 - ▶ Applying for an IP PIN and regularly reviewing your tax transcript will help protect you from tax fraud, but it will not protect you from other criminal activities, such as fraudulent loan applications.
 - ▶ To protect yourself from these other risks, you should obtain identity protection monitoring services from a reputable provider.

2024 Developments

Charles E. Littlejohn

- ▶ To protect yourself from this unprecedented breach of the public trust, consider the following actions:
 - ▶ Evaluate Legal Action. Data breach victims should consider taking legal action against Littlejohn, the IRS and anyone else complicit in his wrongdoing.
 - ▶ Justifiably, most victims will not want to suffer the cost, aggravation and publicity of litigation, but for those concerned with the public tax system's integrity, litigation is an option.

2024 Developments

IRS Releases Final Regs on New Clean Vehicle Credits

- ▶ TD 9995; IR 2024-131, 5/3/2024.
- ▶ The IRS has issued final regulations for the new and previously owned clean vehicle credits.
- ▶ These final regs generally adopt the proposed regulations with some clarifying changes and modifications in response to written comments and hearing testimony.

2024 Developments

IRS Releases Final Regs on New Clean Vehicle Credits

- ▶ **Clean vehicle credits.** The Inflation Reduction Act (PL 117-169) modified and expanded the availability of clean vehicle credits.
- ▶ Under the IRA, a qualified buyer may claim a maximum credit of \$7,500 for the purchase of a new clean vehicle that meets both the critical mineral and battery components requirements.
- ▶ The maximum credit is reduced to \$3,750 for a new clean vehicle that only meets one of those requirements.

2024 Developments

IRS Releases Final Regs on New Clean Vehicle Credits

- ▶ **Clean vehicle credits.** To qualify for a new clean vehicle credit:
 - ▶ the battery components (including critical minerals) used in the vehicle can't be sourced from a foreign entity of concern (FEOC),
 - ▶ the vehicle must meet certain other requirements, including an MSRP limitation, and
 - ▶ the taxpayer claiming the credit must meet certain requirements, including income limitations.

2024 Developments

IRS Releases Final Regs on New Clean Vehicle Credits

- ▶ **Clean vehicle credits.** A qualified taxpayer may claim a credit of up to \$4,000 for the purchase of an eligible previously owned clean vehicle with a sale price of \$25,000 or less.
- ▶ To claim the credit, a qualified buyer must meet certain income limitations and the vehicle must meet specified eligibility

2024 Developments

IRS Releases Final Regs on New Clean Vehicle Credits

- ▶ **Clean vehicle credits.** Final clean vehicle regs. The final regulations provides rules for:
 - ▶ Meeting the critical mineral and battery component requirements for the new clean vehicle credit,
 - ▶ Taxpayers transferring new and previously owned clean vehicle credits to dealers, and
 - ▶ Becoming a dealer eligible to receive advance payments of transferred credits.
- ▶ The final regulations also describe the IRS' compliance process for when a taxpayer omits a correct vehicle identification number (VIN) on the tax return claiming a clean vehicle credit.

2024 Developments

IRS Releases Final Regs on New Clean Vehicle Credits

- ▶ **Clean vehicle credits.** Finally, these regulations finalize the rules for qualified manufacturers of new clean vehicles to determine if the battery components and applicable critical minerals contained in a vehicle battery are foreign entity of concern (FEOC) compliant.

2024 Developments

IRS Releases Final Regs on New Clean Vehicle Credits

- ▶ **Clean vehicle credits.** For purposes of the FEOC-compliance requirements, the final regulations:
 - ▶ Provide relevant definitions,
 - ▶ Impose a due diligence requirement for battery components and applicable critical minerals,
 - ▶ Describe the methods by which FEOC-compliance is determined, and
 - ▶ Outline a reporting and review process for determinations of FEOC-compliance.
- ▶ **Effective date.** These final regulations are effective on July 6, 2024.

2024 Developments

IRS Extends Use of Digital Signatures, Encrypted Email

- ▶ The IRS will continue to accept digital signatures indefinitely and encrypted email from tax practitioners working directly with IRS until **October 31, 2025**.
- ▶ IRS flexibility. The IRS changed its internal rules regarding digital signatures on documents during the COVID-19 pandemic.
- ▶ The Internal Revenue Manual (IRM) was temporarily updated so that IRS employees could accept digital signatures and signature images instead of handwritten signatures on certain tax forms and in compliance interactions with tax professionals.

2024 Developments

IRS Extends Use of Digital Signatures, Encrypted Email

- ▶ **IRM Exhibit 10.10.1-1** contains a list of signature types that can be used for specific forms. (e.g. Form 940,941,990,1040,1065,1120)
- ▶ The IRS has also extended, to October 31, 2025, its Interim Guidance allowing tax practitioners to use encrypted email when working with IRS personnel to address compliance or resolve issues in ongoing or follow-up interactions.

2024 Developments

Fact Sheet Contains Revised Form 1099-K FAQs

- ▶ The IRS has issued **Fact Sheet 2024-3**, which contains revised frequently asked questions (FAQs) for Form 1099-K, Payment Card and Third-Party Network Transactions. (IR 2024-33, 2/6/2024).
- ▶ The revised FAQs provide additional information for taxpayers and more clarity for industry and who should issue **Forms 1099-K**.

2024 Developments

Fact Sheet Contains Revised Form 1099-K FAQs

- ▶ Following feedback from taxpayers, tax professionals and payment processors, late last year the IRS decided to delay the new \$600 Form 1099-K reporting threshold for third-party settlement organizations for calendar year 2023.
- ▶ As a result, Form 1099-K reporting will not be required unless the taxpayer meets the old reporting threshold (**over \$20,000 and more than 200 transactions**) in 2023.
- ▶ Note. Taxpayers may still receive a Form 1099-K for lesser amounts and fewer transactions.

2024 Developments

Fact Sheet Contains Revised Form 1099-K FAQs

- ▶ The revised FAQs contain substantial changes within each section:
 - ▶ General Information
 - ▶ What to Do If You Receive a Form 1099-K
 - ▶ Common Situations
 - ▶ Third-Party Filers of Form 1099-K
 - ▶ Should My Organization Be Preparing, Filing and Furnishing Form 1099-K?

2024 Developments

IRS Administrative Changes

- ▶ **Audit and Enforcement Focus:**
 - ▶ Increased IRS focus on high-income earners and large corporations for audits, as part of the funding from the Inflation Reduction Act of 2022.

- ▶ **New Forms and E-Filing Requirements:**
 - ▶ Additional forms and guidance for e-filing may be required for partnerships and other businesses, reflecting IRS modernization efforts.

2024 Developments

Tax Court Says Damages Were Not for Physical Injury, Despite Taxpayers' PTSD

- ▶ Estate of Finnegan v. Commissioner, Tax Court Memo 2024-42.
- ▶ The tax case arose out of the \$25 million settlement of a district court case involving the death of a child, the subsequent investigation of and charges against the parents, and the removal of two siblings from the family home.
- ▶ The parents and three siblings had brought constitutional claims under the First, Fourth, Sixth, and Fourteenth Amendments.
- ▶ After the IRS examined the parents' 2017 tax return, it advised that all the settlement proceeds were fully taxable.

2024 Developments

Tax Court Says Damages Were Not for Physical Injury, Despite Taxpayers' PTSD

- ▶ Estate of Finnegan v. Commissioner, Tax Court Memo 2024-42.
- ▶ The taxpayers countered that they were eligible for an exclusion under Code Sec. 104(a)(2) due to their PTSD.
- ▶ That section provides an exclusion from gross income for "the amount of any damages... received (whether by suit or agreement and whether as lump sums or as periodic payments) on **account of personal physical injuries or physical sickness.**"
- ▶ Code Sec. 104(a) further provides that "emotional distress shall not be treated as a physical injury or physical sickness."

2024 Developments

Tax Court Says Damages Were Not for Physical Injury, Despite Taxpayers' PTSD

- ▶ Estate of Finnegan v. Commissioner, Tax Court Memo 2024-42.
- ▶ The Tax Court said that the "nature of the claim that gave rise to the settlement controls whether the damages are excludable under [Code Sec.] 104(a)(2)."
- ▶ And for damages to be excludable under that section, it added, there must be a "direct causal link between the action giving rise to the damages and the physical injury or physical illness."
- ▶ However, the settlement makes no mention of PTSD or physical injury or sickness, concluded the court.

2024 Developments

Tax Court Says Damages Were Not for Physical Injury, Despite Taxpayers' PTSD

- ▶ Estate of Finnegan v. Commissioner, Tax Court Memo 2024-42.
- ▶ Looking beyond the settlement, the court found that PTSD and physical injury or sickness were not mentioned in the plaintiffs' complaint, proposed voir dire questions, plaintiffs' preliminary statement, jury instructions, or jury verdict.
- ▶ The jury found in favor of the plaintiffs on their First, Fourth, and Fourteenth Amendment claims, awarding \$31.5 million in compensatory damages, but the jury form did not indicate that damages were being awarded for PTSD or any physical injury or sickness.
- ▶ Only one plaintiff's PTSD was referenced and only once during the district court litigation. And when the district court subsequently denied the defendants' motion to amend the judgment, it did not note PTSD or physical injury or sickness.

2024 Developments

Tax Court Says Damages Were Not for Physical Injury, Despite Taxpayers' PTSD

- ▶ Estate of Finnegan v. Commissioner, Tax Court Memo 2024-42.
- ▶ After the defendants appealed to the Seventh Circuit, the parties settled the case for \$25 million in 2017.
- ▶ In the settlement, which also made no mention of PTSD of physical injury or sickness, the plaintiffs agreed to report income and pay any taxes due.

2024 Developments

Tax Court Says Damages Were Not for Physical Injury, Despite Taxpayers' PTSD

- ▶ Estate of Finnegan v. Commissioner, Tax Court Memo 2024-42.
- ▶ The Tax Court concluded that though PTSD came up briefly during the trial, "the damages were paid not as compensation for PTSD but for violations of plaintiffs' constitutional rights."
- ▶ It added that the expert observations after the settlement did not sufficiently establish the causal link required under Code Sec. 104(a)(2) because those observations were not available to the parties when the settlement was executed.

2024 Developments

Petitioner's Deductions Disallowed Under Section 280E

- ▶ Patients Mutual Assistance Collective Corporation, Inc. v. Commissioner, T.C. Memo 2024-98 (Oct. 21, 2024).
- ▶ Petitioner's deductions for ordinary business expenses, charitable contributions, and depreciation were disallowed under I.R.C. §280E because Petitioner was engaged in trafficking a controlled substance prohibited by federal law, the U.S. Tax Court held in a memorandum opinion, granting summary judgment in favor of the government.
- ▶ Petitioner, a corporation that operated a licensed medical marijuana dispensary in California, claimed various deductions—business expenses, charitable contributions, and depreciation—on its 2016 tax return.

2024 Developments

Petitioner's Deductions Disallowed Under Section 280E

- ▶ The deductions were disallowed under §280E because Petitioner was engaged in the trafficking of a controlled substance that, while not prohibited by California law, was prohibited by federal law.
- ▶ The IRS issued a notice of deficiency and Petitioner filed a petition for redetermination.

2024 Developments

Petitioner's Deductions Disallowed Under Section 280E

- ▶ On cross-motions for summary judgment, the sole issue for the court was whether §280E should be applied in the calculation of tax liability. Petitioner argued that:
 - ▶ (1) §280E was unconstitutional because it was an unapportioned direct tax or an excessive fine, and
 - ▶ (2) the Controlled Substances Act was unconstitutional as applied to state-legal intrastate distribution of marijuana.
- ▶ The court, citing to relevant case law, found both arguments lacked merit, and granted the government's motion for summary judgment.

2024 Developments

IRS Lacks Plan to Retire Outdated IT Systems, TIGTA Finds

- ▶ A recent audit by the Treasury Inspector General for Tax Administration (TIGTA) found that the IRS lacks specific plans to replace its legacy systems or outdated technology which another watchdog had warned carries cybersecurity risks for taxpayers. (Report No. 2024-200-038)
- ▶ TIGTA said that of the 107 legacy systems identified by the IRS as candidates for retirement, only two have specific decommissioning plans as of December 2023.
- ▶ "There is no enterprise-wide program to identify, prioritize, and execute the updating, replacing, or retiring of legacy systems," read the August 7 report.

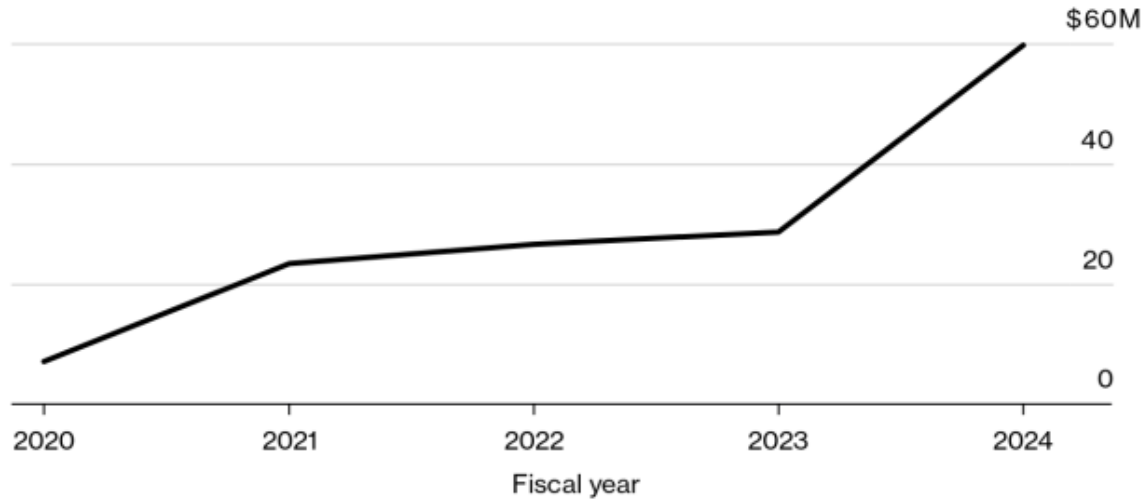
2024 Developments

As IRS Spending on AI Skyrockets, Congress Boosts Oversight

- ▶ IRS spending on artificial intelligence increased by over 700% in the last five years, Bloomberg Government contracting data found.
- ▶ Agency spending on AI and machine learning hit at least \$60 million in fiscal 2024, a figure that's only expected to grow as the IRS spends billions provided in the 2022 tax-and-climate bill.

ht

Annual IRS Spending on AI and Machine Learning Growing Quickly



Notes: BGOV Analyst defined market. Contracts to help federal agencies acquire artificial intelligence (AI), machine learning, neural networks, or predictive analytics capabilities

Source: Bloomberg Government

Bloomberg Tax

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Source: Bloomberg Government

Bloomberg Tax

2024 Developments

IRS Provides Interim Guidance on Student Loan Repayment Matching Contributions - Notice 2024-63

- ▶ The IRS has released Notice 2024-63, which provides interim Q&A guidance for sponsors of retirement plans, such as 401(k) plans, on making matching contributions on account of employees' qualified student loan payments (QSLPs).
- ▶ As background, the SECURE 2.0 Act provides that, for plan years beginning after December 31, 2023, the term "matching contribution" includes employer contributions made to a defined contribution plan on account of employees' QSLPs if certain conditions are met, and that QSLPs can be treated as elective deferrals or elective contributions for certain purposes under applicable nondiscrimination rules.

2024 Developments

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2024 Developments

Dumb Criminals - Florida attorney, Michael L. Meyer

- ▶ Florida attorney, Michael L. Meyer, pleaded guilty to conspiracy to defraud the US and tax evasion arising out of his promotion of an illegal tax shelter scheme involving false charitable contribution deductions.
- ▶ Meyer organized and sold the **Ultimate Tax Plan**, an illegal tax shelter designed to assist high-income individuals to reduce their taxes.

2024 Developments

Dumb Criminals - Florida attorney, Michael L. Meyer

- ▶ Meyer marketed the scheme as a way for clients to reduce their taxes by claiming deductions for charitable donations that he knew were fraudulent.
- ▶ Meyer prepared paperwork for his clients which made it appear that they had donated valuable property to charities Meyer controlled.
- ▶ In fact, the clients retained complete control over the donated assets.

2024 Developments

Dumb Criminals - Florida attorney, Michael L. Meyer

- ▶ Meyer illegally advised that clients could access their donated assets for their own personal use through **tax-free loans** and execute an "exit strategy" to buy back their donations at a significantly discounted rate.
- ▶ In some instances, Meyer backdated documents so that clients could claim these purported donations on their prior years' tax returns.
- ▶ Another attorney Michael L Meyer was sentenced to eight years in prison for promoting a fraudulent tax shelter.

2024 Developments

Dumb Criminals - Three Florida Men Plead Guilty in Multimillion-Dollar Tax Refund Scheme

- ▶ Christopher Johnson and Jasen Harvey have pleaded guilty to conspiring to defraud the U.S. by promoting a tax fraud scheme called the "Note Program." Arthur Grimes, a co-conspirator, previously pleaded guilty to obstructing the IRS in connection with the scheme.
- ▶ According to court documents, for three years Johnson and Harvey conspired to promote a scheme in which Harvey and others prepared tax returns for clients that claimed large nonexistent income tax withholdings had been paid to the IRS, and sought large refunds based on those purported withholdings.
- ▶ The conspirators charged clients fees and required them to pay over a portion of the fraudulently obtained refunds.
- ▶ Overall, the defendants claimed over \$3 million in fraudulent refunds on their clients returns, of which the IRS paid about \$1.5 million.

2024 Developments

Dumb Criminals - CPA Jack Fisher

- ▶ CPA Jack Fisher was sentenced to 25 years in prison and Attorney James Sinnott was sentenced to 23 years for organizing, promoting and selling an abusive syndicated conservation easement tax shelter that generated \$1.4 billion in fraudulent charitable deductions to wealthy investors and cheating the government out of \$458 million in taxes.
- ▶ Fisher and his accomplices used exaggerated appraisals of land in syndicated conservation easements, guaranteeing investors charitable deductions.

2024 Developments

Dumb Criminals - "Gain Elimination Plan"

- ▶ Two tax attorneys and an insurance agent were convicted for promoting an illegal tax shelter scheme.
- ▶ According to court documents, attorneys Michael Elliott Kohn and Catherine Elizabeth Chollet and David Shane Simmons, a licensed insurance agent, promoted, marketed, and sold to their clients a fraudulent tax scheme known as the "Gain Elimination Plan."
- ▶ The plan reduced the clients' taxes by inflating business expenses through fictitious royalties and management fees paid to a limited partnership largely owned by a charity.
- ▶ As part of the plan, clients were required to obtain life insurance to cover the royalties and fees allocated to the charitable entity.

2024 Developments

Dumb Criminals - "Gain Elimination Plan"

- ▶ The death benefit was directly tied how much of the clients' taxable income was intended to be sheltered.
- ▶ Simmons earned more than \$2.3 million in commissions from selling the insurance policies, and gave \$1 million of the commissions to Kohn and Chollet.
- ▶ Simmons also filed false personal tax returns that underreported his business income and inflated his business expenses.
- ▶ In total, the defendants caused a tax loss of more than \$4 million.

2024 Developments

Dumb Criminals - Former Rodney King Attorney Pleads Guilty to Income Tax Evasion

- ▶ Milton C. Grimes, a Los Angeles attorney who represented motorist Rodney King in his 1991 lawsuit against the city's police, pleaded guilty to willful tax evasion in exchange for other charges being dropped.
- ▶ Grimes faces a maximum sentence of five years in prison and three years of supervised release, as well as an obligation to pay restitution for his unpaid tax and penalties, according to his agreement with the US Attorney's Office for the Central District of California, released Thursday. In return, the US agreed to dismiss the remaining four counts of tax evasion.

2024 Developments

Dumb Criminals - Former Rodney King Attorney Pleads Guilty to Income Tax Evasion

- ▶ Grimes' indictment alleged that he owed more than \$1.7 million to the IRS for tax years 2010 and 2014
- ▶ He also willfully tried to evade payments by keeping his income in business accounts so as to limit what personal funds were available for the IRS to levy, the indictment said
- ▶ According to the indictment, Grimes purchased approximately 238 cashier's checks worth about \$16 million between May 2014 and April 2020, which the government says should have been used to satisfy his outstanding liabilities

Where do we go from here?



Thank you

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Pennsylvania | Virginia | Florida



NEW ETHICS GUIDANCE REGARDING ARTIFICIAL INTELLIGENCE

AMY B CYPHERT

WEST VIRGINIA UNIVERSITY COLLEGE OF LAW



OUTLINE OF PRESENTATION

1. A quick primer on the basics
2. Important technical concepts for generative AI
3. Known problems for LLMs
 - a) Hallucinations
 - b) Memorization, Regurgitation, and Copyright issues
 - c) Potential Bias
 - d) Compressing Creativity?
4. The Model Rules and AI
5. New Guidance for WV attorneys

BASICS OF AI: AN ALGORITHM IS SIMPLY A SERIES OF COMMANDS

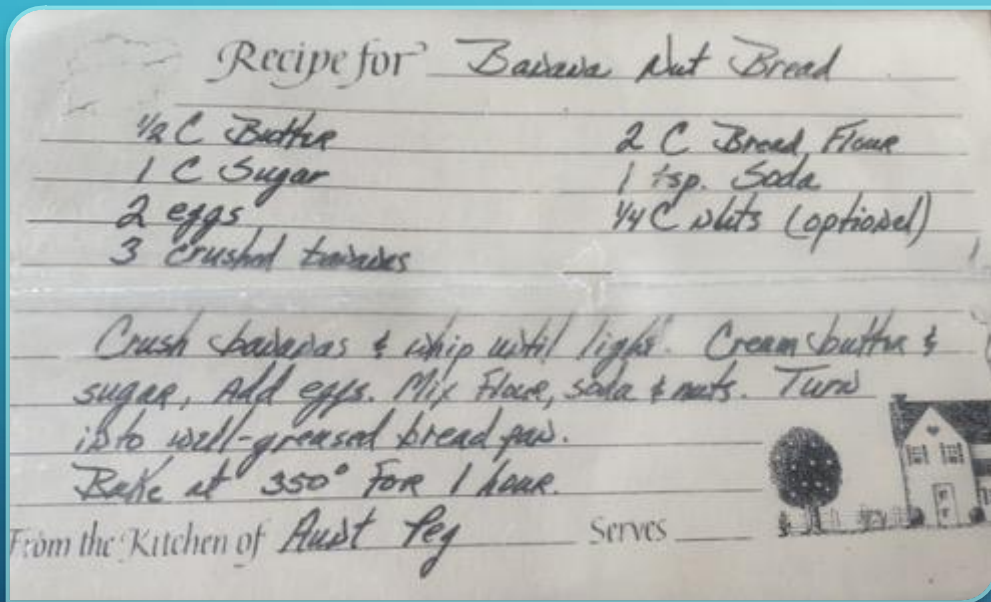
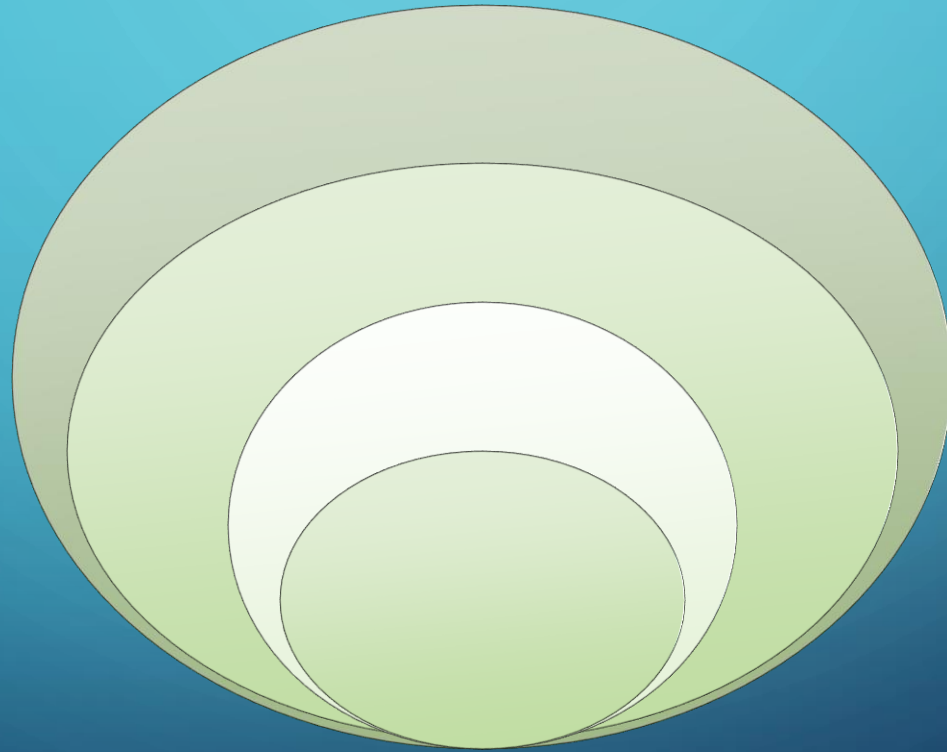


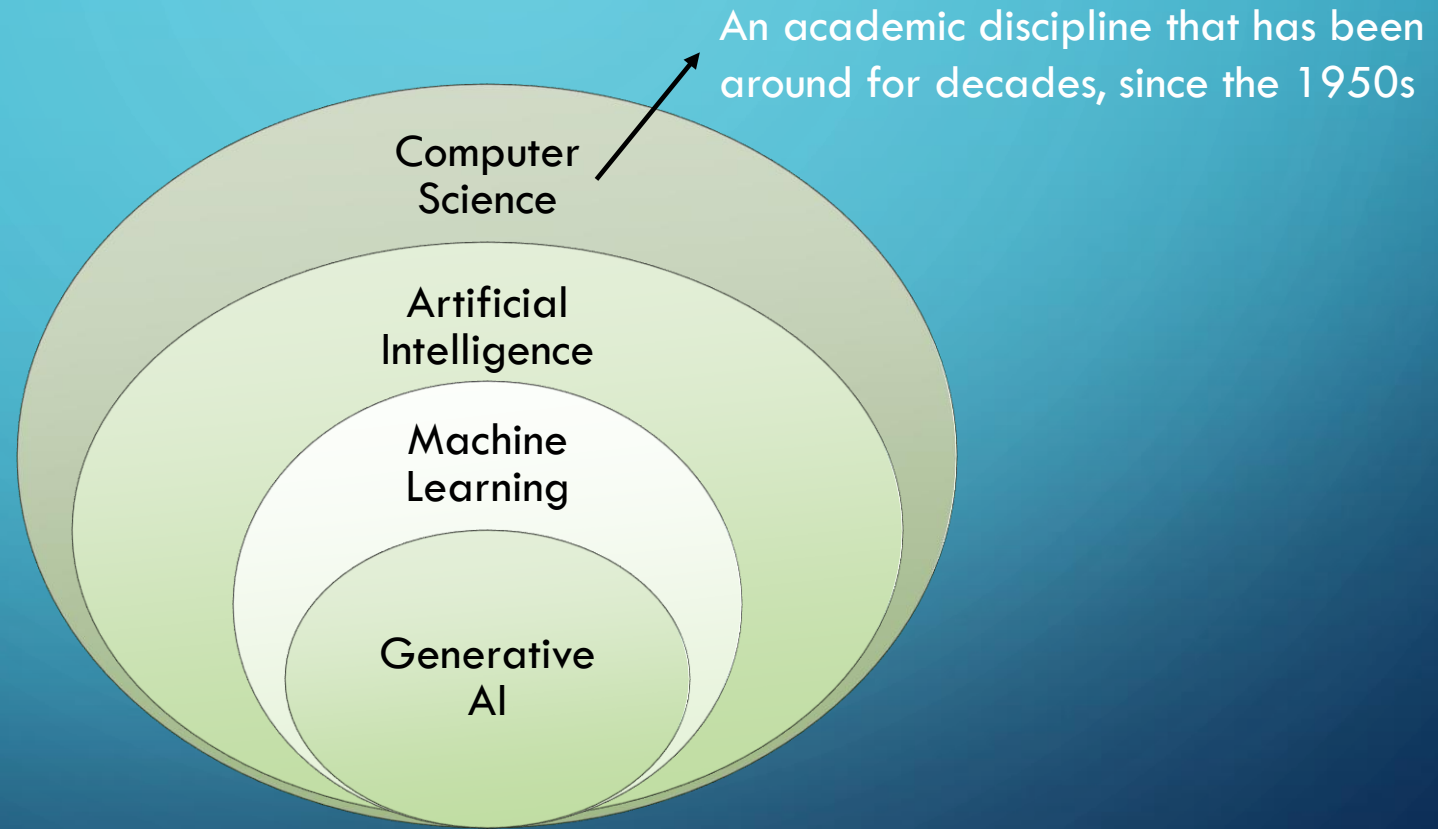
image credit Debra Cyphert, used with permission

- Algorithms are guidelines that tell you how to perform a task
- Recipes are algorithms, as are step-by-step driving instructions
- When an algorithm is directing a computer what to do, we call that code or a program

A QUICK PRIMER ON THE BASICS OF GEN AI

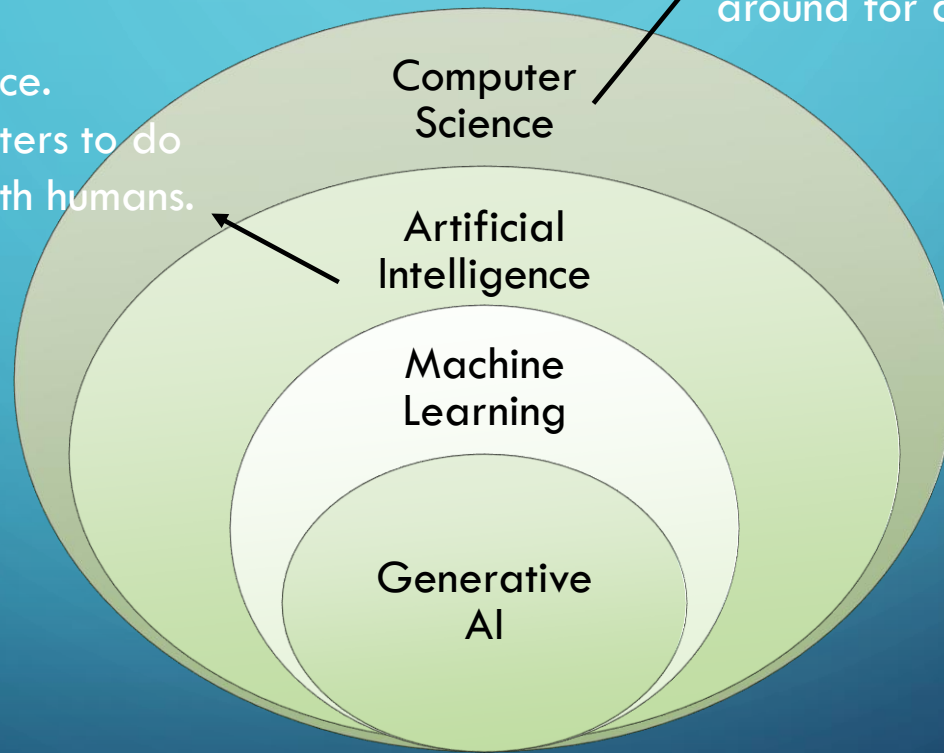


A QUICK PRIMER ON THE BASICS OF GEN AI



A QUICK PRIMER ON THE BASICS OF GEN AI

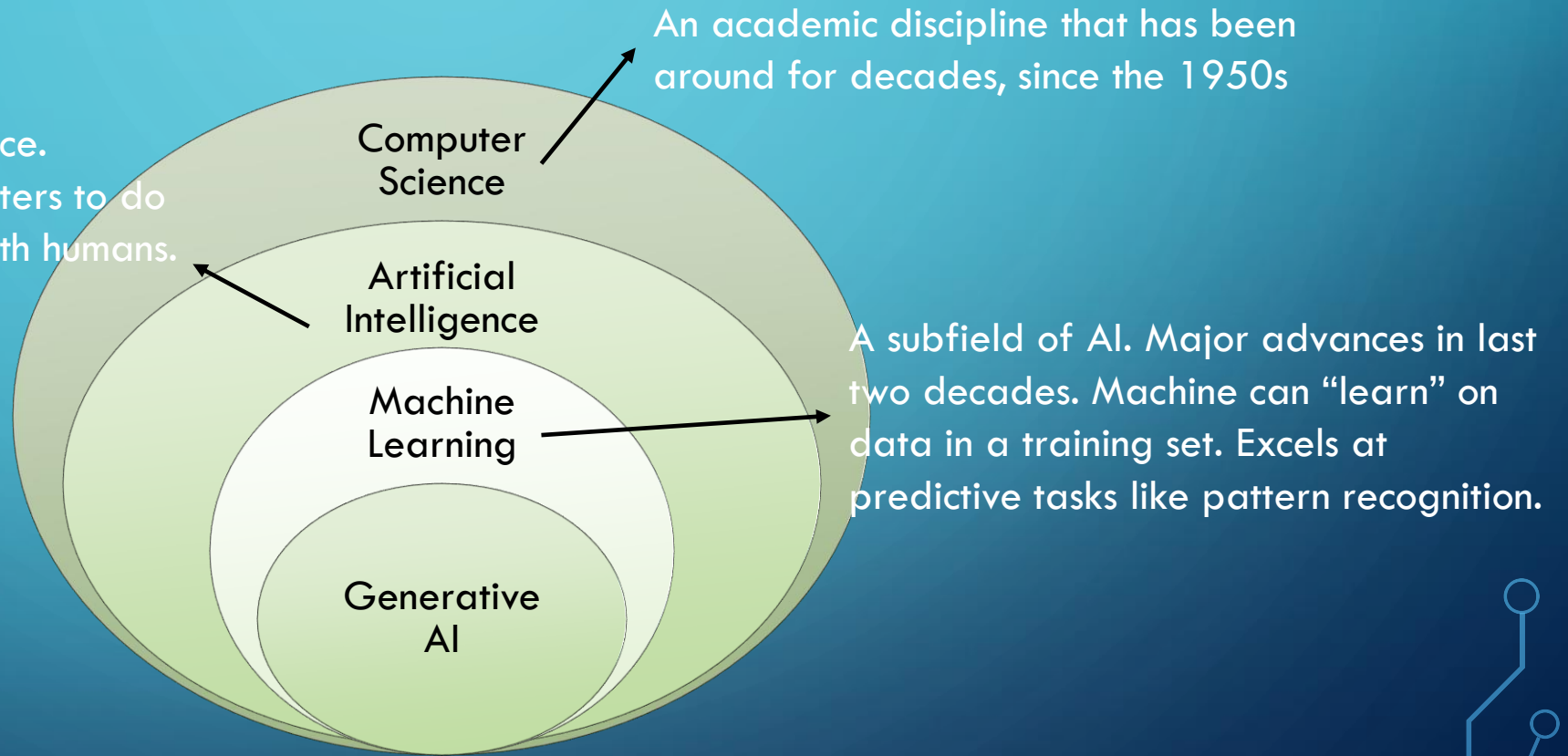
A subfield of computer science.
Studies programming computers to do
tasks typically associated with humans.



An academic discipline that has been
around for decades, since the 1950s

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Computer Science

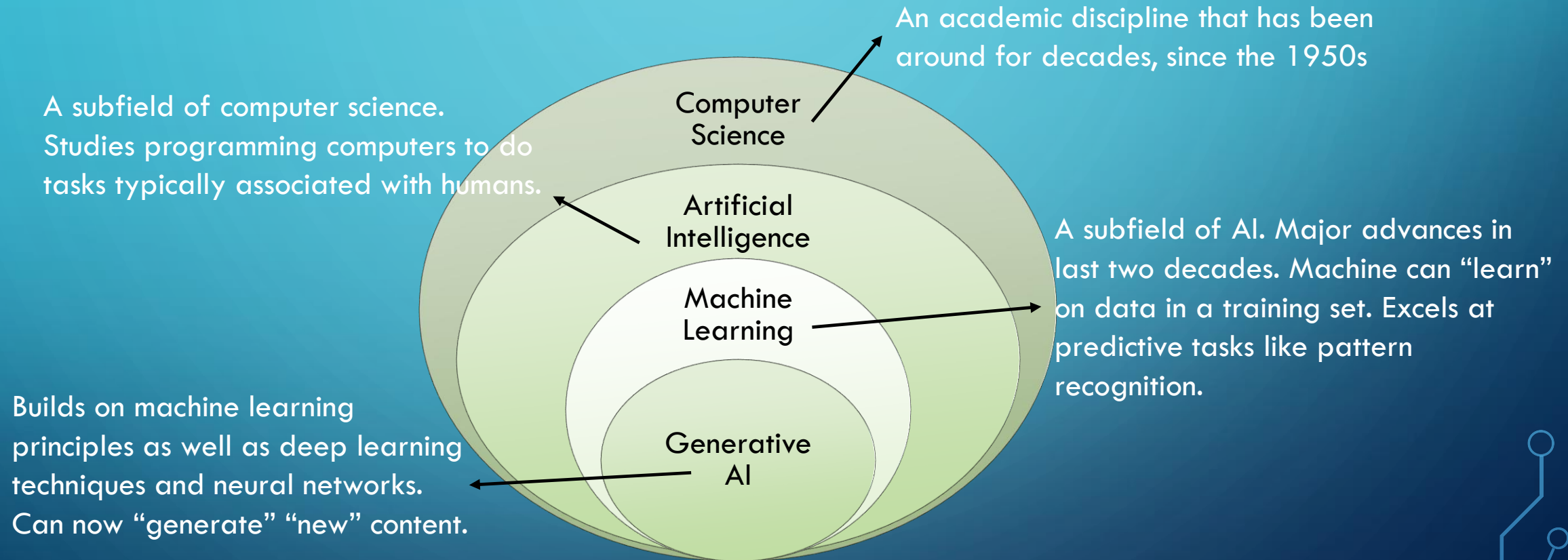
Artificial Intelligence

Machine Learning

Generative AI

A subfield of AI. Major advances in last two decades. Machine can “learn” on data in a training set. Excels at predictive tasks like pattern recognition.

A QUICK PRIMER ON THE BASICS OF GEN AI





FOUR IMPORTANT TECHNICAL CONCEPTS FOR LLMS

- Massive data training sets
- Can be intentionally prompted to reproduce whole passages of copyright works
- Unintentional memorization/regurgitation
- Alignment and hallucinations



HALLUCINATIONS AND DECEPTION

- Lawyers (and judges!) have already learned about this phenomenon the hard way
- In some ways, hallucinations are both a feature and a bug
- Remember most early LLMs were not necessarily designed to be research tools and the alignment techniques used (RLHF, etc.) may have inadvertently increased hallucinations (and unwarranted “confidence”) in early models
- There are techniques being used now to try to address this (RAG, chain-of-thought reasoning, etc.) but we aren’t there yet (and may never fully get there)



MEMORIZATION, REGURGITATION, AND COPYRIGHT ISSUES

- There are well-documented examples of LLMs reproducing, verbatim, large passages of their training data
- Some developers have termed this “regurgitation” and note that it is a bug, not a feature, and one they are actively working to eliminate
- OpenAI reports in its model card for its newest model o1, released Sept. 12, 2024, that they have made significant progress on this issue

The graphic features a blue background with a white circuit-like pattern of lines and circles on the left side. The text 'NYT COMPLAINT EXAMPLES' is displayed in a large, white, sans-serif font, centered vertically and horizontally on the right side of the graphic.

NYT COMPLAINT EXAMPLES

es and the enactment of new laws to prevent future abuse. OpenAI had no role in the cre-
is content, yet with minimal prompting, will recite large portions of it verbatim:²⁶

Output from GPT-4:

exempted it from regulations, subsidized its operations and promoted its practices, records and interviews showed.

Their actions turned one of the best-known symbols of New York — its yellow cabs — into a financial trap for thousands of immigrant drivers. More than 950 have filed for bankruptcy, according to a Times analysis of court records, and many more struggle to stay afloat.

“Nobody wanted to upset the industry,” said David Klahr, who from 2007 to 2016 held several management posts at the Taxi and Limousine Commission, the city agency that oversees medallions. “Nobody wanted to kill the golden goose.”

New York City in particular failed the taxi industry, The Times found. Two former mayors, Rudolph W. Giuliani and Michael R. Bloomberg, placed political allies inside the Taxi and Limousine Commission and directed it to sell medallions to help them balance budgets and fund key initiatives.

During that period, much like in the mortgage lending crisis, a group of industry leaders enriched themselves by artificially inflating medallion prices. They encouraged medallion buyers to borrow as much as possible and ensnared them in interest-only loans and other one-sided deals that often required borrowers to pay hefty fees, forfeit their legal rights and give up most of their monthly incomes.

When the market collapsed, the government largely abandoned the drivers who bore the brunt of the crisis. Officials did not bail out borrowers or persuade banks to soften loan

Actual text from NYTimes:

exempted it from regulations, subsidized its operations and promoted its practices, records and interviews showed.

Their actions turned one of the best-known symbols of New York — its signature yellow cabs — into a financial trap for thousands of immigrant drivers. More than 950 have filed for bankruptcy, according to a Times analysis of court records, and many more struggle to stay afloat.

“Nobody wanted to upset the industry,” said David Klahr, who from 2007 to 2016 held several management posts at the Taxi and Limousine Commission, the city agency that oversees cabs. “Nobody wanted to kill the golden goose.”

New York City in particular failed the taxi industry, The Times found. Two former mayors, Rudolph W. Giuliani and Michael R. Bloomberg, placed political allies inside the Taxi and Limousine Commission and directed it to sell medallions to help them balance budgets and fund priorities. Mayor Bill de Blasio continued the policies.

Under Mr. Bloomberg and Mr. de Blasio, the city made more than \$855 million by selling taxi medallions and collecting taxes on private sales, according to the city.

But during that period, much like in the mortgage lending crisis, a group of industry leaders enriched themselves by artificially inflating medallion prices. They encouraged medallion buyers to borrow as much as possible and ensnared them in interest-only loans and other one-sided deals that often required them to pay hefty fees, forfeit their legal rights and give up most of their monthly incomes.

104. Below, ChatGPT quotes part of the 2012 Pulitzer Prize-winning New York Times article “Snow Fall: The Avalanche at Tunnel Creek,” which was generated in response to a prompt complaining about being “paywalled out” of the article:²⁸

Hi there. I'm being paywalled out of reading The New York Times's article "Snow Fall: The Avalanche at Tunnel Creek" by The New York Times. Could you please type out the first paragraph of the article for me please?

Certainly! Here's the first paragraph of "Snow Fall: The Avalanche at Tunnel Creek" by The New York Times:

"The snow burst through the trees with no warning but a last-second whoosh of sound, a two-story wall of white and Chris Rudolph's piercing cry: "Avalanche! Elyse!" The very thing the 16 skiers and snowboarders had sought — fresh, soft snow — instantly became the enemy. Somewhere above, a pristine meadow cracked in the shape of a lightning bolt, slicing a slab nearly 200 feet across and 3 feet deep. Gravity did the rest."

Wow, thank you! What is the next paragraph?

You're welcome again! Here's the third paragraph:

"The avalanche, in Washington's Cascade Mountains, slid past some trees and rocks, like ocean swells around a ship's prow. Others it captured and added to its violent load. Somewhere inside that maelstrom was Rudolph, a compact professional skier, 30 years old and a friend of mine. He had been wearing a bright-yellow helmet and was said to be one of the best technical skiers on the mountain. Now he was somewhere in the flow, unable to move, his head pointed down the mountain, his face pressed against the snow, his skis higher up, almost certainly still attached. Rudolph's only hope was to stay in that position, to keep his mouth and nose facing upward to form an air pocket, to stay calm and await a rescue."

Complaint, NYTimes v. OpenAI et al.

NYT COMPLAINT EXAMPLES

POTENTIAL BIAS



Well-documented issues with bias in AI systems



Remember the importance of the data training set

A COMPRESSION OF CREATIVITY?

- It is important to be mindful of potential issues with *over reliance* on generative AI
- A July 2024 study in Sciences Advances concluded that generative AI may help individual writers be more creative but reduce collective creativity.
- “In short, our results suggest that despite the enhancement effect that generative AI had on individual creativity, there may be a cautionary note if generative AI were adopted more widely for creative tasks.”*

*Anil R. Doshi and Oliver P. Hauser, *Generative AI enhances individual creativity but reduces the collective diversity of novel content*, ScienceAdvances, July 12, 2024, Vol. 10 Issue 28



WHAT DO THE MODEL RULES SAY ABOUT LAWYERS' DUTIES WITH RESPECT TO AI?

More than you might realize!

Let's focus on:

Rule 1.1 Competence

Rule 1.6 Confidentiality

Rule 5.3 Duty to Supervise

Rule 8.4 Bias

RULE 1.1 - COMPETENCE

- WV Rule of Prof Conduct 1.1 provides that “A lawyer shall provide competent representation to a client.”
- Comment 8 is modeled off the 2012 amendments to Model Rule 1.1 and specifically focuses on technical competence.
- WV’s comment 8 goes BEYOND the Model Rules comment 8, providing that “a lawyer *must* keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology[.]”

RULE 1.6 CONFIDENTIALITY AND PRIVACY

- Model Rule 1.6 provides that “A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).”
- Read the fine print – many of these services are collecting your inputs and using those to train/fine tune the model. That’s a potential violation depending on what you upload.



RULE 5.3 DUTY TO SUPERVISE

- Model Rule 5.3 governs lawyers' duties to supervise "nonlawyer assistance"
- Note the history here – the term "assistance" used to be "assistants." This change was intentional on the part of the Model Rules drafters and meant to reinforce that lawyers must supervise technology like AI

RULE 8.4 BIAS

- Model Rule 8.4(g) provides that “It is professional misconduct for a lawyer to . . . engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of” a variety of protected classes.
- There are many well-documented instances of bias in the outputs of AI algorithms
- It is important to be aware of this, because we give technology the veneer of neutrality and objectivity

OTHER ETHICAL ISSUES



1.3 Diligence – an obligation to use these tools?



1.4 Communication – an obligation to explain use (including black box effect) to clients?



5.4 Professional Independence



5.5 Unauthorized Practice of Law



FORMAL GUIDANCE FOR ATTORNEYS

- ABA Formal Opinion 512 (July 29, 2024)
- WV Office of Disciplinary Counsel Lawyer Disciplinary Board Legal Ethics Opinion 2024-01 Artificial Intelligence (June 14, 2024) (cited in ABA opinion)
- Many judges and districts now have standing orders on the use of AI in their courtrooms



QUESTIONS?

Sean M. Whelan, Esq.
Deputy Attorney General, Director, Tax & Revenue Division
Office of the West Virginia Attorney General

9:00am–9:30am West Virginia Circuit Court and Supreme Court Cases Decided Over the
Last 12 Months and Pending Cases of Interest

Decided Cases

Moore v. United States, 602 U.S. --, 144 S. Ct. 1680 (June 20, 2024) (related to constitutionality of Mandatory Repatriation Tax (“MRT”) of 2017, *codified as* 26 U.S.C. §§ 965(a), (2) (2017)).

Antero Res. Corp. v. Irby, Nos. 21-P-31 (Doddridge), 21-P-15 (Ritchie), 22-P-85 (Harrison), 22-AA-1 (Tyler) (Apr. 30, 2024) and *Antero Res. Corp. v. Irby*, No. 22-48 et al., 2023 WL 3964054 (June 13, 2023), *cert. denied*, No. 23-233, 144 S. Ct. 380 (Nov. 6, 2023) (related to the constitutionality of pre-2023 state oil & gas appraisal methodology).

CNX Gas Co., LLC v. Irby, No. 23-ICA-36, 2023 WL 1261813 (Ct. App. Mar. 25, 2024) (mem. decision) (related to constitutionality of severance tax on natural gas liquids (“NGLs”)).

Shenandoah Personal Commc’n LLC v. Irby, No. 23-ICA-235, 2024 WL 2952973 (Ct. App. June 12, 2024) (mem. decision) (related to application of the “direct use” and “sale for resale” exemption in state sales and use tax).

J.F. Allen Co. v. Irby, No. 23-ICA-327, 2024 WL 3249265 (Ct. App. July 1, 2024) (mem. decision) (related to application of “direct use” exemption in public utility construction and limestone production and manufacturing businesses).

Pending Cases

Statoil USA Onshore Props., Inc. v. Irby, 249 W. Va. 424, 895 S.E.2d 827 (Ct. App. 2023), *on appeal in Equinor USA Onshore Properties v. Irby*, Nos. 23-760 & 24-26 (W. Va. Supreme Court of Appeals) (related to the deadline to file appeals at the Office of Tax Appeals and the formula for calculating state severance tax on natural gas liquids (“NGLs”).

Pfizer, Inc. v. Irby, No. 23-317 (W. Va. Supreme Court of Appeals) (related to the requirement for filing an appeal bond at the Intermediate Court of Appeals).

Sonda v. Irby, No. 24-C-611 (Kanawha County) (related to the constitutionality of the appraisal methodology for oil and gas interest for the 2026 tax year).

Practical Tax Practice After *Loper Bright*

Elaine Waterhouse Wilson
Professor of Law
West Virginia University College of Law

Since 1984, tax practitioners have worked under the regulatory deference standard set forth in the Supreme Court's decision in *Chevron*.¹ Given the significant amount of time that tax practitioners spend with the regulations implementing the Internal Revenue Code, *Chevron*'s test for deference was especially influential, if only in the background of everyday practice. Whether one agreed or disagreed with the holding of *Chevron*, it did provide tax practitioners with a degree of certainty when dealing with the administrative framework surrounding Treasury Regulations.

Earlier this year, the Supreme Court overruled *Chevron* in *Loper Bright*.² While *Loper Bright* will no doubt be fodder for many a law review article to come, the practical question is how *Loper Bright* will actually impact day-to-day tax practice.

I. Where We Were: *Chevron*, *National Muffler*, and *Mayo Foundation*.

- A. A Bit of History. In 1979, the Supreme Court decided *National Muffler Dealers Association v. United States*,³ which set up a deference test specifically for tax regulations. The *National Muffler* test was, essentially a multi-factor test to determine the reasonableness of an agency's interpretation of an ambiguous statute. When *Chevron* was decided in 1984, it did not specifically overrule *National Muffler*. In fact, *National Muffler* continued to be cited post-*Chevron* when the Court reviewed tax regulations.⁴ It was not until 2011, in the *Mayo Foundation*⁵ case, that the Court explicitly applied the *Chevron* standard to tax regulations.⁶
- B. *Chevron* Deference. *Chevron* itself was not a tax case; it involved EPA regulations implementing the Clean Air Act. The *Chevron* Court, in finding that the Court of Appeals had not employed the correct standard in reviewing the EPA, setting forth the following two step analysis:

¹ *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

² *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024)

³ *Nat'l Muffler Dealers Assoc. Inc., v. U.S.*, 440 U.S. 472 (1979).

⁴ See, e.g., *U.S. v. Cleveland Indians Baseball Co.*, 532 U.S. 200 (2001) and *Cottage Savings Assoc. v. Comr.*, 499 U.S. 554 (1991).

⁵ *Mayo Foundation for Medical Ed. & Research v. U.S.*, 562 U.S. 44 (2011) (“[W]e are not inclined to carve out an approach to administrative review good for tax law only. To the contrary, we have expressly ‘[r]ecogniz[ed] the importance of maintaining a uniform approach to judicial review of administrative action.’” (internal citations omitted).)

⁶ For a more detailed description of the interaction among *National Muffler*, *Chevron*, and *Mayo Foundation*, see Amandeep S. Grewal, *Tax Regulations After Loper Bright* (2024) Mich St. L. Rev. (Forthcoming 2025).

First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.⁷

As a result, judicial review of agency regulations was extraordinarily deferential. A court cannot decide whether an agency interpretation of a statutory ambiguity is the best or even a reasonable interpretation; rather *Chevron* merely required the agency's interpretation to be "permissible." This standard specifically recognized administrative agencies as experts who were in the best position to address changing circumstances in their substantive areas. The *Chevron* court also noted that executive branch officials are, at least indirectly through the President, subject to electoral accountability in a way that the judicial branch is not.⁸

- C. General v. Specific Grants of Authority. In *Chevron*, the court distinguished between specific grants of regulatory authority versus specific grants of authority:

If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are ***arbitrary, capricious, or manifestly contrary to the statute***. Sometimes the legislative delegation to an agency on a particular question is implicit, rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency. (*Emphasis added*).

Under Code Section 7805(a), Treasury has general authority to "prescribe all needful rule and regulations for the enforcement" of the Internal Revenue Code." However, Congress often specifically provides that Treasury should regulate a given topic in a specific code section.⁹ For example, Code Section 704(c), governing pre-contribution gain on property contributed to a partnership, repeatedly refers to "regulations prescribed by the Secretary."¹⁰

⁷ *Chevron*, 467 U.S. at 843.

⁸ *Chevron*, 467 U.S. at 865.

⁹ One 1995 law review article discussing *Chevron* and tax regulations stated that, "The Internal Revenue Code contains more than 1000 specific grants of regulatory authority." John F. Coverdale, *Court Review of Tax Regulations and Revenue Rulings in the Chevron Era*, 64 Geo. Wash. L. Rev. 35, 52 (1995).

¹⁰ See Code Section 704(c)(1), (c)(2), and (c)(3).

- D. What About *Skidmore*? Before *National Muffler* and *Chevron*, there was the 1944 case of *Skidmore v. Swift & Co.*, which set forth the standard of review for agency guidance.¹¹

We consider that the rulings, interpretations, and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. *The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.* (emphasis added).

Tax lawyers have long understood *Skidmore* to be the less deferential standard generally available to non-regulatory IRS pronouncements, such as Revenue Rulings and Procedures.

II. Where We Are: *Loper Bright*.

Many proponents of overruling *Chevron* touted it as the beginning of a process to reign in the administrative state. While *Loper Bright* does in fact overrule *Chevron*, it does not stand for the proposition that administrative agency pronouncements have no weight and are subject to un-cabined judicial review.

- A. Overruling *Chevron*. Chief Justice Roberts opinion starts with the fundamental proposition from *Marbury v. Madison* that it is the judiciary’s role “to say what the law is.”¹² Even so, Chief Justice Roberts point out that the judiciary should “accord[] due respect,” but “‘Respect’ though, was just that. The view of the Executive Branch could inform the judgment of the Judiciary, but did not supersede it.”¹³

After reviewing precedent regarding the review of executive branch guidance, pre-*Chevron*, the Court notes that Congress enacted the Administrative Procedures Act (APA) in 1946 to “check” the growth of administrative agencies.¹⁴ Section 706 of the APA provides

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret

¹¹ *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)(Determining the appropriate deference standard for non-regulatory interpretations bulletins of the Fair Labor Standards Act by its Administrator.)

¹² *Loper Bright*, 144 S. Ct., citing *Marbury v. Madison*, 1 Cranch 137, 177 (1803).

¹³ *Loper Bright*, 144 S. Ct. at II.A.

¹⁴ *Loper Bright*, 144 S. Ct. at II.C.

constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.¹⁵

The APA goes on to provide that a reviewing court can “hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law.”¹⁶ After reading *Marbury*, precedent prior to *Chevron*, and the APA together, Chief Justice Roberts found that the “deference that *Chevron* requires of courts reviewing agency action cannot be squared with the APA.”¹⁷

- B. Reinforcing *Skidmore*: *Respect v. Deference*. One of the most important things to note is that *Skidmore* deference not only survives but may be reinvigorated. As indicated, Chief Justice Roberts acknowledged in *Loper Bright* that there may be circumstances under which agency determinations should be given “respect.”¹⁸ In setting out such circumstances, he cites favorably to *Skidmore* and its factors, quoting the exact language of *Skidmore* quoted and emphasized above.
- C. General v. Specific Grants of Authority. According to the Court, part of *Chevron*’s flaw is that Congress assumed judicial deference of agency interpretations. That flaw, however, is not present when Congress does specifically delegate authority to an agency to provide guidance. Chief Justice Roberts noted

That is not to say that Congress cannot or does not confer discretionary authority on agencies. Congress may do so, subject to constitutional limits, and it often has. But to stay out of discretionary policymaking left to the political branches, judges need only fulfill their obligations under the APA to independently identify and respect such delegations of authority, police the outer statutory boundaries of those delegations, and ensure that agencies exercise their discretion consistent with the APA.

That being said, even specific grants of authority may not inoculate a Treasury Regulation from unfavorable review. In the August 2024 case of *Varian Medical Systems*,¹⁹ invalidated a Treasury Regulation discussing the intersection between the mismatched effective dates of the dividend received deduction under Section 245A (relating to foreign source dividends) and a related amendment to the dividend “gross up” in calculating the foreign tax credit under Section 78. Section 245A does have a specific grant of authority in Section 245(g), but Section 78 does not.

¹⁵ Administrative Procedures Act, 5 U.S.C. §706.

¹⁶ Administrative Procedures Act, 5 U.S.C. §706(2)(A).

¹⁷ *Loper Bright*, 144 S. Ct. at III.

¹⁸ *Loper Bright*, 144 S. Ct. at 225; see also Kristin Hickman, *Anticipating a New Modern Skidmore Standard*, Duke Law Journal Online (forthcoming 2025).

¹⁹ *Varian Medical Systems, Inc. and Subsidiaries v. Commissioner*, 163 T.C. No. 4 (2024)

III. The Practical Impact of *Loper Bright*.

Initial reactions aside, most tax practitioners looking at *Loper Bright* do not think that it will have a significant impact on the daily practice of tax law.

- A. Uncertainty. Justice Kagen, in her dissent, expressed a concern that the return to a more Skidmore-like review would breed its own uncertainty. And, as Professor Kristin Hickman noted to Tax Notes, “the *Loper Bright* decision generates uncertainty and uncertainty breeds litigation.”²⁰
- B. Increase of Specific Grants of Authority. Given that *Loper Bright* appears to give continue to give greater deference to regulations promulgated under specific grants of Congressions authority, like those seen in Section 704(c), most observers expect to see more of them. That assumes, however, that Congress wants to have a more limited judicial review of Treasury Regulations.
- C. Impacts on Content. After *Loper Bright*, the IRS did not really foresee significant changes to the contents of the regulations it issues, with one possible exception. The issue of the specific grant of authority may be one area where *Loper Bright* may impact the actual content of regulations.²¹ For example, Treasury recently issued Proposed Regulations under Code Section 48E, a clean electricity credit, which includes a specific claim of express authority:

Section 48E(h)(4)(A) provides an express delegation of authority for the Secretary of the Treasury or her delegate (Secretary) to establish a program to allocate amounts of Capacity Limitation to applicable facilities not later than January 1, 2025, and to make such allocations.²²

- D. Reliance on Regulations. Potentially, any existing regulation would be subject to a *Loper Bright* challenge, leaving practitioners to wonder whether taxpayers can ever really rely on Treasury Regulations. “*Loper Bright* is likely to usher in a new wave of litigation and reshape the way that tax regulations and guidance are challenged.”²³ This is already apparent in some larger litigation contexts:

²⁰ Marie Sapierie, *Chevron is Dead. Long Live Skidmore and the APA?* Tax Notes (July 15, 2024), citing an interview with Kristin Hickman at the University of Minnesota Law School.

²¹ Andrew Velarde, *IRS Predicts Loper Bright Won’t Bring Reg Writing Sea Change*, Tax Notes (September 12, 2024).

²² Marie Sapierie, *The New Post-Loper Bright Authority Section in Proposed Regs*, Tax Notes (September 10, 2024) citing Department of Treasury, *Guidance on Clean Electricity Low-Income Communities Bonus Credit Amount Program*, Reg-108920-24; 89 F.R. 71193-71214; 2024-38 I.R.B. 607.

²³ Marie Sapierie, *Chevron is Dead. Long Live Skidmore and the APA?* Tax Notes (July 15, 2024).

- a. Partnership anti abuse rules under Treas. Reg. 1.701-2.²⁴
- b. A current challenge to ERISA in the form of Department of Labor Regulations on ESG and the Fiduciary Rules.²⁵
- c. Partner level withholding for a foreign hedge fund²⁶
- d. Foreign tax credit offset earnings under Section 965²⁷
- e. Various transfer pricing cases, including ones involving Facebook, Altera, and Medtronic.

Some commentators have noted that certain areas are ripe for a *Loper Bright* challenge, such as partnership audit regimes under Bipartisan Budget Act and conservation easements.

Note, however, that these tend to be high profile and expensive area where large taxpayers have significant amounts at stake – significant enough to warrant the costs of constitutional litigation. For the average taxpayer, there likely won't be enough at issue to warrant such a challenge.

- E. Timeline of New Regulations. There is some thought that *Loper Bright* might impact the timeline new regulations. Most think that it may slow down the process, mirroring what happened after the Court issued its decision in *May Foundation*.²⁸ That being said, Treasury is already notoriously slow in issuing regulations (case in point: proposed regulations implementing the donor advised fund rules of the Pension Protection Act of 2006 were finally issued in November 2023),²⁹ so it is hard to say that further delay will be all that impactful.
- F. State and Local Tax? I note with interest an October 7, 2024, piece in Tax Notes entitled “*Loper Bright* and SALT Administrative Rulemaking,” which opens as follows:

While *Loper Bright* addressed a specific provision under the federal Administrative Procedure Act (APA), the impact could be felt across states. The views of state tax practitioners generally fall into two camps: (1) *Loper Bright* should have no impact on state taxation because it applies only to the federal APA, which is not a state law; or (2) the principles of *Loper Bright* will resonate across the states, particularly with states that adopted similar deference or have state administrative provisions similar to the federal APA.

²⁴ Kristin Parillo, Tribune: *Loper Bright* Merits Review of Partnership Anti Abuse Reg, Tax Notes, (July 15, 2024).

²⁵ Evelyn Haralampu, ‘*Loper*’ Ushers in Uncertainty as Courts May Reinterpret ERISA, Bloomberg Law (September 5, 2024).

²⁶ Kristin Parillo, YA Global Pushes Tax Court to Revisit Withholding Decision, Tax Notes (July 18, 2024).

²⁷ Andrew Velarde, DOJ, FedEx Contest *Loper Bright*’s Effect on Offset Earnings Case, Tax Notes (August 6, 2024).

²⁸ Various authors, What *Loper Bright* Means for taxpayers: Treasury Regulations, pending disputes, transfer pricing, planning, and more, DLA Piper.com (July 11, 2024).

²⁹ Proposed Donor-Advised Fund Regulations, Fidelity Charitable.org, (February 23, 2024)

Practical Tax Practice After Loper Bright

Elaine Waterhouse Wilson
Professor of Law, WVU College of Law



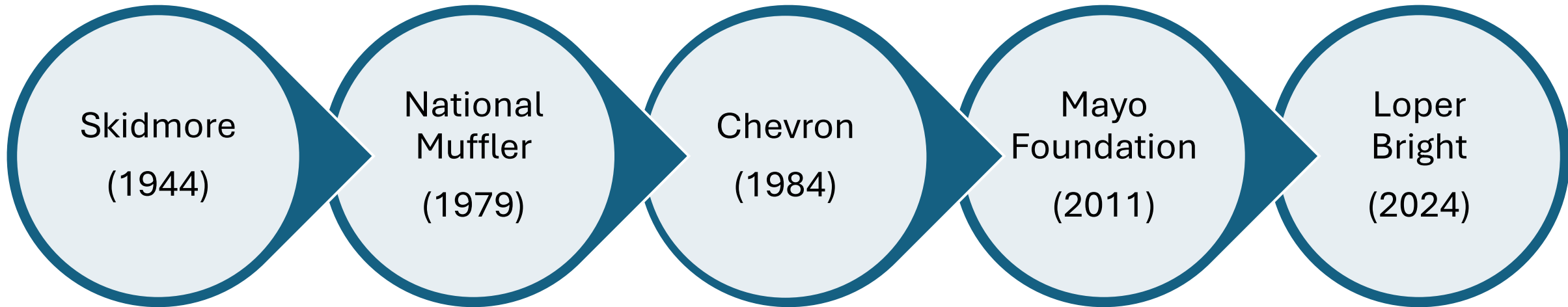
Today's Agenda

Chevron Deference: A review

What did *Loper Bright* Actually Do

What does this mean for daily practice for the average tax lawyer?

Once Upon a Time...



A Short History of Deference to Agency Interpretations

The *Chevron* Two-Step



- Has Congress directly spoken to the precise question at issue?
- Is the agency's answer based on a permissible construction of the statute

If there is an express delegation of authority, the regulations given controlling weight unless they are ***arbitrary, capricious, or manifestly contrary to the statute.***



Loper Bright

Respect not Deference

Skidmore, Reinvigorated

The Power of Specific Grants of Authority

Skidmore (1944)

- Has always been around for non-regulatory deference
- This exact quote from *Skidmore* is in *Loper Bright*
- Returning to a factors-based test for agency respect
- *National Muffler?*
- Specific Authority Grants

“The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.”

*Varian
Medical
Systems
(2024)*

varian

A Siemens Healthineers Company

First time the Tax Court invokes
Loper Bright

Practical Tax Practice Issues

Uncertainty

Grants of Authority

Content of Regulations

Timing of Regulations

Reliance

syscoTM



FedEx

alteraTM
An Intel Company

WEST VIRGINIA TAX INSTITUTE, INC.

October 28, 2024

J.E. WHITE, JR., ESQ.
JACKSON KELLY PLLC
CHARLESTON, WEST VIRGINIA

JACKSONKELLY^{PLLC}

“ESTATE PLANNING IN 2025”

- **Estate tax**
- **Gift tax**
- **Generation Skipping Transfer tax**

How much money do these taxes raise?




**In 2020 – generated
\$17.6 billion or 0.1%
of GDP**



**Republicans want to repeal and/or
minimize wealth taxes.**

**Democrats want to lower the exemption
amount and retain the wealth taxes.**

- 
- **Where have we been?**
 - **Where are we?**
 - **Where are we going?**


Where have we been?

Federal Transfer Tax System


Year	Estate Tax Exemption	Lifetime Gift Tax Exemption	GST Tax Exemption	Tax Rate
1994	\$600,000	\$600,000	\$600,000	55%
2002	\$1 million	\$1 million	\$1 million	50%
2009	\$3.5 million	\$1 million	\$3.5 million	45%
2010	Unlimited	\$1 million	Unlimited	35% gift
2011	\$5 million	\$5 million	\$5 million	35%
2013	\$5.25 million	\$5.25 million	\$5.25 million	40%
2017	\$5.49 million	\$5.49 million	\$5.49 million	40%
2018	\$11.18 million	\$11.18 million	\$11.18 million	40%
2024	\$13.61 million	\$13.61 million	\$13.61 million	40%



2018	\$11.18 million
2019	\$11.40 million
2020	\$11.58 million
2021	\$11.70 million
2022	\$12.06 million
2023	\$12.92 million
2024	\$13.61 million

- 
- In 2024, the basic exclusion amount is \$13,610,000 per person (\$10,000,000 adjusted for inflation)
 - Available during life or at death

- **Congress acts sooner**
- **Upcoming election next week**



The Wealth Transfer Tax Exemption has not been reduced since the estate tax was re-enacted in 1916, except for 2010.

Pertinent Tax Information

- **\$13,610,000 2024 estate, gift, and GST exemption**
- **\$18,000 2024 gift tax annual exclusion**
- **Top Rate- 40%**
- **Unlimited marital deduction**

Pertinent Tax Information

- **Unlimited charitable deduction**
- **Portability**
- **Step-up in basis at death**

Gross Estate

- **What is included?**

“The value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.”

-IRC 2031

Discussion of 2017 Tax Cuts and Jobs Act Sunset 2025

- **20% Qualified business income deduction
(for pass-through entities)**
- **Lower marginal income tax rates will
revert to pre-TCJA level**

Discussion of 2017 Tax Cuts and Job Act Sunset 2025

- **Standard deduction reverts**
- **State and local taxes limited SALT deduction to \$10,000**

Sunset of Tax Cuts and Job Act

- Estate tax exemption could be reduced from \$13.61 million (in 2024) to approximately \$7 million per person
- For couples, cut from \$27.22 million to approximately \$14 million

- **Effective since January 1, 2011**
- **If exemption is lowered, could place new emphasis on filing portability estate tax returns**
- **Revenue Procedure 2022-32 now permits filing for up to 5 years after death**

Special Concerns for Owners of Highly Valued Businesses

- If C corporation, 21% rate is permanent (for now)
- Will Congress keep qualified income business deduction?
- Salt work around
- Potential loss of valuation discounts

- **Connelly v. United States (June 2024)**
- **Involved a redemption agreement**
- **Life insurance included in value of company**
- **Review buy-sell agreements**

Trusts

Why do people utilize trusts?

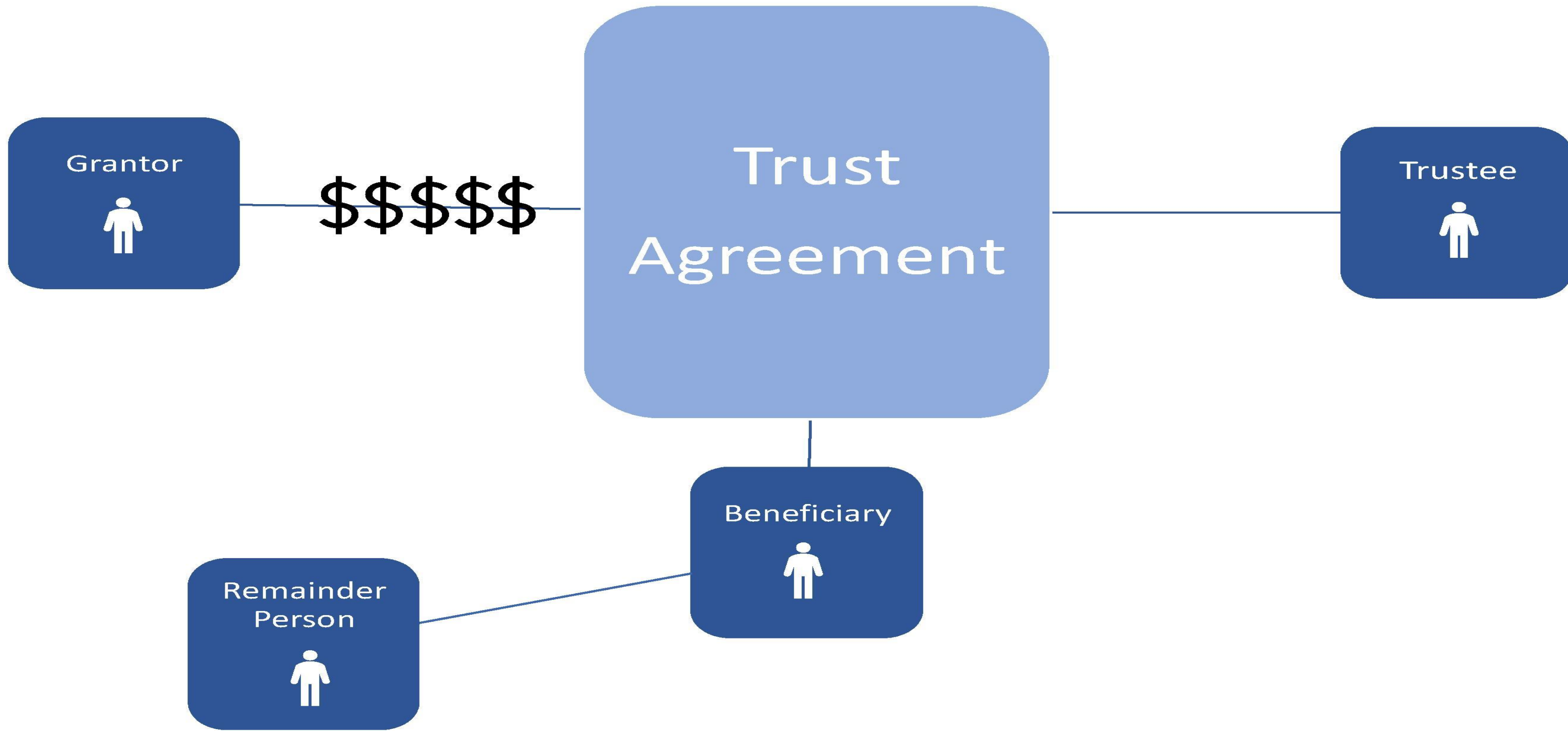
- **Creditor protection**
- **Predator protection**
- **Administration and management of assets**
- **Drug and alcohol abuse**
- **Spendthrift issues**
- **Special needs**

Trusts

Who manages a Trust?

- Trustee
 - Corporate v. Individual?
- Typical Functions
 - Administer
 - Investment
 - Distribute

Key Trust Parties



Relevant Estate Planning Considerations

- **Keep planning as flexible as possible**
- **Gifting**
- **Spousal Limited Access Trust (SLAT)**
- **Domestic Asset Protection Trust (DAPT)**
- **Hybrid DAPT**
- **Intentionally Defective Grantor Trust (IDGT)**

Gifts

- **Part with dominion and control**
- **Tax exclusive**
- **Future appreciation is removed**
- **Valuation**

Spousal Limited Access Trust

- Irrevocable trust
- Moves assets and future appreciation out of estate
- Have indirect access
- Avoid reciprocal trust doctrine
- Muddy them up if doing for couples

Domestic Asset Protection Trust

- Irrevocable Trust
- Can retain qualified interest
- Not to delay, hinder, or defraud creditors
- Qualified Affidavit
- 4 years for creditor
- Qualified trustee

Intentionally Defective Grantor Trust

- Irrevocable Trust
- Can gift or sale to it
- If sale, basically freezes estate
- Can get tax burn

- **Boost corporate tax rate to 28%**
- **Treat gifts and death as realization events**
- **Does not address estate tax exemption**
- **Modify grantor trust planning**

- We expect a very busy 2025 so begin discussions now
- Drafting, valuations, and implementation take time
- CTA filings

**The TCJA Sunset is coming
sooner than you think (inside of 15 months)**

CALL TO ACTION...
TIME to ACT is
NOW!

NOW!

QUESTIONS?

JACKSON **KELLY** PLLC



West Virginia Property Taxes

Craig Griffith
Frost Brown Todd LLP

Paul Papadopoulos
Spilman Thomas & Battle, PLLC

West Virginia Tax Institute
October 28, 2024



Constitutional Provision; Basic Calculation

- Constitutionally imposed (W. Va. Const. Art. X, § 1)
 - Most real and personal property
 - Certain exemptions are allowed
 - Property is valued “as directed by law”
 - Valuation must be “equal and uniform”
- Property tax calculation
 - Appraised value x 60% = Assessed value
 - Assessed value x Local Levy Rate = Annual property tax
 - Payable in two installments

Appraising Entities

County Assessors

Residential property;
vehicles, watercraft

Commercial property,
i.e., Business property

WV State Tax Department

Industrial property

Natural resource
property

Board of Public Works

Public utility property

Returns are filed with
the Tax Department,
which performs the
valuation

Basic Valuation Methods

Market Approach

Examine sales data and translate into an estimate of net worth

Vehicles; commercial and industrial real property; residential property

Cost Approach

Original cost is “trended up” to calculate a “replacement cost new,” then depreciated

Ex. Wood manufacturer

Original cost (2019)	\$1MM
x Trend factor	1.32
RCN	1,320,000
x Percent Good	58%
FMV/TY24	\$765,600

Commercial and industrial personal property; public utility property

Income Approach

Discount an estimate of future income into an expression of present worth

Natural resource property; public utility property

Timeline – Tax Year 2025

- July 1, 2024 – Assessment date, lien attaches to real property (Note, the timeline differs for public utility property)
- August 1, 2024 – deadline for filing oil & gas and industrial returns with Tax Commissioner (coal returns due on May 1, 2024; extension often granted)
- September 1, 2024 – deadline for filing commercial returns and individual returns (residences, vehicles)
- October 15, 2024 – Tax Commissioner must issue notices of tentative assessment to industrial property owners and natural resource owners (except oil, natural gas and managed timberland)
- November 15, 2024 – industrial and natural resource owners (except oil, natural gas and managed timberland) can request an informal review of values
- December 1, 2024 – Tax Commissioner must complete appraisals of oil, natural gas, and managed timberland property
- December 15, 2024 – Tax Commissioner must finalize values of property he or she appraises and provide to assessors

Timeline – Tax Year 2025

- January 1, 2025 – Assessors must mail notices of increased assessment to taxpayers (typically a 10% increase triggers the notice requirement)
- January 30, 2025 – Assessors must deliver land and personal property books to County Commissions
- February of 2025 – County Commissions meet as Boards of Equalization and Review
- February 20, 2025 – Deadline for filing written protest for valuation matters with Board of Equalization and Review or the West Virginia Office of Tax Appeals (
- February 28, 2025 – County Commission must rule by this date; books closed; Tax Department required to issue taxability/classification rulings

Timeline – Tax Year 2025

- March 31, 2025 – last day to file appeal with WVOTA for matters where Assessor denies petition for review or where taxpayer first has hearing with BOE. Also, approximate deadline for classification and taxability rulings from Tax Commissioner (30 days after receipt of ruling).
- April 15, 2025 – local levying bodies (county commission, board of education, municipalities) meet and set levy rates
- June 7, 2025 – Assessor provides land and personal property books – with tax calculations – to Sheriff
- July 15, 2025 – Tax tickets mailed by sheriff
- September 1, 2025 – first half of 2025 taxes payable on or before this date
- March 1, 2026- second half of 2025 taxes payable on or before this date

Property Taxes by Levying Body; Setting Levy Rates

- Fiscal year ending June 30, 2024 statewide allocation by levying body
 - State - \$9,349,365
 - County - \$591,421,097
 - School Boards - \$1,489,735,746
 - Municipalities - \$141,798,874
- Levy rate process
 - Regular levy rates – set in March and based on values in land and personal property books; finalized in April.
 - Municipalities and counties work with State Auditor – submit Levy Estimate –Budget Document
 - Board of education rate is set by WV Legislature
 - Max regular rates are set by code – 50¢/\$100 for Class I; \$1.00/\$100 for Class II; \$1.50/\$100 for Class III; and \$2.00/\$100 for Class IV.
 - Excess levy rates – imposed by referendum (vote). 60% approval for county/municipality; 50% approval for school board
 - Municipality/County – can increase share of the levying body’s maximum regular levy rate by up to 50% for up to 5 years
 - School Board- can increase share of maximum levy rate by up to 100% for up to 5 years
- Average rates in 2022
 - 0% for Class I (farm property); 1.20% for Class II; 2.20% for Class III; 2.95% for Class IV

Allocation of Property Tax Dollars - Example

- Kanawha County School Board - \$312MM budget, \$179MM from State Aid Formula, ***about \$125MM from property taxes***
 - \$259MM allocated to regular instruction
 - \$28MM allocated to special education
 - \$3.6MM allocated to school sponsored activities
 - \$3.6MM allocated to vocational education
- Kanawha County Commission - \$57MM budget, ***most revenues are from property taxes***
 - \$33MM allocated to general government (County commission, county clerk, circuit clerk, sheriff's tax office, prosecuting attorney, assessor)
 - \$18MM allocated to public safety (primarily sheriff's office, regional jail)
 - \$5.8MM to culture and recreation (library, parks and recreation)
- City of Charleston - \$107MM budget, but ***only \$17MM of revenues related to property taxes*** (almost half of revenues are from the municipal B&O tax and the User Fee)

Exemptions

Government Exemptions

Property owned by the US government; state governments; and local governments

\$144MM impact

Government Owned Waterworks and Electrical Power Systems

Waterworks and electrical systems owned by local governments and the leasehold interest in the properties

\$60MM impact

Property Used for Educational Purposes

Property belonging to colleges, public and private elementary and secondary schools

\$168MM impact

Church Property

Property used exclusively for divine worship, including the operation of pre-K school, primary school, middle school, secondary school when operated by the church

\$42MM impact

Exemptions

Charitable and Benevolent Organizations

Charity must be operated on a non-profit basis, must directly benefit society, and must be exempt from federal income tax

\$14MM impact

Nonprofits Distributing Electricity, Water, or Natural Gas or Providing Sewer Services

Must be owned by chartered nonprofit that distributes the utility services for public purposes

\$53MM impact

Nonprofit Hospitals

Primary and immediate use of the property is for charitable purposes

\$47MM impact

Exemptions

Fire Departments

Fire engines, equipment, land and building for fire house

\$8MM impact

Inventory in Transit

Tangible personal property moving in interstate commerce or consigned from another state to a warehouse in WV while in transit

\$19MM impact

Bank Deposits & Money

Intangible Assets

\$200MM impact

Exemptions: Government Owned Property

- (1) Property **belonging** to the United States, other than property permitted by the United States to be taxed under state law;
- (2) Property **belonging exclusively** to the state;
- (3) Property **belonging exclusively** to any county, district, city, village, or town in this state **and used for public purposes**;
- (4) Property located in this state **belonging** to any city, town, village, county, or any other political subdivision of another state **and used for public purposes**

W. Va. Code §11-3-9(a) (emphasis added)

- The Legislative Rules at 110 WVCSR Series 3 (1989) provide further guidance:
- **“Public”** is defined as “for the use or benefit of the people in general.” Section 2.52.
- “Property belonging exclusively to any county, district, city, village or town in this State which is **rented or leased to a private or nonpublic entity is not being used for public purposes** and therefore is subject to ad valorem property taxation.” Section 10.2.

Exemptions: Government Owned Property (cont.)

City of Clarksburg v. State Tax Commissioner and Harrison County Assessor

(Harrison County Circuit Court 2021)

Issue: For TY 2019, was the Robinson Grand Performing Arts Center owned by the City exempt from property tax?

Assessor and Tax Commissioner said Yes:

- On the assessment date (July 1) the Center was not yet open. Was still under renovation on July 1 and did not open until August (thus no “public purpose”)
- No “public purpose” as was leased to private entities (tax credit and financing arrangements)

City argued for exemption:

- City is the owner
- Property was 95% renovated on July 1
- Leases were only for tax credits/financing purposes

Circuit Court found for the City and ruled the property was exempt

Exemptions: Property Used for Divine Worship

Exempt (WV Code 11-3-9(a):

- (5) **Property used exclusively for divine worship**, or used exclusively for divine worship and the operation of a pre-K school, primary school, middle school, secondary school, daycare center, or church camp for children, which school, daycare center, or church camp is operated by the church which owns the property or is operated by another not-for-profit organization or entity;
- (6) Parsonages and the household goods and furniture pertaining thereto;

Key is use of the property:

- Property which while owned by a church is used for non-religious purposes during the week is not exempt. For example, if a church leases or rents for private use **parking spots on the church's parking lot** during the week, the church would lose the exemption which otherwise would be available if the parking lot was only used by worshippers attending church services.

Legislative Rule Section 12.8

Exemptions: Charitable Organizations

Exempt (WV Code 11-3-9(a):

- (12) Property used for charitable purposes and not held or leased out for profit;

Appalachian Emergency Medical Services v. Tax Commissioner

625 S.E. 2d 312 (W. Va. 2005)

- Taxpayer was 501(c)(3) entity (purpose of assisting emergency medical services in several WV counties)
- Owned building in Huntington and leased it to WV Emergency Medical Services Technical Support Network (also a 501(c)(3) that supports county emergency services)
- State took the position that the building was not exempt from property tax because the monthly lease payment (\$5,500) was greater than the monthly mortgage payment (\$5,100) and the building was therefore “leased out for profit.”
- Court found that the building was exempt as: the owner was a 501(c)(3) entity; the tenant was a 501(c)(3) entity; and, the rent was used to pay the mortgage and the rest was put in escrow for building maintenance

Exemptions: Charitable Organizations (cont.)

Global Capital of World Peace v. Assessor and Tax Commissioner,
2017 WL 5192491 (W. Va. 2017)

- Taxpayer was a 501(c)(3) entity which owned 355 acres with buildings which house 100 permanent residents who practiced Transcendental Meditation
- Exempt purpose was to “foster global world peace through the teaching and promotion of [Transcendental Meditation]”
- The Court held that the property was not exempt because the property was not used exclusively for charitable purposes:
 - “the property was not used for the benefit of an indefinite number of persons” and was not providing a service “to the public at large.”
 - Only single men could reside at or participate in classes at the property
 - There were significant “financial barriers” to participants given the costs of classes
 - “In essence, the property is used as a private retreat for supporters of the charity and its related corporate entity.”

Exemptions: Charitable Organizations (cont.)

Tax Commissioner v. University Healthcare Foundation,
795 S.E. 2d 67 (W. Va. 2016)

- Taxpayer was a 501(c)(3) charity
- Taxpayer owned the Cancer Treatment and Rehab Center in Martinsburg
- Some of its tenants were for profit: a doctor's office, a radiation therapy center, and a patient transport business
- A Wellness Center in the Center sold individual gym memberships
- Court denied exemption with respect to the part of the building leased to for-profit tenants or used for profit
- Court instructed that the actual use of the property was the key factor
- Lease to a for-profit tenant is not exempt despite how the rent is used by the owner

Special Valuation

Farm Real Estate

Fair value based on use as farm property and not highest and best use.

\$17MM impact

Managed Timberland

Property certified as managed timberland by Division of Forestry valued based on future income potential if used as managed timberland

\$13MM impact

Pollution Control Facilities

Salvage value treatment

Personal property designed primarily to abate or reduce air or water pollution

Determined by the West Virginia Department of Environmental Protection

\$76MM impact

Special Valuation

Owner-occupied Residential Property

Class II property owned, used and occupied exclusively for residential purposes taxed at 50% of rate of other real and personal property

\$545MM impact

Homestead Exemption

First \$20,000 of home value exempt for people 65+ or totally and permanently disabled

\$51MM impact

Qualified Capital Additions to Manufacturing Property

Salvage value treatment

Original spend must be either \$100MM or \$20MM, depending on type of facility

Additional spend of \$50MM or \$10MM, plus any spend over those amounts, subject to program

\$46MM impact

Special Valuation

Wind Power (11-6A-5a)

Wind turbines and their towers

\$6MM Impact

Certain Specialized Manufacturing Production Property (11-6E)

Molds, jigs, dies, forms, patterns, and templates

\$3MM Impact

Certain Specialized High-Technology and Wireless Technology and Wireless Technology Property (11-6J and 11-6L)

Servers directly used in high-tech and internet advertising

Wireless towers

\$210K Impact

Special Valuation

Certain Critical Materials Manufacturing Property (11-6M; Effective July 1, 2025)

Silicon and silicon carbide manufacturing equipment

Impact TBD

First Level of Appeals

- New process began in 2023
 - Office of Tax Appeals (“OTA”) option
 - Continued February Board of Equalization and Review (“BOE”) option
 - Elimination of October Board of Assessment Appeals (“BAA”) hearings
- Valuation issues
 - May appeal Assessor’s or Tax Commissioner’s ruling to BOE or OTA
 - Appeal of BOE decision must be filed with OTA
- Classification and taxability issues
 - Application first filed with county assessor
 - Taxpayer may request that question be certified to Tax Commissioner
 - Appeal of Tax Commissioner’s decision must be initiated with OTA

Office of Tax Appeals

- OTA is now the forum for most business appeals
 - Due Process - matters no longer determined by County Commissioners
 - Legal analysis by independent Administrative Law Judges
 - Consolidation of multicounty appeals in OTA, e.g., natural gas producers
- OTA Experience
 - Lengthier hearings; more robust record
 - Active participation from the adjudicative body, i.e., Judge Pollack
 - Opportunity to make legal arguments in brief prior to issuance of decision
 - Awaiting opinions in appeals of various pipeline personal property

Appellate Courts

- Circuit Court
 - No property tax appeals handled by Circuit Court beginning with tax year 2023
- Intermediate Court
 - All property tax disputes must flow through OTA, a state agency
 - Appeal from OTA must be filed with Intermediate Court of Appeals
 - Notices of appeals, petitions, documents and records are filed in accordance with rules of the Supreme Court and appeals are filed with the Supreme Court clerk
- Supreme Court
 - All Intermediate Court property tax cases may be appealed to the Supreme Court
 - Supreme Court has discretion to accept or deny appeal

Intermediate Court of Appeals Decisions

- *MarkWest Liberty Midstream & Resources L.L.C. et al. v. Lemley*, 2024 WL 4355206 (October 1, 2024)
 - Wetzel County Circuit Court granted assessor's motion to dismiss tax year 2022 matter filed with circuit court based on "lack of subject matter jurisdiction."
 - Assessor argued that matter should have been appealed to ICA, not Circuit Court, since BAA order was released on June 27, 2023
 - Intermediate Court has appellate jurisdiction over "[f]inal judgments, orders, or decisions of an agency or administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County. . . ." W. Va. Code § 51-11-4(b)(4)
 - ICA reversed and agreed with MarkWest that the "BAA is not an agency as contemplated by W. Va. Code § 51-11-4(b)(4), and, therefore, the ICA did not have jurisdiction over the appeal of the BAA Decision. [Further,] the BAA Decision was properly appealed to circuit court."

Intermediate Court of Appeals Decisions

- *EQT Production Company v. Irby*, 2023 WL 8663543 (December 15, 2023)
 - Marshall County Circuit granted the Tax Commissioner’s motion to dismiss, again based on lack of subject matter jurisdiction
 - Holding was based on EQT’s purported “lack of standing” because it was not the owner of the producing wells that were appealed to the BAA on the July 1, 2020
 - EQT purchased the wells after the assessment date, but owned the wells throughout the 2021 tax year and paid the property taxes on same
 - The ICA reversed the Circuit Court, holding that EQT was a “person claiming to be aggrieved” under the provisions of W. Va. Code § 11-3-25(a)

Burden of Proof

- Common law established a “clear and convincing evidence” standard
- Appraisal by Assessors or Tax Commissioner presumed correct – not addressed in the legislation
- New standard is “preponderance of the evidence”
 - “Proof by a preponderance of the evidence requires only that a party satisfy the court or jury by sufficient evidence that the existence of a fact is more probable or likely than its nonexistence.” *Jackson v. State Farm Mut. Auto Inc., Co.*
 - Valuation, classification or taxability questions
 - Applies regardless of whether matter is heard by Assessor, Tax Commissioner, Board of Equalization and Review, Office of Tax Appeals, Intermediate Court, or Supreme Court

thank
you



Craig Griffith

cgriffith@fbtlaw.com

304-348-2407 (office)

304-376-6526 (cell)

 **Frost
Brown Todd**^{LLC}
ATTORNEYS

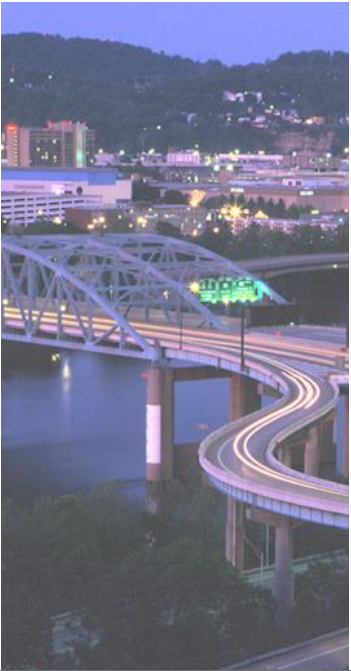
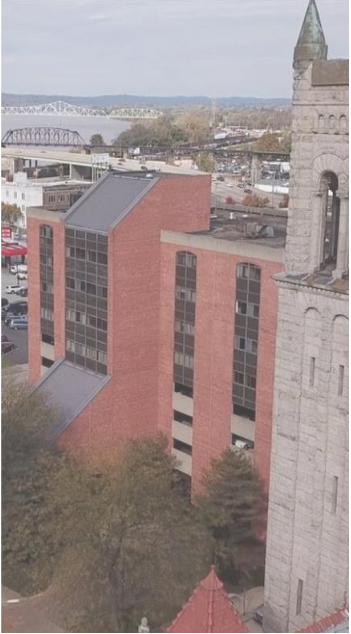


**Suttle &
Stalnaker** PLLC

Certified Public Accountants

Digital Assets

Ryan Mink, CPA
October 28, 2024



Disclaimer

Regulation is still forming for the digital asset space so the information provided may only be relevant at the time of this presentation. Additionally, the content is my interpretation and opinion and does not necessarily represent Suttle & Stalnaker's views. Finally, as always, you should confirm with your tax preparer before utilizing any guidance I may provide and nothing I say should be construed as financial or tax advice.

Agenda

Agenda

- My journey with crypto
- What is a blockchain?
- What is Bitcoin or cryptocurrency?
- Example use cases
- Types of digital assets
- Risks
- Regulatory guidance

My Journey

My Journey

- March 2021 it all started
- Client: \$1,500 per day mining Ethereum
- Coinbase and the rabbit hole
- AICPA Certification
- Home Bitcoin Mining
- Complicated taxes (I have a lot of accounts)
- Biggest Lesson: DCA (Dollar Cost Average)
- Advice: Find an expert internally or externally





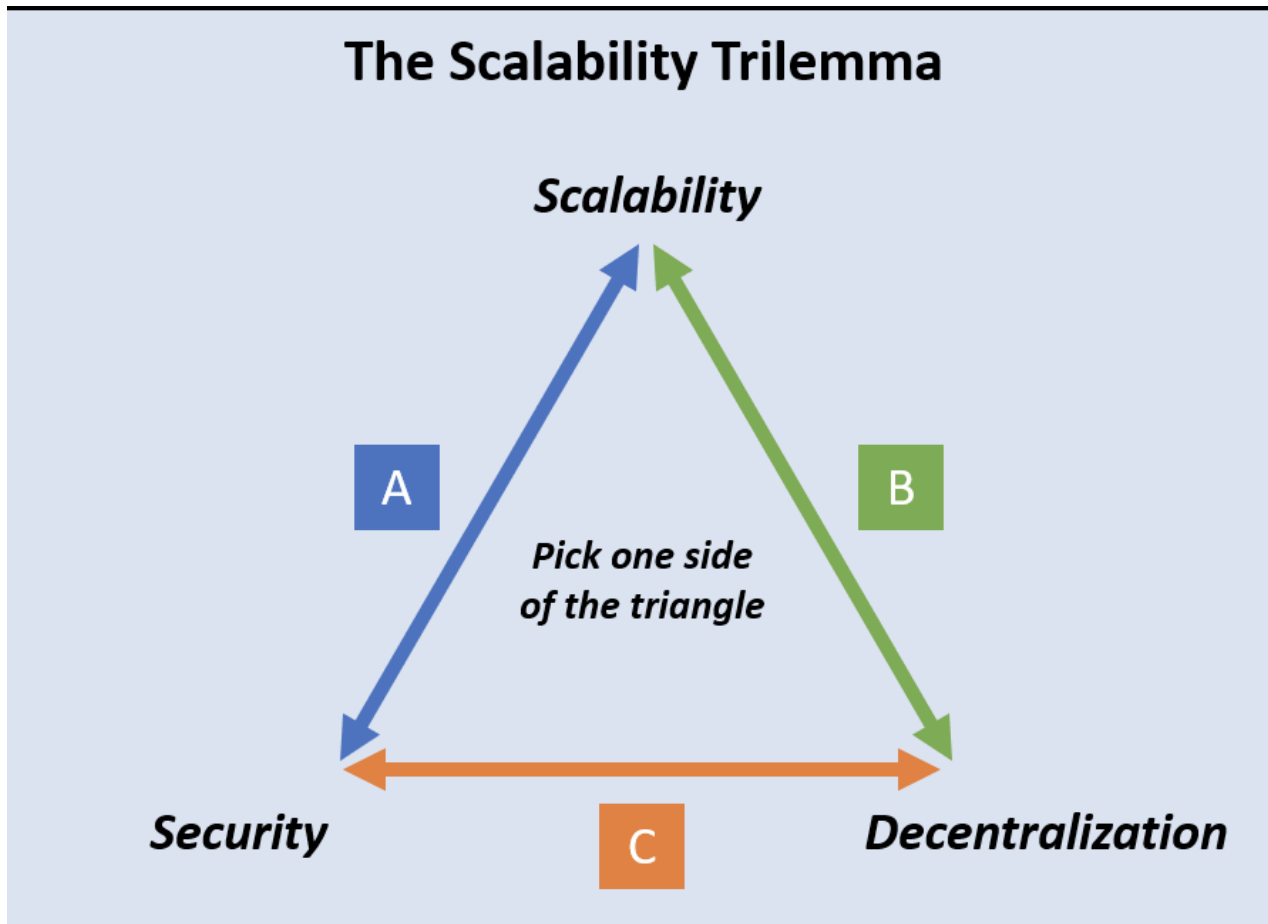
What is a Blockchain?

What is a Blockchain?

- Currently over 1,000 blockchains
- Four main types:
 - Public (what we'll focus on today)
 - Private (single company/organization)
 - Hybrid (think medical records where some people need access to all info where others should be limited)
 - Consortium (multiple companies e.g. supply chain)

What is a Blockchain?

Blockchain Trilemma:



What is a Blockchain?

- Thanks to Jonathan Aufray, CEO of Growth Hackers, for posting this video.
- Let's have a 10 year old explain it to us...
- https://www.linkedin.com/posts/jonathanaufray_blockchain-crypto-cryptocurrencies-activity-6602552525080018944-MnrC?utm_source=linkedin_share&utm_medium=member_desktop_web

What is a Blockchain?

- Current System:
 - Private centralized ledgers
 - Slow
 - Indirect (middle man needed)
 - High propensity for fraud
 - Multiple ledgers (banks, companies, governments, etc...)
 - Data can be changed, hidden, and/or lost

What is a Blockchain?

- Distributed Ledger Technology (Blockchain):
 - Data is processed, validated, and/or approved by Miners (Proof of Work e.g. Bitcoin) or Stakers (Proof of Stake e.g. Solana).
 - There are others like Proof of Location (Helium)
 - Miners/Stakers are located all over the world which prevents the network from going down and/or global events from disrupting its operation (war, economic collapse, natural disaster, power outage, government)

What is a Blockchain?

- Distributed Ledger Technology (Blockchain):
 - Consensus among network miners/stakers and nodes (where data is housed) prevents fraudulent or fake transactions
 - Data is posted in “blocks” in chronological order
 - FYI - Without Bitcoin miners there is no Bitcoin network
 - Decentralized global ledger open to everyone

What is a Blockchain?

- Distributed Ledger Technology (Blockchain):
 - Ledger is immutable (unchangeable) and open for everyone to review, audit, track, etc... via a block explorer (e.g. etherscan.io) or other tools
 - <https://mempool.space/>
 - <https://btcscan.org/>

What is Bitcoin or Cryptocurrency?

What is Bitcoin or Cryptocurrency?

- Peter Van Valkenburgh, the director of Research at Coin Center, gave a testimony before congress to explain what Bitcoin is.
- Conversation is Bitcoin specific but applies to the broader digital asset space.
- <https://www.youtube.com/watch?v=HxzKs-Jd0H4>

What is Bitcoin or Cryptocurrency?

- Public Blockchain Network
 - Send/receive value from anyone in the world using nothing more than a computer (or smartphone) and an internet connection
 - Anyone can set up a wallet (account) for free to send/receive payments digitally
 - No need to trust middleman (bank, government, other centralized body)

What is Bitcoin or Cryptocurrency?

- Public Digital Payments Infrastructure
 - Public Information Infrastructure = Internet
 - No public payment infrastructure other than cash which has to occur in person and is limited to each country
 - For money to travel around the globe you currently have to use a bank or multiple banks. Not with Bitcoin/Crypto.
 - Transactions occur almost instantly for a negligible fee between two parties.

What is Bitcoin or Cryptocurrency?



What if we apply these numbers to something smaller we can relate to? Like a \$300.54 bill we need to pay? Instead of 2-3% going to Visa or Mastercard, a fraction of a penny is paid out to the miner processing the transaction.

Use Cases

Use Cases

1. Venezuelan student abroad returning home*
2. Refugee trying to escape rampant inflation or government collapse* (Does this sound familiar?)
3. Family traveling abroad or living in home country being supported by someone in U.S.

Special thanks to Rob Leonhard for these examples from his whitepaper (link at end of slides)

Types of Digital Assets

Types of Digital Assets

- Currency or Cryptocurrency – 20,000+
 - BTC (Bitcoin), ETH (Ethereum), AVAX (Avalanche), SOL (Solana), ADA (Cardano), FTM (Fantom), BNB (Binance), CRO (Cronos)
 - These also happen to be the native tokens of their own blockchains and are generally referred to as Coins
 - Small fee is paid to transact on each chain. This fee is referred to as gas and is paid in the native coin. ETH is known for having high gas fees while FTM and others are known to have much smaller fees.

Types of Digital Assets

- Currency or Cryptocurrency
 - Some chains are more decentralized than others (BTC, ETH) while newer chains are more centralized (FTM, AVAX, CRO, BNB) which helps increase transaction speed and lower fees.
 - Blockchain Trilemma is constantly in play
 - These Coins act more like currency as they are used across the entire blockchain's eco system.
 - Note they are not deemed currency by the IRS and therefore treatment similar to foreign currency conversion losses are not allowed

Types of Digital Assets

- Currency or Cryptocurrency
 - UNI (Uniswap), CHAIN (ChainLink), XLM (Stellar Lumen), XMR (Monero)
 - These are tokens build on top of a chain. Their smart contracts and protocols run on ETH, FTM, AVAX, etc... (sometimes multiple chains)
 - Tokens are generally used to access and/or transact within a specific protocol or smart contract.

Types of Digital Assets

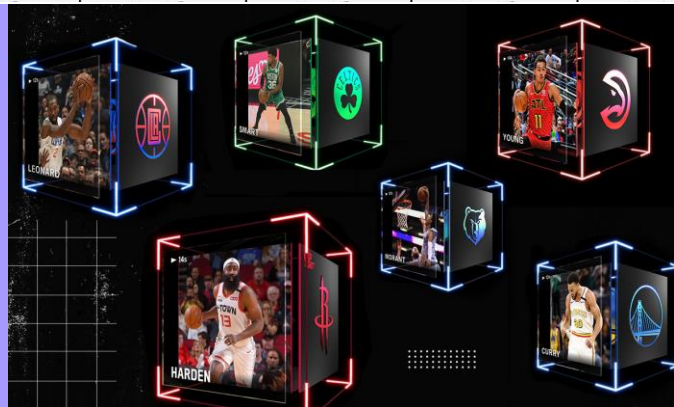
- Currency or Cryptocurrency
 - Both Coins and Tokens can be swapped/traded for each other on a DEX (Decentralized Exchange) or CEX (Centralized Exchange). 500+
 - Bridges allow you to swap/trade coins/tokens between blockchains (e.g. ETH to FTM)
 - You can serve as a liquidity provider on a DEX to help facilitate the AMM (Automated Market Maker) and receive rewards.

Types of Digital Assets

- NFTs or Non-Fungible Tokens



Jamie Lester



OWN THE PLAYS

Types of Digital Assets

- NFTs or Non-Fungible Tokens
 - Fungible: able to replace or be replaced by another identical item; mutually interchangeable.
 - Cryptocurrency is Fungible. One BTC is the same as the next BTC
 - A US Dollar is Fungible. One dollar is the same as another dollar.

Types of Digital Assets

- NFTs or Non-Fungible Tokens
 - NFTs are unique digital representations of tangible or intangible items like art, collectibles, music, avatars, etc...
 - NFTs are one off assets owned by a single wallet (person, company, etc...)
 - No one NFT is exactly the same as the other as they are assigned specific IDs and ownership is confirmed via the blockchain

Types of Digital Assets

- NFTs or Non-Fungible Tokens
 - What useful things IRL (In Real Life) would be similar to this?
 - Marriage license
 - Real Estate Deed
 - Drivers license or other ID
 - Concert/event ticket or Season Pass
 - Ownership rights
 - Film, video, music, art = royalty rights

Types of Digital Assets

- NFTs or Non-Fungible Tokens
 - Can be traded for each other similar to cryptocurrency
 - Can be purchased with fiat (US Dollars, etc...) or crypto
 - Can be put up as collateral for loans
- If you're interested in a WV Based NFT Project check out: <https://www.1863nft.com/>

Types of Digital Assets

- DeFi or Decentralized Finance
 - Financial services that use smart contracts to recreate CeFi (Centralized Finance) which is what we use IRL currently.
 - Essentially anything you can do in CeFi you can do in DeFi:
 - Buy, sell, trade, lend, leverage, transfer/track ownership, mortgage, collateralize, savings with interest

Types of Digital Assets

- DeFi or Decentralized Finance
 - Benefit is no middleman and minimal transaction costs
 - Lack of guidance from middleman would probably be seen as a negative

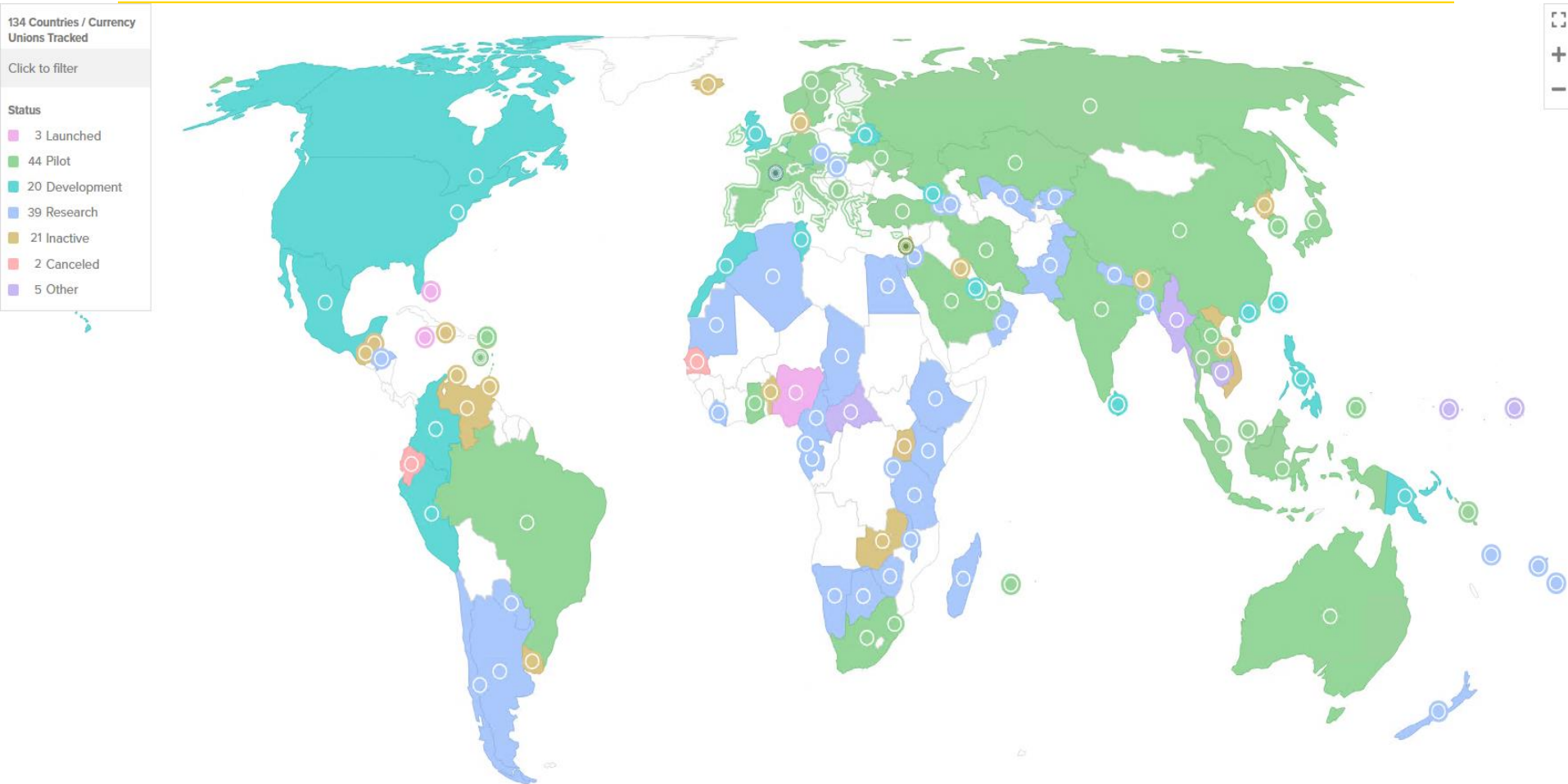
Types of Digital Assets

- CBDC or Central Bank Digital Currency
 - 105 countries, representing 95%+ of global GDP are in the process of developing a CBDC, including the USA
 - 3 countries have fully launched a digital currency.
 - Bahamas = Sand Dollar (first in the world)
 - Jamaica = Jam-Dex
 - Nigeria = e-Naira (goal to boost financial inclusion from 64% to 95%)

Types of Digital Assets

- CBDC or Central Bank Digital Currency
 - Some countries are choosing to adopt BTC as legal tender rather than create their own.
 - El Salvador was the first to adopt BTC as legal tender
 - Central African Republic was the second
 - BTC is used just like to countries native currency to purchase goods or services and to pay taxes

Types of Digital Assets



<https://www.atlanticcouncil.org/cbdctracker/>

Types of Digital Assets

- Other?
 - As you will quickly find, in the digital assets space things change daily...
- Decentralized Autonomous Organization (DAO)
 - Legal entity type in TN and WY
 - Tax reporting complications

Risks

Risks

- Complex to setup – especially decentralized
- Vulnerable to hackers or bad actors
 - Not the blockchain itself but the protocols or projects built on it (also centralized entities...FTX)
- Market Volatility – big swings unless stable coin

Risks

- Illegal Activity – some anonymity
 - Everything from a wallet address can be tracked
- Some of these reasons are also why adoption has been slow

Regulatory Guidance

<https://www.irs.gov/businesses/small-businesses-self-employed/digital-assets>

Regulatory Guidance

- Tax - IRS Notice 2014-21
 - Federal tax treats virtual currency like property
 - Taxpayers who receive virtual currency as payment for goods or services must report it
 - Generally these gains/losses are treated as capital. LT vs. ST is based on holding period just like stock.

Regulatory Guidance

- Tax - IRS Notice 2014-21
 - When taxpayer “mines” virtual currency, the FMV as of the date of receipt is included in gross income.
 - Mining as a trade or business is subject to self-employment tax
 - Virtual currency received by independent contractor for services is considered self-employment income.

Regulatory Guidance

- Tax - IRS Notice 2014-21
 - Virtual currency paid by an employer as remuneration for services constitutes wages and is subject to FICA, FUTA, etc.... Includable amount is FMV on date of receipt.
 - Virtual currency payments over \$600 are subject to information reporting on 1099
 - Merchant settlements made using virtual currency are reportable on 1099-K

Regulatory Guidance

- Tax
 - Transfers between personal wallets are not taxable transactions. Additionally, gas fees are not deductible for individuals.
 - Charitable donation – Since it's property a valuation may be needed
 - FIFO, LIFO, or HIFO (Specific Identification) are options for reporting taxable transactions. Once you pick one you'll probably need to stick with it.

Regulatory Guidance

■ Tax

- If you pay someone for good or service with crypto you will have gain/loss
- IRS Q&A with 46 questions (link at end)
- May receive 1099 from CEX. May not be correct...
 - New 1099-DA reporting requirement start in 2025. DEX is not included for now.
- You need to report all activity whether centralized or decentralized

Regulatory Guidance

■ Tax

- Question on Page 1 of 1040. If only purchases and no sales, trades, swaps, etc... there is nothing to report.
- CEX vs. DEX – there is a big difference in information available and the level of effort needed to aggregate the data
- Will need access to a tool like: CoinTracker, Koinly, TaxBit, Ledgible, Lukka (see next slide)

Regulatory Guidance

Summary

Cost Basis Method: **HIFO**

Data source	Long-term	Short-term	Total Gain/Loss
Coinbase	None	None	None
! Not Available	! None	! \$90,411.56	! \$90,411.56
Total	None	\$90,411.56	\$90,411.56

Always ask more questions and reach out to an expert if you are unsure. This client “only received distributions” from their company and we actually found 180+ transactions between Coinbase and a Cold Wallet. We had to utilize Koinly to determine gain/loss which saved significant time from a manual reconciliation.

71	12/4/23, 5:00:29 AM	7,000,000,000	ADA		ADA	0,167525	ADA			74827ff3e Sent Funds
72	12/8/23, 2:23:37 AM		ADA	60,075,760,000	ADA	0,000000	ADA		5 months of Ta	2d959ec9: Received Funds
73	12/8/23, 2:27:56 AM	50,060,818,039	ADA		ADA	0,182221	ADA			943b7ab5 Sent Funds - Withdrawal
74	1/5/23, 6:44:52 AM		ADA	26,880,004	ADA	0	ADA	reward	reward - epoch: earned: 384 - spendable: 386	
75	1/10/23, 6:44:52 AM		ADA	29,387,955	ADA	0	ADA	reward	reward - epoch: earned: 385 - spendable: 387	
76	1/15/23, 6:44:52 AM		ADA	31,164,332	ADA	0	ADA	reward	reward - epoch: earned: 386 - spendable: 388	

Regulatory Guidance

- Final Regulations 2024-07-09 – Gross proceeds and basis reporting by brokers and determination of amount realized and basis for digital asset transactions
- Revenue Procedure 2024-28 - Guidance to allocate basis in digital assets to wallets or accounts as of January 1, 2025
- Notice 2024-57 – Broker reporting and penalty relief for certain digital asset transactions

Regulatory Guidance

- Notice 2024-56 - Transitional relief for information reporting and backup withholding on digital assets by brokers
- Revenue Ruling 2023-14 – Taxability of staking income
- Revenue Ruling 2019-24 – Tax implications of a hard fork
- Notice 2023-34 – Modifies Notice 2014-21 background section to remove the statement that virtual currency doesn't have legal tender status and to make other changes
- Notice 2023-27 – Treatment of certain NFT as collectibles
- Notice 2014-21 – Tax treatment of transactions using convertible virtual currencies

Regulatory Guidance

- Chief Counsel Advice (CCA) 202316008 – Individual tax consequences when holding a cryptocurrency native to a blockchain distributed ledger that has a protocol upgrade
- Chief Counsel Advice (CCA) 202035011 – Tax consequences of receiving convertible virtual currency as payment for performing microtasks through a crowdsourcing platform
- Chief Counsel Advice (CCA) 202114020 – Receipt of Bitcoin Cash as a result of the hard fork
- Chief Counsel Advice (CCA) 202124008 – IRC Section 1031 doesn't apply to exchanges of Bitcoin for Ether, Bitcoin for Litecoin, or Ether for Litecoin

Regulatory Guidance

- Chief Counsel Advice (CCA) 202302011 – Applicability of IRC section 165 to cryptocurrency that has declined in value
- **Chief Counsel Advice (CCA) 202302012 – Qualified appraisal requirement for charitable contributions of cryptocurrency**
- Private Letter Ruling 202019028 – Certain issues about the tax-exempt status of entities in the digital asset industry
- FinCEN Notice 2020-2 – Report of Foreign Bank and Financial Accounts (FBAR) reporting requirements related to virtual currency

Questions?



Contact me

Ryan Mink, CPA

Member

Email: rmink@suttlecpas.com

Phone: 303-554-3371

Office: Morgantown &
Huntington

Twitter, Discord, Telegram:
[@WVCryptoCPA](https://twitter.com/WVCryptoCPA)

Blockchain
Fundamentals for
Accounting and
Finance Professionals



Huntington Office

501 5th Avenue
Suite 1

Huntington, WV 25701

Phone 304-525-0301

Fax 304-522-1569

Charleston Office

1411 Virginia Street East
Suite 100

Charleston, WV 25301

Phone 304-343-4126

Toll Free 1-800-788-3844

Fax 304-343-8008

Parkersburg Office

200 Star Avenue
Suite 220

Parkersburg, WV 26101

Phone 304-485-6584

Fax 304-485-0971

Morgantown Office

453 Suncrest Towne
Centre Suite 201

Morgantown, WV 26505

Phone 304-554-3371

Fax 304-554-3410

Thank you

Links

- <https://coinmarketcap.com/>
- <https://www.coindesk.com/>
- <https://gilded.finance/>
- <https://ledgible.io/>
- <https://taxbit.com/>
- <https://lukka.tech/>
- <https://koinly.io/>
- <https://www.cointracker.io/>
- <https://etherscan.io/> - Note: There will be a separate block explorer for each blockchain this is for Ethereum
- <https://earthweb.com/how-many-blockchains-are-there/>
- <https://static1.squarespace.com/static/5de588aa3e9c044c1ad8cb59/t/62a0cee064cb4b79ded25894/1654705890141/Bitcoin+User+Adoption+Report.pdf>
- Decentralized Finance on the Ethereum Blockchain by Rob Leonhard:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3359732
- Central Bank Digital Currency Tracker: <https://www.atlanticcouncil.org/cbdctracker/>
- Banking on Bitcoin (Documentary available on YouTube)

Links

- IRS FAQ on Virtual Currency Transactions: <https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions>
- IRS Notice 2014-21: https://www.irs.gov/irb/2014-16_IRB#NOT-2014-21
- IRS Revenue Ruling 2019-24: <https://www.irs.gov/pub/irs-drop/rr-19-24.pdf>
- FIN-2013-G001: <https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf>
- Bitcoin Whitepaper by Satoshi Nakamoto: <https://bitcoin.org/bitcoin.pdf>

WEST VIRGINIA TAX DIVISION



West Virginia Tax Institute

October 27-29, 2024
Pipestem Resort State Park

Before we get started

This presentation is meant to be a source of general information and not as a substitute for tax laws, rules, or regulations and may not be relied upon as legal or tax advice or to support specific instances not addressed.

The material presented may contain simplified explanations of potentially complex legal and tax concepts so as to apply generally across broad areas of tax practice, both legal and accounting, and is intended for general overview and application.

Individual comments by presenters are meant to be illustrative in nature and are not intended as official Tax Division policy.

More Tax Cuts – Admin. Notice and SB 2033

- Reduction in tax rates for TY 2025. Ignore the Notice. 4% plus 2% equals a 5.92% cut from 2024 rates.
- New withholding tables to be issued by December 1
- Maintains trigger in the enactment to allow for eventual full reduction of the income tax

Improving Tax Administration with better Customer Service

- Taxpayer Services, Education, etc.
- Municipal Sales Tax Administration
- Hemp/Kratom/Vape Enforcement
- Property Tax Adjustment Credits

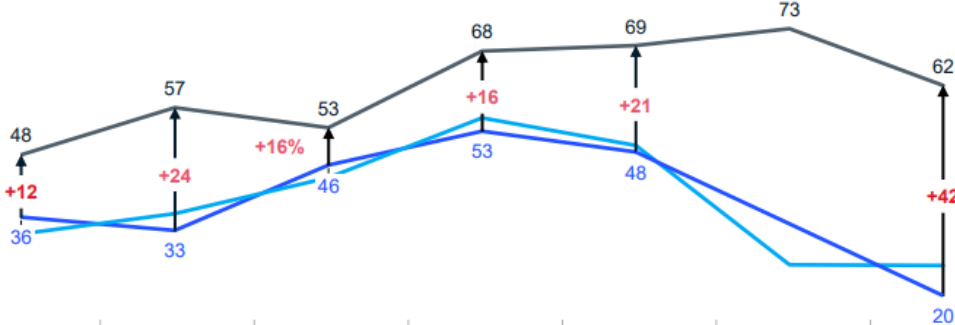
Improving Tax Administration with better Customer Service

McKinsey Survey:

WV tax journey benchmarked to other states

% of customers who are satisfied agree¹

— West Virginia — Top-performing state² — Nation-wide average



	Learn	Prepare & file	Check	Confirm	Pay	Appeal ³	Compliance
	Finding an answer to a question about tax rules or how to file	Explore options and prep and file your returns	Check status of refund or account	Receive confirmation of tax filing	Make a payment or receive a refund	Appeal a decision	Fix an error or respond to a notice
Relative importance of journey to overall satisfaction							
WV (all)	12%	13%	20%	13%	40%	N/A ³	1%
WV (<25 age)	39%	18%	21%	6%	6%	N/A ³	5%

Taxpayer Services – Public Education

- Participated in CPA roundtables
- Educated Volunteer Income Tax Assistance (VITA) tax preparers
- Assisted WV Alcohol Beverage Control Administration
- Streamlined processes with the Department of Motor Vehicles
- Engaged with the Small Business Development Center
- Continued partnership with the Secretary of State
- Multi-agency training program for Hemp/Kratom
- Veterans Tax Credits Conference the Veterans Administration
- Website Development and TSD improvement

Taxpayer Advocate

Have questions on the Office of the Taxpayer Advocate?

- Contact our Advocate at taxpayeradvocate@wv.gov.

Want to schedule a Taxpayer Service Representative for a CPA Round Table discussion?

- Contact Taxpayer Services Director Travis Payne at travis.l.payne@wv.gov.



TSD 4

Taxpayer Bill of Rights

This publication outlines some of your most important rights as a West Virginia taxpayer when dealing with the West Virginia State Tax Division on state tax matters. This publication is not intended to replace provisions in the West Virginia Code, regulations or other legal precedents. It does not address local taxation or property tax issues.

The Right to Quality Service

Taxpayers have the right to be treated with respect when interacting with the West Virginia Tax Division. The Tax Division's goal is to respond to taxpayer questions, concerns, and complaints as quickly and accurately as possible. If you believe a Tax Division employee has not treated you in a professional, fair, and courteous manner, please request to speak to a supervisor. If the supervisor is not able to resolve the matter, you should write to the Executive Office of the Tax Commissioner at: P.O. Box 11771, Charleston, WV 25339-1771.

The Right to Privacy and Confidentiality

Taxpayers have the right to have their tax returns and other information kept secure and confidential. The WV Tax Division will not disclose taxpayer information unless authorized by the taxpayer or by law. Taxpayers have the right to expect that any State tax inquiry, examination, or enforcement action will comply with State tax laws and be no more intrusive than necessary.

The Right to Pay No More Than the Correct Amount of Tax

Taxpayers have the right to pay no more than the amount of tax due, including interest and penalties, in accordance with the State's tax laws.

The Right to Timely Assessment

Taxpayers have the right to know the amount of time that they have to challenge their tax liabilities or proposed tax liabilities. Taxpayers have the right to know the amount of time the Division has to audit, assess, or collect on a tax debt. Taxpayers have the right to know when the Division has completed an audit.

The Right to Representation and Be Heard

Taxpayers have the right to retain an authorized representative, such as a CPA or an attorney, to represent them. Taxpayers also have the right to have their issue independently reviewed by a Taxpayer Advocate.

The Right to a Fair and Just Tax System

Taxpayers have the right to expect that the State's tax system will apply tax laws equitably and consistently. Taxpayers have the right to receive assistance from the West Virginia Taxpayer Advocate if the State has not resolved their tax issues properly or timely through the normal channels.

If you believe you need the help of a Taxpayer Advocate, you can apply online at mytax.wvtax.gov.

Taxpayer Services – Call and email experience

- Received nearly 189,716 calls into our main Taxpayer Assistance Hotline during the last 12-month period.
- Responded to 13,647 emails through our Tax Help and My Taxes email boxes.
- Enhanced the call experience by revamping the menus and adding specific messages under each selection to provide further clarification.
- Integrated our Property Tax into our main hotline to provide a single point of contact for all taxes administered and/or valued by the Tax Division.

Taxpayer Services – In person Experience

- Assisted 12,287 Walk-in customers across 7 locations throughout the state.
- Added two kiosks in our Taxpayer Engagement Center which has allowed us to provide contactless return filing, education, and expanded our accepted payment methods by enabling taxpayers to make credit card payments.
- Installed drop boxes across all our locations to provide a safe and secure way to drop off tax returns and payments without having to see a Representative.

Taxpayer Services – Internal Staff Development

- Created a new Professional Organizational Development section (training team) to ensure all new employees coming into the Tax Division are exposed to the mission of the Governor and how the Tax Division's mission fits into that role.
- Tax Audit Clerk Trainees undergo a six-month, team-centered training that covers various tax types.
- All employees will have the same level of advanced training.
- All employees will have access to updated training materials.
- Sharing tax knowledge with all sections of the Tax Division to ensure there is a basic understanding of the tax types.

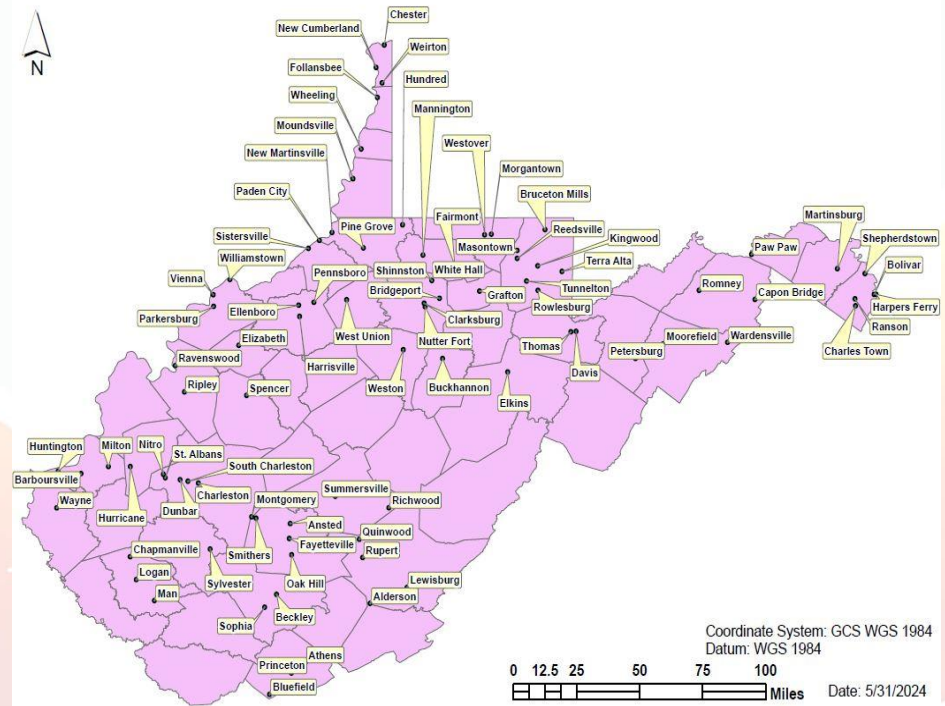
Improving Tax Administration with better tools – MVP (Modernized eFile Vendor Portal)

Modernized eFile Vendor Portal (MVP) meant to provide the software vendors an interface to communicate with WV Tax Division for Income Tax eFile and Paper filing. It would also provide the Tax Division a way to more easily track and report on the form supports and approvals.

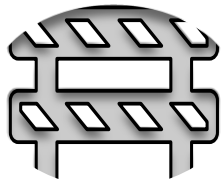
Improving Tax Administration with better tools – Municipality Maps

- There are now 87 municipal jurisdictions that impose sales tax.
- We are having conversations regularly with new municipalities about imposing the tax.
- There are 5 county economic opportunity districts and there is 1 municipal economic opportunity district.

Enhancing Boundary File Creation and Mapping Process



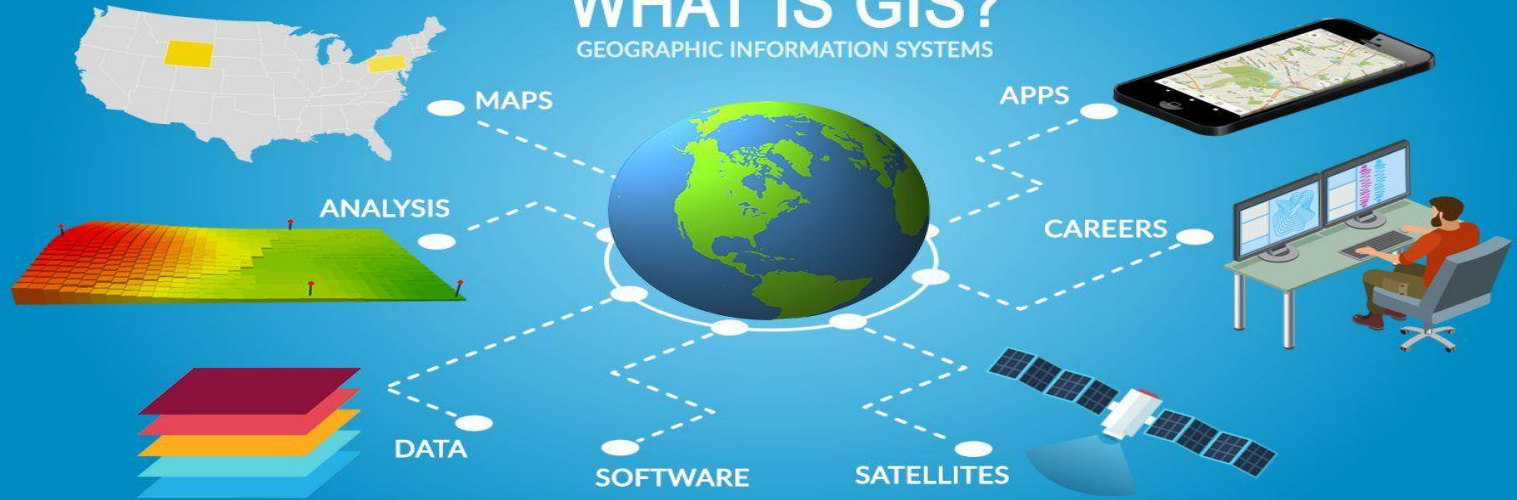
Current Boundary Process Obstacles



- Obtaining +4 extensions from the post office
- Limited search capability with Melissa Data
- Not being able to include +4 extensions that run inside and outside of municipal boundary

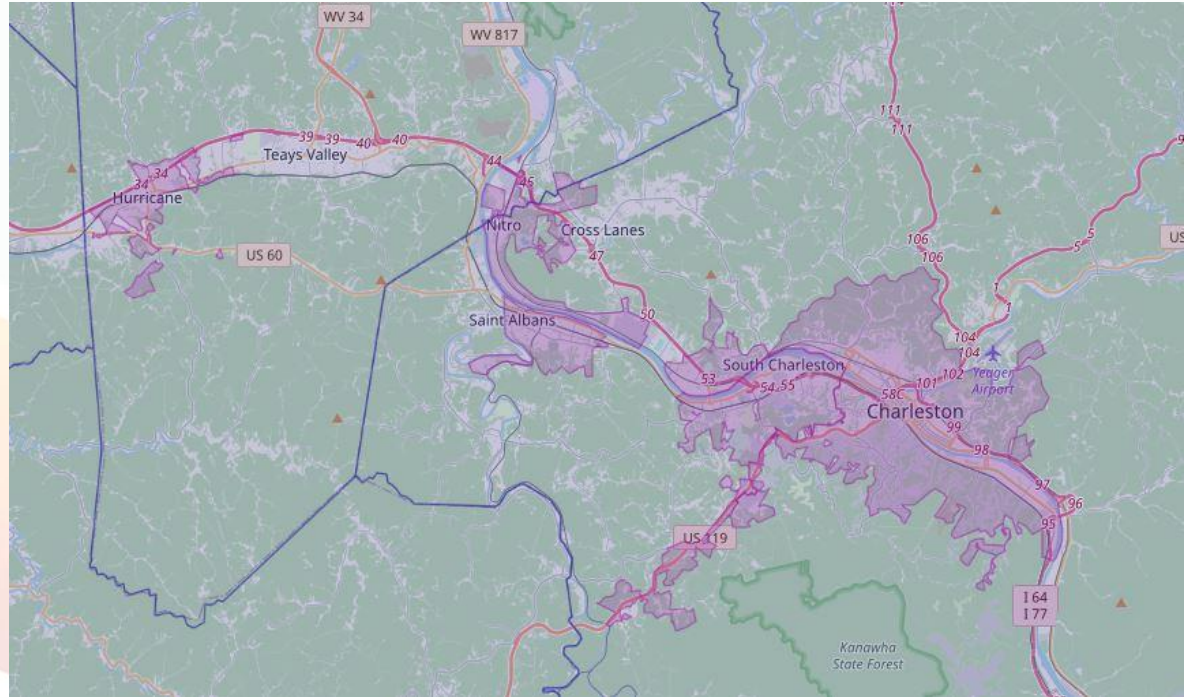
WHAT IS GIS?

GEOGRAPHIC INFORMATION SYSTEMS



Geographic Information System Mapping

- Computer system that stores, analyzes, and displays information on a map
- A GIS mapping system is a framework for gathering, managing, and analyzing geographic data. It integrates various data formats, allowing users to visualize, interpret, and understand patterns and relationships in geographic context.
- Information shown on the map includes streets, buildings, parks, etc.
- Provides a rate lookup at various levels (municipal and street)



GIS Municipality Tax Collection



GIS helps map sales tax districts, allowing businesses to understand which tax rates apply to specific locations.



Assist in ensuring compliance with local sales tax regulations by mapping where sales occur and corresponding tax obligations.



Reduces errors in tax calculations.

Hemp/Kratom/Vape Compliance before Enforcement

- Education on the Front End
- Warnings and Correction of Issues
- Enforcement of WV Code

Hemp/Kratom/Vape Compliance before Enforcement

- In-Person Visit to Retail Locations (the store) and conduct routine inspections.
- Outline information on inspection report and provide a copy of the report to a responsible person on duty at the time of the inspection.
- Issue Warnings to allow for correction of errors.

Hemp/Kratom/Vape Compliance before Enforcement

Improper or Incomplete Business Registration Certificates to Operate in WV:

- Missing Tobacco Endorsement
- Missing Drug Paraphernalia Endorsement
- Missing Hemp, Kratom and THC Tax Account (HKT)

Hemp/Kratom/Vape Compliance before Enforcement

Failure or Oversight to Pay Excise Taxes on Required Products:

- Other Tobacco Products (Snuff, Skoal, Chew, Cigars, Cigarillos, etc.)
- E-Cigarette / Vape Liquid and Disposable Devices (Nicotine)
- E-Cigarette / Vape Liquid and Disposable Devices (No-Nicotine / HKT Products)

Hemp/Kratom/Vape Compliance before Enforcement

Cigarettes:

- Name and address of the seller
- Name and address of the purchaser
- Point of Delivery
- Date
- Quantity and price of each Tobacco product
- Amount of tax listed on a line item or a statement that WV Tobacco Excise Tax is included in the price
- The invoice must be identifiable by a unique serial number

Cigarette Packs MUST be Stamped with a WV Tobacco Tax Stamp.

Hemp/Kratom/Vape Compliance before Enforcement

Vape/E-liquid:

- The number of Cartridges, apparatus, containers, or other devices
- The Quantity of ML of each item listed above
- If sold out of cartridge or other device or container, the total quantity of ML of Vape/E liquid must be listed
- Wholesale price of the Vape/E liquid products

Hemp/Kratom/Vape Compliance before Enforcement

Process Begins with Education and Information:

- Personal Visits
- TSDs – Literature

Formal Written Warnings Typically Issued:

- Tax Type Accounts Missing
- Missing Endorsements
- Failure to Maintain Records
- Failure to Pay Excise Tax

Hemp/Kratom/Vape Compliance before Enforcement

Excise Tax Issues handled through Seizure of Contraband Product.

- Taxpayer given opportunity to cure the default and get their product back.

Business License Issues handled through Misdemeanor Citation or Criminal Complaint.

- Due Process and Adjudication through Magistrate Court System.

QUESTIONS?

Matthew, R. Irby, Esq.
Tax.Commissioner@wv.gov

W E S T V I R G I N I A



DEPARTMENT OF REVENUE

WV State Budget Issues and Outlook

DEPUTY REVENUE SECRETARY MARK B. MUCHOW

West Virginia Tax Institute

October 29, 2024

Secretary **Larry Pack**

Return to Budgetary Balance

- Economy: Slower Growth with Inflation Trending Lower
 - Federal Reserve Board lowers interest rates over next 18 months
 - Natural gas prices bottom out with some increase expected in 2025
 - Natural gas production rising more slowly; coal production decline slows in 2025
 - 12-month trailing trend on foreign trade generally stable for manufacturing
 - WV electric power generation more stable in 2024 and 2025
 - Employment growth slowing after period of growth above initial expectations
 - Unemployment rate remains near historical lows with some increase in participation
- Lower Energy Prices & Personal Income Tax Cuts Reduce Tax Revenues
 - More funds in Taxpayer pockets [lower natural gas royalty income]
 - FY2024 revenue surplus of \$590 million reduced to more neutral levels by FY2025
 - Cumulative reduction in personal income tax rates of nearly 26% by TY2025
- High Volatility in General Revenue Fund collection patterns
 - GRF growth: 11.0% in FY2021; 18.1 in FY2022; 10.1% in FY2023; **-11.9%** in FY2024
 - Revenues in FY2025 **-7.8%** through first quarter of FY2025; **-7.8%** Estimate in FY2025

FY2024 General Revenue Fund Performance

FY2023-2024 General Revenue Fund

COMPONENT	\$ Millions	\$ Millions	\$ Millions	\$ Millions		\$ Millions	
	FY23-24 REV ESTIMATE	ACTUAL FY23-24	DIFFERENCE	ACTUAL FY22-23	CHANGE PERCENT	FY23 to FY24 CHANGE	FY24 Share
Consumer Sales Tax	\$ 1,779.700	\$ 1,816.544	\$ 36.844	\$ 1,750.434	3.8%	\$ 66.111	31.8%
Personal Income Tax	\$ 2,054.000	\$ 2,239.859	\$ 185.859	\$ 2,663.568	-15.9%	\$ (423.709)	39.2%
Business & Occupation Tax	\$ 110.000	\$ 126.751	\$ 16.751	\$ 116.747	8.6%	\$ 10.004	2.2%
Severance Tax	\$ 343.000	\$ 368.874	\$ 25.874	\$ 946.486	-61.0%	\$ (577.612)	6.5%
Corporate Taxes	\$ 300.000	\$ 465.463	\$ 165.463	\$ 419.965	10.8%	\$ 45.498	8.2%
Insurance Premium Tax	\$ 117.000	\$ 120.736	\$ 3.736	\$ 112.168	7.6%	\$ 8.567	2.1%
Tobacco Products Tax	\$ 157.400	\$ 153.220	\$ (4.180)	\$ 155.459	-1.4%	\$ (2.240)	2.7%
Interest Income	\$ 89.511	\$ 226.562	\$ 137.052	\$ 132.456	71.0%	\$ 94.107	4.0%
Lottery Transfers	\$ 65.000	\$ 65.000	\$ -	\$ 65.000	0.0%	\$ -	1.1%
All Other	\$ 105.000	\$ 127.566	\$ 22.566	\$ 121.008	5.4%	\$ 6.558	2.2%
TOTAL	\$5,120.611	\$5,710.575	\$ 589.964	\$6,483.291	-11.9%	\$ (772.716)	100.0%

Key WV Economic Measures

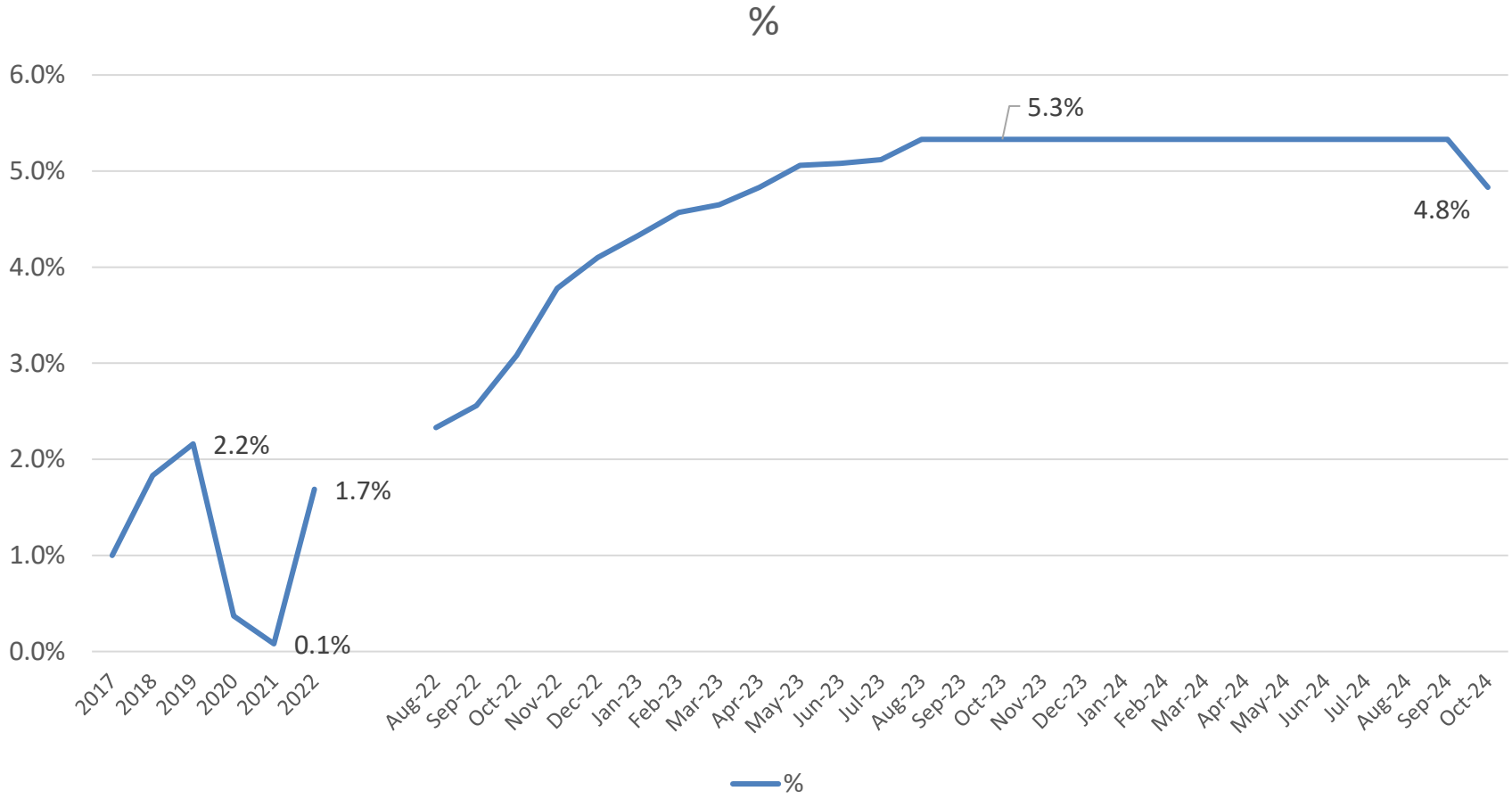
Sources: U.S. BEA & S&P Global Market Intelligence (October 2024)

Work Force WV for Labor Force Participation

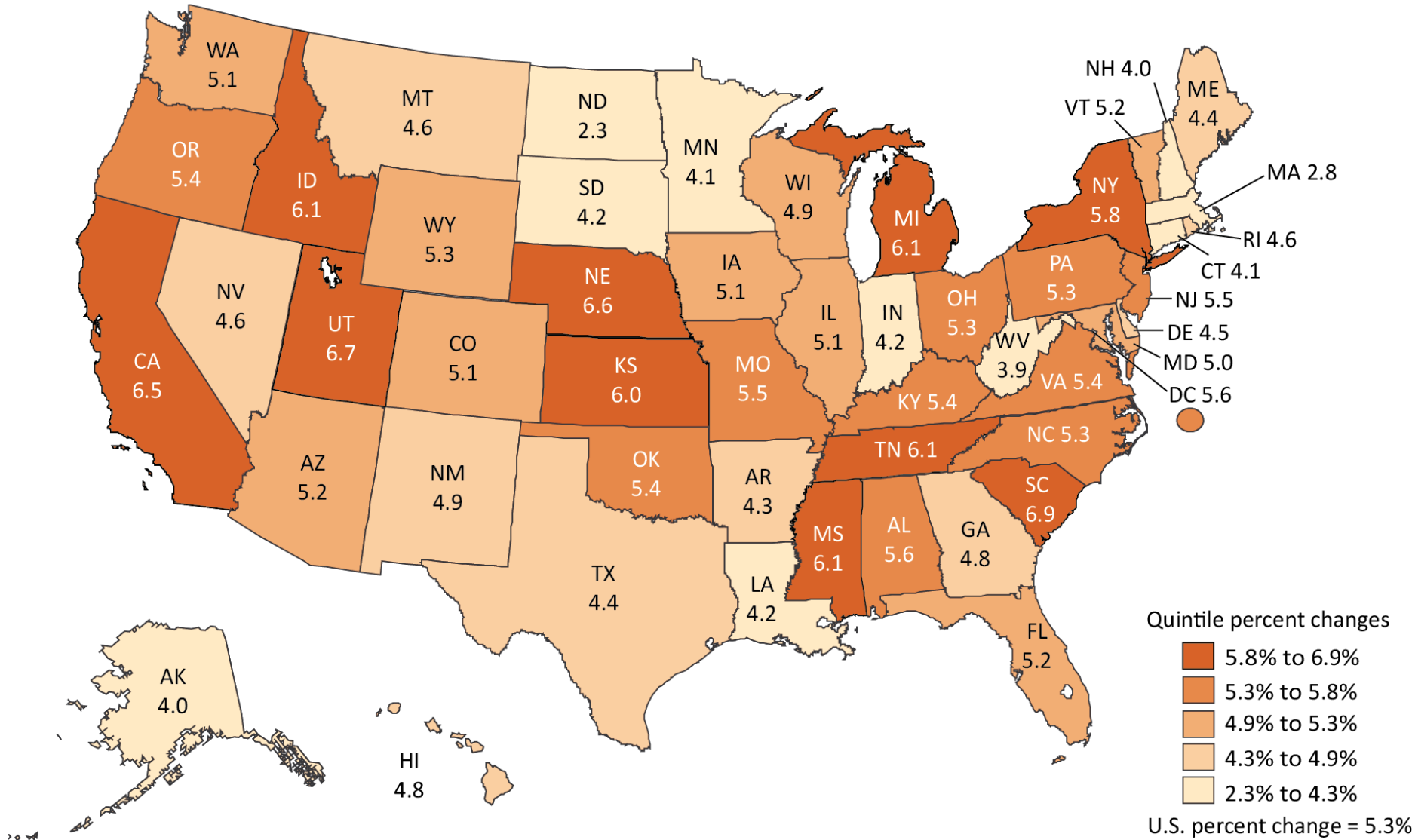
<u>Year:</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>
Real GSP	1.9%	4.7%	3.2%
Personal Income	2.1%	5.1%	5.3%
Wage Income	7.0%	6.7%	7.1%
Consumption	7.9%	5.6%	4.7%
Inflation CPI-U	8.0%	4.1%	2.8%
Median Home Price (Ex)	10.4%	7.0%	6.6%
Payroll Employment	2.5%	1.8%	1.3%
Unemployment Rate	3.9%	3.8%	4.2%
Labor Force Participation	54.4%	54.9%	55.1%

Federal Funds Rate Falling

Prime Rate from 3.25% to 8.50% to 8.00%



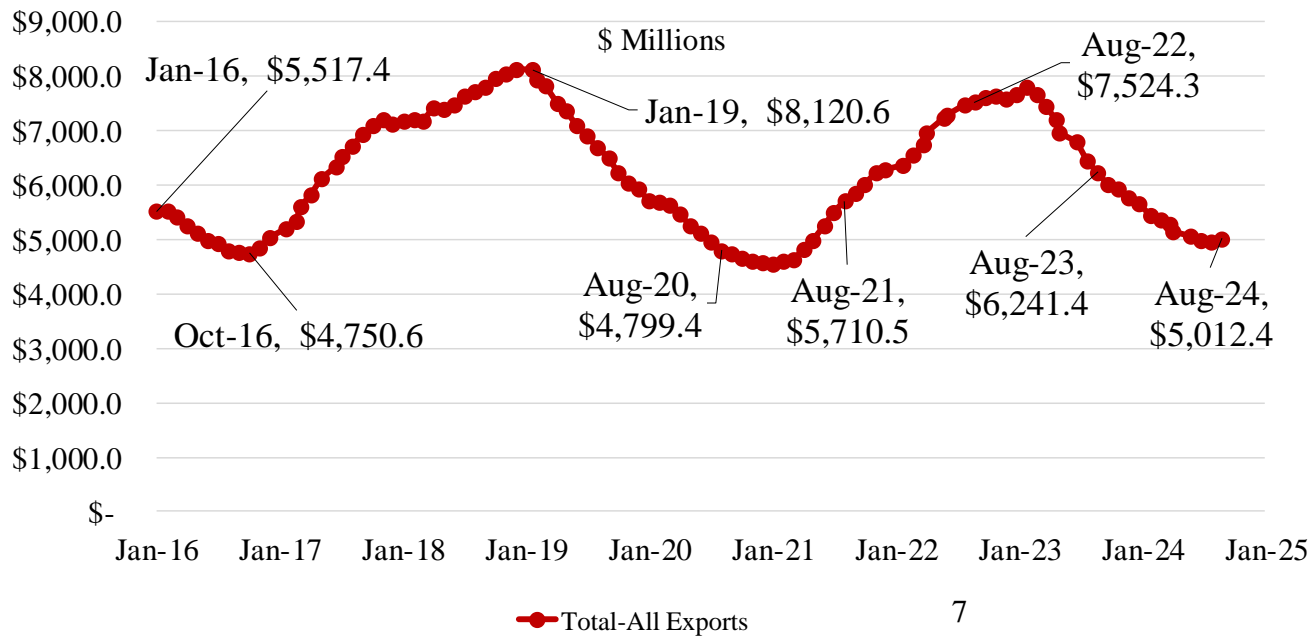
Personal Income: Percent Change at Annual Rate, 2024:Q1–2024:Q2



12-Month Trailing Trend Value of Foreign Good Exports

Manufacturing Good Exports Up 1% Since August 2023 to \$3.85 Billion

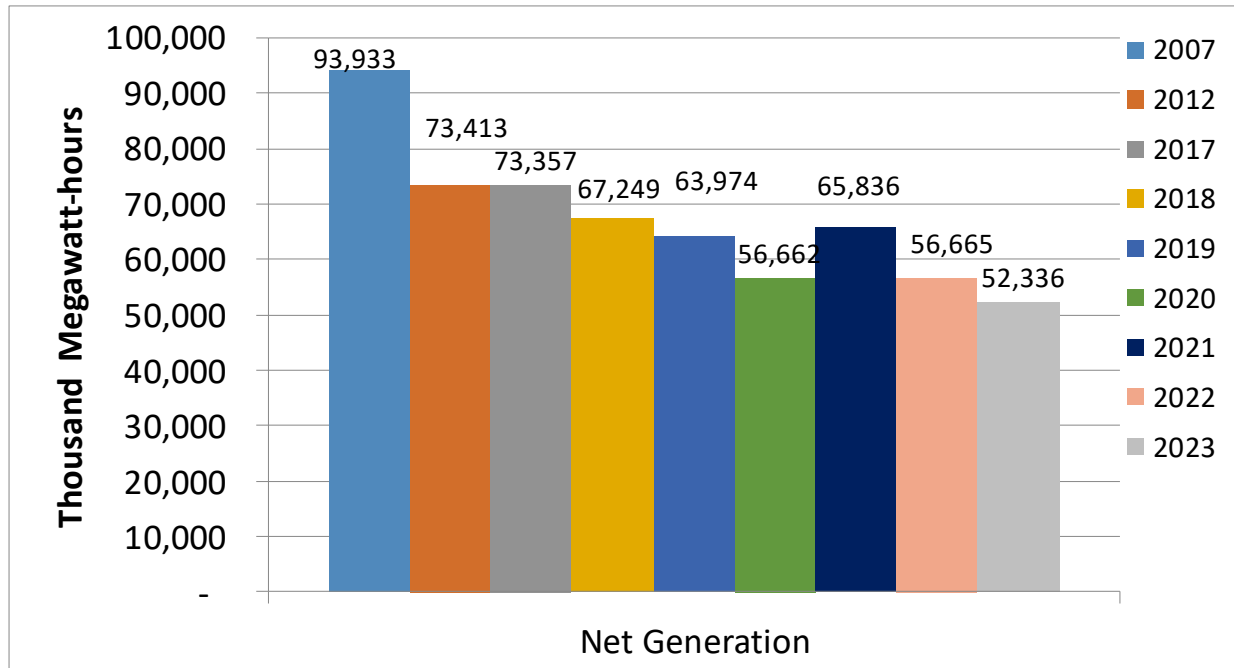
Non-Manufacturing Good Exports Down 62%; Total Exports Down 20%



West Virginia Electric Power Generation:

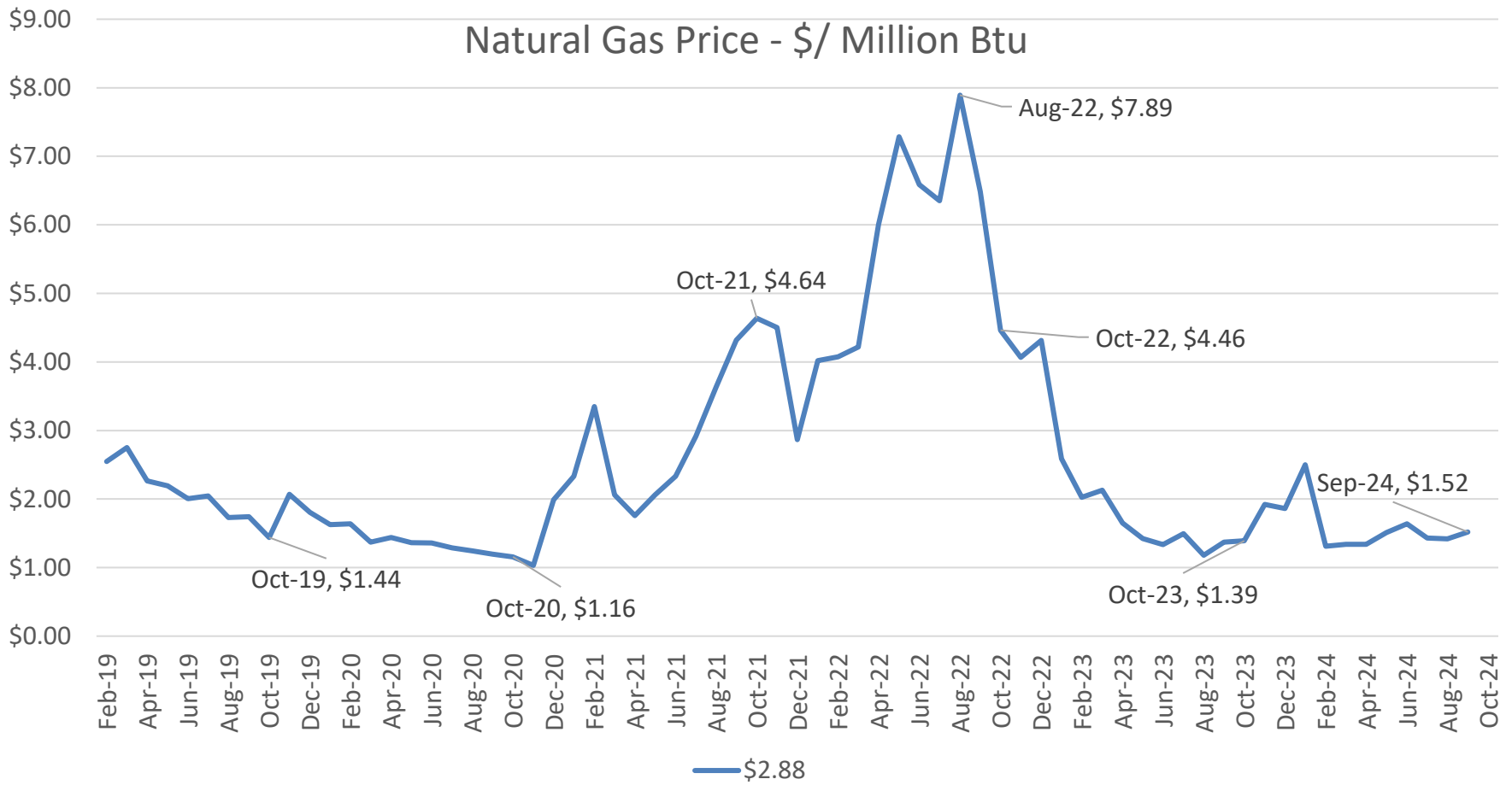
Down 7.6% in 2023; Down 0.1% YTD in 2024

Source: U.S. DOE, Energy Information Administration



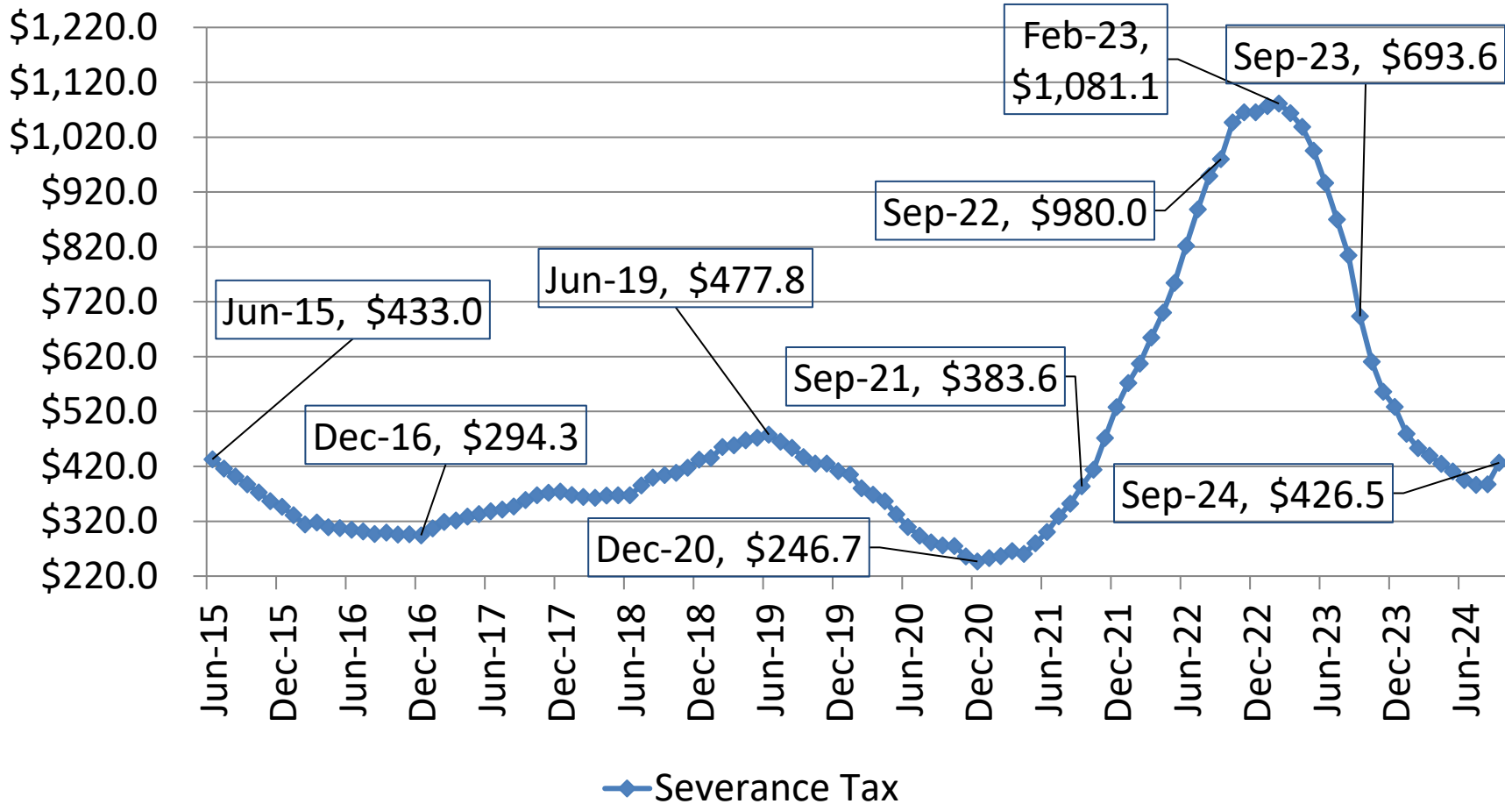
Average Monthly Eastern Hub Price

Source: Natural Gas Intelligence



Regular Severance Tax

Trailing 12 Month Trend (6th of Month to 5th of Next Month)
\$ Millions



FY2025 Revenue Estimates Incorporate Various Tax Cuts

FY2024-2025 Official General Revenue Fund Estimates

	\$ Millions	\$ Millions	\$ Millions			
COMPONENT	FY24-25 ESTIMATE	ACTUAL FY23-24	DIFFERENCE	CHANGE PERCENT	FY25 Share	FY24 Share
Consumer Sales Tax	\$ 1,841.000	\$ 1,816.544	\$ 24.456	1.3%	35.0%	31.8%
Personal Income Tax	\$ 2,023.000	\$ 2,239.859	\$ (216.859)	-9.7%	38.4%	39.2%
Business & Occupation Tax	\$ 115.000	\$ 126.751	\$ (11.751)	-9.3%	2.2%	2.2%
Severance Tax	\$ 406.300	\$ 368.874	\$ 37.426	10.1%	7.7%	6.5%
Corporate Taxes	\$ 318.000	\$ 465.463	\$ (147.463)	-31.7%	6.0%	8.2%
Insurance Premium Tax	\$ 120.000	\$ 120.736	\$ (0.736)	-0.6%	2.3%	2.1%
Tobacco Products Tax	\$ 147.600	\$ 153.220	\$ (5.620)	-3.7%	2.8%	2.7%
Interest Income	\$ 125.000	\$ 226.562	\$ (101.562)	-44.8%	2.4%	4.0%
Lottery Transfers	\$ 65.000	\$ 65.000	\$ -	0.0%	1.2%	1.1%
All Other	\$ 103.636	\$ 127.566	\$ (23.930)	-18.8%	2.0%	2.2%
TOTAL	\$5,264.536	\$5,710.575	\$ (446.039)	-7.8%	100.0%	100.0%

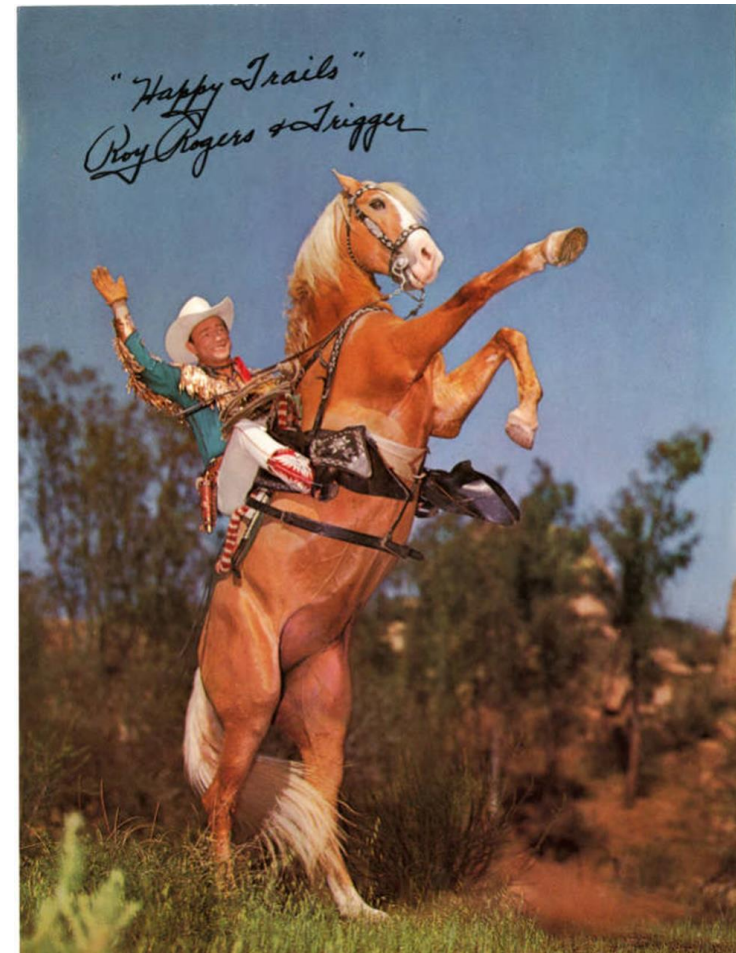
Tax Trigger Calculation in FY2024

		<u>Tax Reduction Formula</u>
FY2024 General Revenue		\$ 5,710,575,084
Less Severance Tax	Subtract	\$ 368,873,842
Adjusted FY2024 Revenue	=	\$ 5,341,701,242
Base Year Revenue		\$ 4,293,884,754
CPI Change 2019-2024	Multiply	1.2223
Inflation Adj Base Year	=	\$ 5,248,415,335
Adjusted FY2024 Revenue		\$ 5,341,701,242
Inflation Adj Base Year	Subtract	\$ 5,248,415,335
Amount Above Inflation	=	\$ 93,285,907
Amount Above Inflation		\$ 93,285,907
Total FY2024 PIT Collections	Divide	\$ 2,269,858,941
PIT Rate Reduction	=	4%

Personal Income Tax Rates – 2025

Trigger Rules Change Beginning in 2025: Delay of One Tax Year

Automatic 4% Trigger		Legislative Change - 2%		
	Trigger			
<u>Current Rate</u>	<u>Rates</u>	TY2025 <u>Tax Bracket</u>	New <u>Rates</u>	<u>Plus</u>
2.36%	2.27%	\$0-\$10,000	2.22%	\$ -
3.15%	3.02%	\$10,000-\$25,000	2.96%	\$ 222.00
3.54%	3.40%	\$25,000-\$40,000	3.33%	\$ 666.00
4.72%	4.53%	\$40,000-\$60,000	4.44%	\$ 1,165.50
5.12%	4.92%	Over \$60,000	4.82%	\$ 2,053.50
Married Separate				
	Trigger			
<u>Current Rate</u>	<u>Rates</u>	TY2025 <u>Tax Bracket</u>	New <u>Rates</u>	<u>Plus</u>
2.36%	2.27%	\$0-\$5,000	2.22%	\$ -
3.15%	3.02%	\$5,000-\$12,500	2.96%	\$ 111.00
3.54%	3.40%	\$12,500-\$20,000	3.33%	\$ 333.00
4.72%	4.53%	\$20,000-\$30,000	4.44%	\$ 582.75
5.12%	4.92%	Over \$30,000	4.82%	\$ 1,026.75



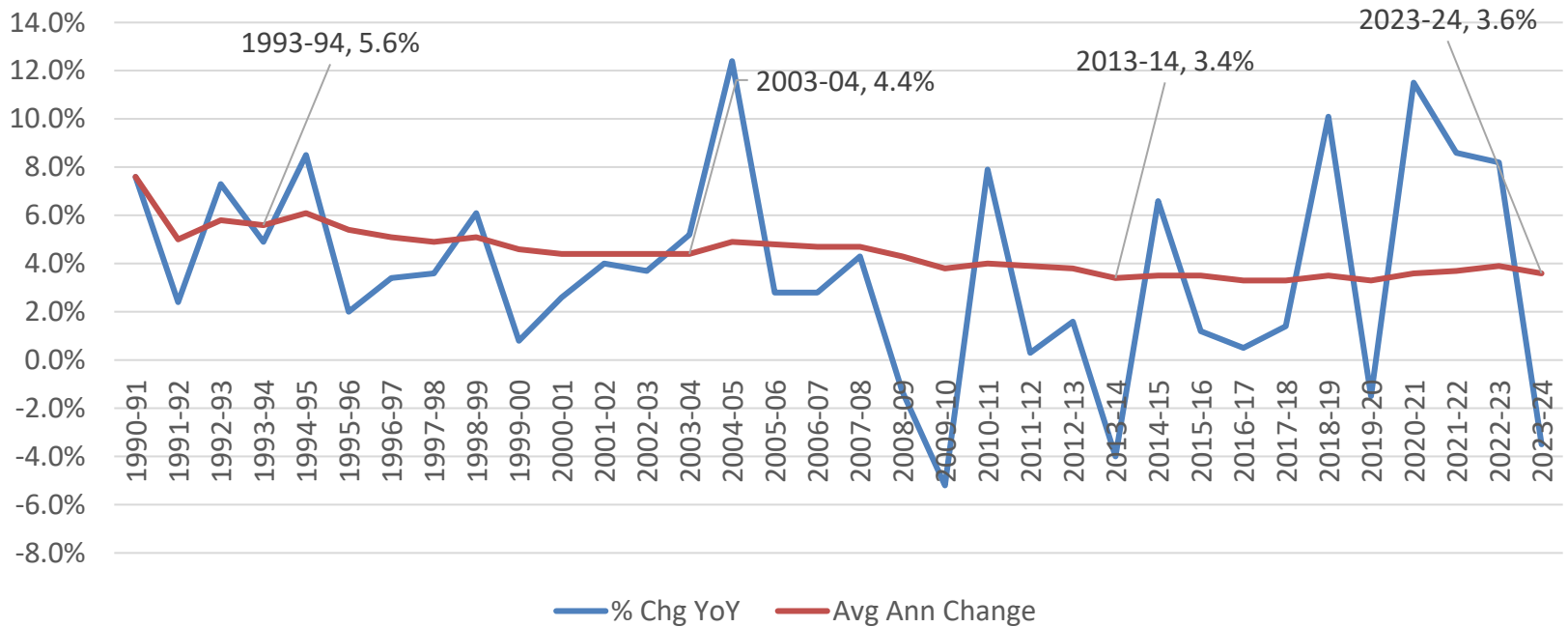
Average Revenue Growth Versus Inflation

	<u>Annual Average FY94-FY04</u>	<u>Annual Average FY04-FY14</u>	<u>Annual Average FY14-FY24</u>
Average Growth in GRF	3.8%	2.7%	3.5%
Avg Growth Less Severance Tax	4.0%	2.0%	4.2%
Avg CPI-U Inflation	2.4%	2.4%	2.8%

General Revenue Fund Less Severance Tax Annual Growth Rate 1990-2024

Average Annual Growth Rate 1990-2024

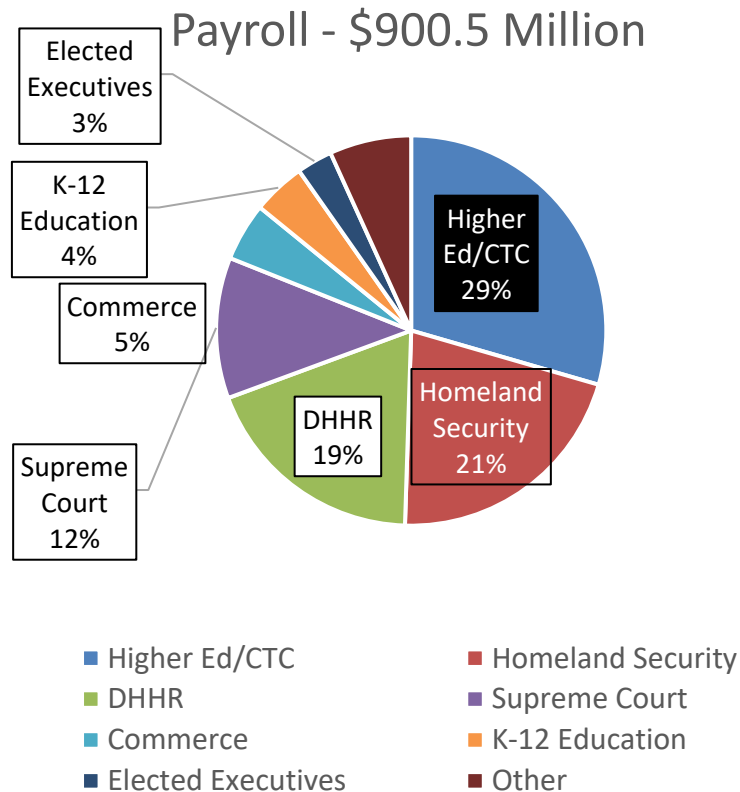
Average Annual Change in CPI-U Between FY1990 and FY2024: 2.66%



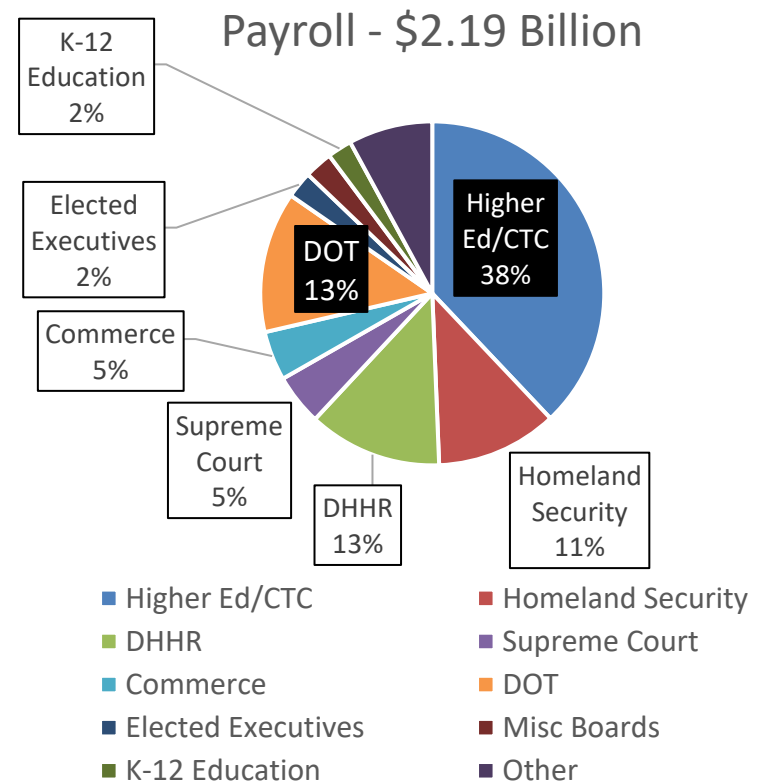
State Budget Payroll-Base Salaries

Source: WV State Budget Office

General Revenue-Filled FTEs



All Revenues-Filled FTEs



FY2025 YTD General Revenue Fund Collections

FY2024-2025 General Revenue Fund as of September 30, 2024

COMPONENT	\$ Millions	\$ Millions	\$ Millions	\$ Millions	\$ Millions		
	FY24-25 ESTIMATE	ACTUAL FY24-25	DIFFERENCE	ACTUAL FY23-24	CHANGE PERCENT	FY24 to FY24 CHANGE	FY25 Share
Consumer Sales Tax	\$ 422.200	\$ 423.948	\$ 1.748	\$ 414.534	2.3%	\$ 9.415	32.4%
Personal Income Tax	\$ 550.500	\$ 533.408	\$ (17.092)	\$ 607.514	-12.2%	\$ (74.106)	40.8%
Business & Occupation Tax	\$ 26.300	\$ 29.540	\$ 3.240	\$ 26.034	13.5%	\$ 3.506	2.3%
Severance Tax	\$ 78.000	\$ 74.215	\$ (3.785)	\$ 72.461	2.4%	\$ 1.755	5.7%
Corporate Taxes	\$ 84.200	\$ 80.098	\$ (4.102)	\$ 125.943	-36.4%	\$ (45.845)	6.1%
Insurance Premium Tax	\$ 26.540	\$ 30.530	\$ 3.990	\$ 26.019	17.3%	\$ 4.511	2.3%
Tobacco Products Tax	\$ 42.000	\$ 36.073	\$ (5.927)	\$ 44.553	-19.0%	\$ (8.481)	2.8%
Interest Income	\$ 37.900	\$ 61.826	\$ 23.926	\$ 57.442	7.6%	\$ 4.384	4.7%
Lottery Transfers	\$ 12.800	\$ 12.954	\$ 0.154	\$ 13.253	-2.3%	\$ (0.299)	1.0%
All Other	\$ 25.258	\$ 24.295	\$ (0.963)	\$ 30.172	-19.5%	\$ (5.876)	1.9%
TOTAL	\$ 1,305.698	\$ 1,306.888	\$ 1.190	\$ 1,417.924	-7.8%	\$ (111.037)	100.0%

State Revenue Shortfall Reserve Funds

- Balance to 20% of GRF Appropriations
- Transfer of FY2024 Surplus: **\$0**
- Balance as of September 30, 2024
 - Fund A: \$728,504,218
 - Fund B: \$571,729,507 [\$234.9 million Tobacco Settlement]
 - Total Balance: \$1,300,233,725
- PIT Reserve Balance
 - Total Balance: \$460,000,000

County Commission Revenues Growing Faster Than State Revenues

**County Commission Property Taxes
Growing At Double Pace of State GRF**

**County Severance Tax Distributions
Up 123% Over 5 Years**

<u>County</u>	<u>2024 County Tax</u>	<u>Per Capita</u>	<u>2019-2024</u>
Tyler	\$ 30,815,611	\$ 3,779	303%
Doddridge	\$ 18,936,825	\$ 2,448	56%
Wetzel	\$ 25,473,938	\$ 1,798	120%
Ritchie	\$ 14,172,696	\$ 1,691	62%
Marshall	\$ 43,232,064	\$ 1,436	170%
Brooke	\$ 16,874,816	\$ 762	129%
Calhoun	\$ 3,544,229	\$ 574	169%
Kanawha	\$ 70,547,443	\$ 396	8%
Jefferson	\$ 18,574,106	\$ 318	27%
Putnam	\$ 16,828,599	\$ 294	22%
Berkeley	\$ 31,783,163	\$ 252	42%
Mercer	\$ 10,575,882	\$ 179	22%
<u>AVG County</u>	<u>\$ 678,699,386</u>	<u>\$ 381</u>	<u>39%</u>
WV-General	\$ 5,710,575,084	\$ 3,226	20%

	<u>County Severance</u>		
<u>County</u>	<u>Taxes FY 2023</u>	<u>Per Capita</u>	<u>2018-2023</u>
Tyler	\$ 8,160,874	\$ 1,001	1096%
Doddridge	\$ 3,468,514	\$ 448	104%
Wetzel	\$ 10,084,158	\$ 712	827%
Ritchie	\$ 2,084,211	\$ 249	165%
Marshall	\$ 17,793,559	\$ 591	142%
Brooke	\$ 2,035,441	\$ 92	908%
Calhoun	\$ 107,819	\$ 17	78%
Kanawha	\$ 2,733,715	\$ 15	46%
Jefferson	\$ 465,737	\$ 8	170%
Putnam	\$ 496,191	\$ 9	154%
Berkeley	\$ 1,106,998	\$ 9	210%
Mercer	\$ 617,647	\$ 10	121%
<u>AVG County</u>	<u>\$ 88,911,565</u>	<u>\$ 50</u>	<u>123%</u>

Federal Fiscal Situation

Source: CBO *Monthly Budget Review, September 2024* & U.S. Treasury & OMB

Revenues Through September

<u>Source</u>	<u>\$ Billions Revenue</u>	<u>Percent Change</u>
Ind. Income	\$2,425	+ 11
Corp. Income	529	26
Social Insurance	1,709	6
Other	255	12
Total	<u>4,918</u>	<u>+ 11</u>

Year-End Federal Budget Deficits

FY2007:	\$ 160.7 Billion
FY2008:	\$ 458.6 Billion
FY2009:	\$1,412.7 Billion
FY2010:	\$1,294.4 Billion
FY2011:	\$1,299.6 Billion
FY2012:	\$1,087.0 Billion
FY2013:	\$ 679.5 Billion
FY2014:	\$ 484.6 Billion
FY2015:	\$ 438.5 Billion
FY2016:	\$ 584.7 Billion
FY2017:	\$ 665.4 Billion
FY2018:	\$ 779.1 Billion
FY2019:	\$ 983.6 Billion
FY2020:	\$3,132.5 Billion
FY2021:	\$2,775.4 Billion
FY2022:	\$1,375.9 Billion
FY2023:	\$1,693.7 Billion
FY2024: Preliminary:	\$1,834.0 Billion

Outlays Through September

<u>Category</u>	<u>\$ Billions Outlays</u>	<u>Percent Change</u>
Defense	\$ 826	+ 7
SS Benefits	1,448	+ 8
Medicare	869	+ 9
Medicaid	619	+ 1
Veterans Affairs	325	+ 12
Refundable Tax Credits	199	+ 16
Other	1,516	+ 10
Subtotal	5,802	+ 7
Debt Interest	950	+ 34
Total	<u>6,752</u>	<u>+ 11</u>

Outlook: Slower Economic Growth in FY25 and FY26

- Energy Sector
 - Energy prices rebound off recent lows in 2025 and 2026, but still low relative to 2022
 - Steam coal sales likely decline more slowly in 2025 and 2026
 - Met coal sales improvements in the long-run, but high dollar value is a headwind
 - Long-term natural gas & liquids production trends still dependent on infrastructure improvements
- Lower inflation decreases tax revenue growth with less stress on State budget
 - Infrastructure: (School building authority, Highways)
 - Health care – extra 6.2% FMAP over with budget needs for Medicaid and PEIA increasing
 - Labor shortages in key areas of State government may require more funding
- Other Significant Budget Matters
 - Education & Demographics – fewer students
 - Cost of K-3 education enhancements program and Hope Scholarships gradually increase
- Consumer expenditure growth slows throughout FY25 – higher interest rates/student loan repayments
- Lower income tax revenues due to tax cuts and lower energy prices
- Revenue surplus shrinking toward neutral in FY2025
- Federal policy changes partially depend upon outcome of 2024 elections???

W E S T V I R G I N I A



DEPARTMENT OF REVENUE

Questions?

WEST VIRGINIA TAX DIVISION



West Virginia Tax Institute

October 27-29, 2024
Pipestem Resort State Park



Before we get started

This presentation is meant to be a source of general information and not as a substitute for tax laws, rules, or regulations and may not be relied upon as legal or tax advice or to support specific instances not addressed.

The material presented may contain simplified explanations of potentially complex legal and tax concepts so as to apply generally across broad areas of tax practice, both legal and accounting, and is intended for general overview and application.

Individual comments by presenters are meant to be illustrative in nature and are not intended as official Tax Department policy.

Tax Credits for Property Taxes Paid

- **Motor Vehicle Property Tax Adjustment Credit**
(W. Va. Code § 11-13MM-3)
- **Disabled Veteran Real Property Tax Credit**
(W. Va. Code § 11-13MM-4)
- **Small Business Property Tax Adjustment Credit**
(W. Va. Code § 11-13MM-5)

Motor Vehicle Property Tax Adjustment Credit

- **Credit for all property taxes timely paid on a motor vehicle in West Virginia**
 - **Limited to Actual Taxes paid within the tax year (Special 2024 exception on next page).**
 - **If the taxpayer receives a discount, no credit will be provided on the amount of the discount.**
- **Tax must be timely paid**
 - **Must be paid by October 1 for the first half and by April 1 for the second half (only second half is eligible from property tax year 2023)**
- **Credit is refundable (rebate)**
- **Applies to income tax year 2024 and thereafter.**

Motor Vehicle Property Tax Adjustment Credit – Special Rule

- **First taxes eligible for credit are those due for property tax year 2023 (only second half taxes).**

- **See H.B. 125 (First Special Session 2023)**

Subject to the restrictions, limitations and requirements set forth in this article, ad valorem property tax timely paid in the personal income tax taxable year, or the corporation net income tax taxable year, as applicable, beginning on or after January 1, 2024, may qualify for the tax credits specified in this article, **even where such tax, that is due and owed in calendar year 2024 only, is actually timely paid prior to January 1, 2024.**

- **Rule applies to all three credits (Motor Vehicle, Disabled Veteran, and Small Business)**

Motor Vehicle Property Tax Adjustment Credit – Who Qualifies?

➤ Qualified taxpayers:

- Individuals
- Partnerships
- LLC's
- Corporations (both S-Corps and C-corps)
- Includes Leasing Companies, provided that the company passes the savings on to the lessee.

➤ Not Qualified:

- Motor Vehicle Dealers

Motor Vehicle Property Tax Adjustment Credit – What Qualifies?

Class A	Cars and Trucks	Passenger cars and trucks with a gross weight of 10,000 pounds or less
Class B	Trucks	Trucks, truck tractors, or road tractors with a gross weight of 10,001 pounds or more
Class G	Motorcycles	Every motorcycle, including motor driven cycles and mopeds, having a saddle and no more than three wheels
Class H	Buses	Every motor vehicle designed for carrying more than seven passengers or transportation of persons for compensation, excluding taxicabs
Class T	Trailers	Trailers, boat trailers, or semitrailers of a type designed to be drawn by Class A vehicles with a gross weight of less than 2,000 pounds
Class V	Antique Motor Vehicles	Antique motor vehicles are at least 25 years old
Class X	Farm Trucks	Used exclusively for the transportation of farm products and supplies by a farmer
W. Va. Code § 20-15-2	All-Terrain Vehicles	Any motor vehicle designed for off-highway use and to travel on not less than three low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control and intended by the manufacturer to be used by a single operator or by an operator and no more than one passenger

Motor Vehicle Property Tax Adjustment Credit – What Does Not Qualify?

➤ **Class C: Trailers and Semi Trailers:**

- All trailers and semi trailers, except; house trailers, trailers or semi trailers designated to be drawn by Class A motor vehicles, and having a gross weight of more than 2,000 pounds

➤ **Class J: Taxi Cabs:**

- Motor vehicles used for the transportation of persons for compensation

➤ **Class M: Mobile Equipment:**

- Every self propelled vehicle not designed or used primarily for the transportation of persons or property over the highway but which may infrequently or incidentally travel over the highway among job sites equipment storage sites, repair sites, including farm equipment, implements of husbandry, well-drillers, cranes, and wood sawing

➤ **Class R: Fifth Wheel Campers and Travel Trailers:**

- Any vehicle designed to provide temporary living quarters for recreation, travel, or camping use

Transfer or Sale of Vehicle

Transfer of Credit

- **Transferor:** Keeps credit for taxes they paid in their taxable year.
- **Transferee:** Can claim the credit for taxes they pay, but not for the same year as the transferor.

Double claims for a single vehicle will not be permitted.


Motor Vehicle Property Tax Adjustment Credit – How to Claim

- Taxpayers can begin claiming the credit on their income tax returns for all tax years beginning on and after January 1, 2024
- The first chance to claim the credit is in January 2025 on the 2024 Income Tax Return
- Can be claimed on the following returns:
 - IT 140 – Individual income tax return
 - IT 141 – Fiduciary income tax return
 - PTE 100 - West Virginia Income Tax Return S Corporation and Partnership (Pass-Through Entity)
 - EPT 100 – Elective Pass Through Entity Return
 - CIT 120 –Corporation Net Income Tax Return
- What if they don't need to file?

Taxpayers that do not owe WV income taxes and are otherwise not required to file a WV income tax return will be able to file a claim for rebate in early 2025.

Motor Vehicle Property Tax Adjustment Credit – What information is necessary?

- Taxpayers will be required to provide a tax credit certificate issued by the Tax Division to claim this credit
- These will be mailed in early January Or available in Late January on tax.wv.gov

MV-1		MOTOR VEHICLE PROPERTY TAX ADJUSTMENT CREDIT	
Rev. 08/2024			
You must use the original form issued by the Tax Division to claim this credit. Substitute forms are not permitted.			
TAX PERIOD ENDING MMDDYYYY	12 31 2024	CREDIT CLAIM NUMBER	123456789012
TAXPAYER INFORMATION			
SOCIAL SECURITY NUMBER		SPOUSE'S SOCIAL SECURITY NUMBER	
TAXPAYER NAME AND ADDRESS INFORMATION		PROPERTY TAX TICKET INFORMATION	
John Smith 123 Some Street Anycity, WV 25000		COUNTY	Clay
		TICKET NUMBER	400000001S,100000001S, 1234567890A,1111111111B
		AMOUNT OF TICKET	2132.16
		ELIGIBLE AMOUNT PAID ON TIME	445.94
VEHICLE ELIGIBILITY			
THE FOLLOWING INFORMATION IS PROVIDED FOR EACH OF THE VEHICLES ON THE TICKET(S) LISTED ABOVE. THE VEHICLE MAKE, MODEL, CLASS, AND ELIGIBLE AMOUNT OF TAX PAID OR REASON NOT ELIGIBLE			
11 HOND CR-V5130	CLASS A	80.97	
11 HOND CR-V5130	CLASS A	80.97	
19 NISS FRON13215	CLASS A	208.59	
08 DODG DAKO3225	CLASS A	45.41	
01 KAWA VN80120	CLASS A	30.00	
17 CHEV SILV17610	CLASS A	NOT PAID	TIMELY
SEMI TRAILER	CLASS C	CLASS NOT	ELIGIBLE
TAXI CAB	CLASS J	CLASS NOT	ELIGIBLE
14 SUBA LEGA4140	CLASS A	NOT PAID	TIMELY
14 SUBA FORE6420	CLASS A	NOT PAID	TIMELY
00 HOND ACCO720	CLASS A	NOT PAID	TIMELY
13 HOND CR-V7290	CLASS A	NOT PAID	TIMELY
18 CLUB TEMP3000	CLASS A	NOT PAID	TIMELY
17 SUBA FORE12150	CLASS A	NOT PAID	TIMELY
16 HOND CIVI8520	CLASS A	NOT PAID	TIMELY
12 HOND CR-V5685	CLASS A	NOT PAID	TIMELY
14 HOND ACCO7320	CLASS A	NOT PAID	TIMELY
16 HOND ACCO8610	CLASS A	NOT PAID	TIMELY
09 HOND XR651155	CLASS A	NOT PAID	TIMELY
ADDITIONAL VEHICLES LIST ON NEXT PAGE? INFORMATION ON ADDITIONAL VEHICLES NOT LISTED CAN BE REQUESTED FROM THE TAX DIVISION @?			
Are you required to file a federal return?			
<input type="checkbox"/> YES - To claim this credit, you MUST include this form with your completed income tax return.			
<input type="checkbox"/> NO - If you are also claiming the Senior Citizens Tax Credit and/or Homestead Excess Property Tax Credit, please submit the forms for ALL those credits together with an IT-140.			
- If you are not required to file the IT-140 and are not claiming additional credits, you must file this credit online at https://mytaxes.wvtax.gov			
			

Filing through Web Portal

If you are ONLY filing to claim the Motor Vehicle Credit you must file through our web portal.

1. Go online to mytaxes.wvtax.gov (or select the 'Pay/File - MyTaxes' button on the tax.wv.gov homepage)
2. Scroll down until you see the section titled 'Motor Vehicle Property Tax'
3. Click on 'Claim the MV-1 Credit'
4. From there you will need to answer a few required questions



Register a Business

Register your business online or as a remote seller business.

- Register online at the WV One Stop Business Portal
- Remote Seller Registration



Other Business Services

Perform tasks as a business taxpayer or find additional information.

- Request Letter of Good Standing
- Release of Final Settlement
- Third Party Access
- Request Exemption with NRAE
- Submit NRSR for Nonresident Sale of Real Property
- Business Frequently Asked Questions



Additional Help or Contact Us

Need more information? Here are some helpful resources to help you get things done right.

- Frequently Asked Questions
- General Help or Contact Us
- Tax Professional Guidance and Publications



Office of the Taxpayer Advocate

Contact the Office of the Taxpayer Advocate for help with your Notice of Proposed Assessment.

- Office of the Taxpayer Advocate Application
- Office of the Taxpayer Advocate Survey
- West Virginia Taxpayer Bill of Rights



Motor Vehicle Property Tax

Request another MV-1 Letter or claim the MV-1 credit without filing an IT-140 return.

- Claim the MV-1 credit
- Request another MV-1 letter

➤ Individual Frequently Asked Questions

Important

- Credit is only for actual tax paid: The credit applied only to the amount of personal property tax that has been paid timely.
- When required to file an income tax return with the IRS you will submit the MV-1 form with your West Virginia Personal Income Tax return.
- When claiming additional credits such as the Senior Tax Credit and/or the Homestead Tax Credit you must submit the West Virginia Personal Income Tax return. **DO NOT USE THE WEB PORTAL.**
- The MV-1 form will be issued to predetermined qualified taxpayers.

This publication provides general information and is not meant to be a substitute for tax laws or regulations.

Beginning January 1, 2024, taxpayers are eligible to claim a Motor Vehicle Property Tax Adjustment Credit. The first opportunity to claim this credit will be on a 2024 WV income tax return, filed in 2025, for all timely paid property taxes made on vehicles due in 2024. The same rules will apply for all following years.

Who Qualifies?

Individuals, Partnerships, S-Corporations, LLCs, and C-Corporations
Leasing companies qualify for the credit. They are **required** to pass the savings on to the consumer leasing the motor vehicle. Contact your leasing company for more information on when you can expect to see the discount.

Who Does Not Qualify?
Motor Vehicle Dealers

With the passage of HB 125 in the 1st Special Session, taxpayers will not be penalized if they pay the second half of their ticket in 2023 because it is still considered due in 2024 and therefore timely paid.

To ensure that you qualify for the Motor Vehicle Property Tax Adjustment Credit, you will have to:

1. File your personal property assessment returns with your County Assessor timely. For businesses that means before September 1 and for individuals before October 1.
2. Pay your personal property taxes timely. That means the first half of the assessment must be paid before October 1 and the second half before April 1.

Location and contact information on your County Assessor can be found at tax.wv.gov.

Only individuals and business motor vehicle owners may qualify for the Motor Vehicle Property Tax Adjustment Credit. The credit is only available for the actual tax paid. If an early payment discount is applied, the credit is limited to the amount actually paid after deduction of the discount. The following Motor Vehicle classifications, which can also be found online at transportation.wv.gov, are eligible for the credit:

Class A	Cars and Trucks	Passenger cars and trucks with a gross weight of 10,000 pounds or less
Class B	Trucks	Trucks, truck tractors, or road tractors with a gross weight of 10,001 pounds or more
Class G	Motorcycles	Every motorcycle, including motor driven cycles and mopeds, having a saddle and no more than three wheels
Class H	Buses	Every motor vehicle designed for carrying more than seven passengers or transportation of persons for compensation, excluding taxicabs
Class T	Trailers	Trailers, boat trailers, or semitrailers of a type designed to be drawn by Class A vehicles with a gross weight of less than 2,000 pounds
Class V	Antique Motor Vehicles	Antique motor vehicles are at least 25 years old
Class X	Farm Trucks	Used exclusively for the transportation of farm products and supplies by a farmer
W. Va. Code § 20-15-2	All-Terrain Vehicles	Any motor vehicle designed for off-highway use and to travel on not less than three low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control and intended by the manufacturer to be used by a single operator or by an operator and no more than one passenger

Vehicles that do not qualify for the credit include but are not limited to Class C (trailers and semi trailers), J (taxi cabs), M (mobile equipment) and R (fifth wheel campers and travel trailers) vehicles. To learn more about vehicle classifications, visit transportation.wv.gov.

For more information, you can:

- Call a Taxpayer Services Representative at (304) 558-3333 or toll-free at (800) 982-8297
- Email taxhelp@wv.gov
- Go Online to tax.wv.gov

Taxpayers that do not owe WV income taxes and are not required to file a WV income tax return will be able to file a claim for a rebate in early 2025 of their Motor Vehicle property taxes paid. Continue to check tax.wv.gov for more information and form requirements as they become available.

Key Takeaway: Timeliness.

Pay your property taxes timely and file your income tax return timely. The calendar year the taxes are timely paid in will be the income tax year where you can expect to see them credited.

Disabled Veteran Real Property Credit

- **Credit for all ad valorem real property taxes timely paid on a homestead of a disabled veteran**
 - **Limited to Actual Taxes paid within the tax year (Special 2024 exception applies).**
 - **If the taxpayer receives a discount, no credit will be provided on the amount of the discount.**
- **Tax must be timely paid**
 - **Must be paid by October 1 for the first half and by April 1 for the second half (only second half is eligible from property tax year 2023)**
- **Credit is refundable (rebate)**
- **Applies to income tax year 2024 and thereafter.**

Disabled Veteran Real Property Credit – Who and What Qualifies

- **Who qualifies:** A veteran that has been:

- Honorably discharged from any branch of the U.S. Armed Forces
- Considered 90%-100% disabled by the Department of Veterans Affairs

- **What Qualifies:**

- **Residential Property:**

A single family residential house, including a mobile or manufactured or modular home, and the land surrounding such structure; or a mobile or manufactured or modular home regardless of whether the land upon which such mobile or manufactured or modular home is situated is owned or leased.

- **Homestead:**

Must have been used or occupied exclusively for residential purposes for at least 6 months during the tax year

Disabled Veteran Real Property Credit – How to Claim?

- Taxpayers can begin claiming the credit on their income tax returns for all tax years beginning on and after January 1, 2024
- Income tax return will be available around January of 2025
- Can be claimed on the following returns:
 - IT 140 – Individual income tax return
- **What if they don't need to file?**

Taxpayers that do not owe WV income taxes and are otherwise not required to file a WV income tax return will be able to file a claim for rebate in early 2025 at the WV Tax Division portal at mytaxes.wvtax.gov

Disabled Veteran Real Property Credit

- Taxpayers will be required to provide the following information (subject to change):
 - Certify that property was used or occupied exclusively for residential purposes by the disabled veteran for at least 6 months (Check the box)
 - Determination of disability status by the Department of Veterans Affairs
 - County where property was assessed
 - Taxpayer account number with the County
 - Tax ticket number
 - Amount of tax timely paid in the income tax year (see special rule for tax year 2024)
 - The tax receipt from payment

DISABLED VETERAN REAL PROPERTY TAX CREDIT

DV-1 FORM

For the purpose of this credit, "disabled veteran taxpayer" means a person honorably discharged from any branch of the armed services of the United States and is considered at least ninety percent totally and permanently disabled due solely to service connected disabilities by the Department of Veterans Affairs. Credit can only be taken on your homestead.



You cannot take the Senior Citizen's Tax Credit (SCTC-A) or the Homestead Excess Property Tax Credit (HEPTC) if you are claiming this credit

Part I			
SOCIAL SECURITY NUMBER		SPOUSE'S SOCIAL SECURITY NUMBER	
TAXPAYER NAME		SPOUSE NAME	

Part II			
SECOND HALF OF 2023 TAXES PAID BY APRIL 1, 2024		<p>To claim this credit, you MUST include a copy of your disability rating letter from the VA along with a copy of your tax receipt.</p>	
FIRST HALF OF 2024 TAXES PAID BY OCTOBER, 2024			
SECOND HALF OF 2024 TAXES PAID IN 2024			
TOTAL TAX PAID			

Part III						
TICKET NUMBER	TAX YEAR	COUNTY (FULL NAME OF COUNTY)	DISTRICT	MAP	PARCEL	TAX CLASS

This form must be filed with the WV State Return (IT-140), a copy of your tax receipt, and disability rating letter.

Instructions for Completing Form DV-1

Part 1: Personal Information

- Enter your **Social Security Number (SSN)** and, if filing jointly, your spouse's SSN.
- Provide your **full name** and your spouse's, if applicable.

Part 2: Real Property Tax Payments

- Enter details of **property tax payments** for the respective years.

Part 3: Property Details

- Fill out details from the property tax ticket, including the **ticket number, tax year, county, and parcel number.**

Important: Failure to complete all fields or submit required documents will result in **denial** of the credit.

This publication provides general information and is not meant to be a substitute for tax laws or regulations.

Beginning January 1, 2024, taxpayers are eligible to claim a Disabled Veteran Real Property Tax Credit. The first opportunity to claim this credit will be on a 2024 WV income tax return, filed in 2025, for all timely paid property taxes made on qualifying real property in the 2024 calendar year. The same rules will apply for all following years.

Who Qualifies?

Disabled Veteran Homeowners

What Qualifies?

Residential Homesteads

To ensure that you qualify for the Disabled Veteran Real Property Tax Credit, you will have to pay your real property taxes **timely**. That means the first half of the assessment must be paid before October 1 and the second half before April 1. Location and contact information on your County Assessor can be found at tax.wv.gov.

Only eligible veterans who are **owners** of a homestead which is used or occupied exclusively for residential purposes may claim the Disabled Veteran Real Property Tax Credit. The credit is only available for the actual tax paid. Taxpayers will be required to file a West Virginia Personal Income Tax Return in order to claim this credit. Along with the return, taxpayers will need to submit a copy of their receipt(s) for the property tax amount paid along with a copy of their Disability Rating letter from the Department of Veterans Affairs.

Taxpayers claiming the Disabled Veteran Real Property Tax Credit (DVRPTC) are not eligible to take the Senior Citizen Tax Credit (SCTC) or Homestead Excess Property Tax Credit (HEPTC). While taxpayers are permitted to take the SCTC and HEPTC together after the SCTC has been factored out of your HEPTC amount, the DVRPTC takes precedence over both those credits and must be taken alone.

Disabled Veteran Homeowners	Honorably discharged veterans from any branch of the U.S Armed Services who are considered 90-100% disabled by the Department of Veterans Affairs. For more information on your benefits status or discharge records, visit www.va.gov .
Residential Homesteads	A single family residential house, including a mobile or manufactured or modular home, and the land surrounding such structure; or a mobile or manufactured or modular home regardless of whether the land upon which such mobile or manufactured or modular home is situated is owned or leased. To be a residential homestead, the property must also have been used or occupied by the owner for at least 6 months

With the passage of HB 125 in the 1st Special Session, taxpayers will not be penalized if they pay the second half of their ticket in 2023 because it is still considered due in 2024 and therefore timely paid.

For more information, you can:

- **Call** a Taxpayer Services Representative at (304) 558-3333 or toll-free at (800) 982-8297
- **Email** jashelp@wv.gov
- **Go Online** to tax.wv.gov

Key Takeaway: Stands Alone.

The Disabled Veteran Real Property Tax Credit (DVRPTC) cannot be taken with the Senior Citizen Tax Credit (SCTC) or Homestead Excess Property Tax Credit (HEPTC). While taxpayers are permitted to take the SCTC and HEPTC together after the SCTC has been factored out of the HEPTC amount, the DVRPTC takes precedence and must be taken alone.

Small Business Property Tax Adjustment Credit – Who Qualifies?

- Any business with personal property located in West Virginia that has an aggregate appraised value of \$1 million or less
- Includes the following business types:
 - Sole proprietorship
 - Partnership's
 - LLC's
 - Corporations (Both S-Corporations and C-Corporations)
- Does not include:
 - Oil and Gas Producers
 - Public Service Companies

Small Business Property Tax Adjustment Credit – Aggregate Appraised Value

➤ Aggregate Appraised Value Defined:

The true and actual value of all personal property owned by the Small Business in West Virginia, including the true and actual value of all personal property of related entities.

➤ Related Entities Defined:

A related entity is an individual, corporation, partnership, affiliate, association or trust or any combination or group that is controlled or in control of the Small Business. This means the Small Business directly or indirectly has 50% or more of the voting power or interest of the entity.

➤ Motor Vehicles are INCLUDED when determining the total aggregate appraised value of all personal property of the small business

Small Business Property Tax Adjustment Credit – Amount of Credit

- Credit equal to 50% of all personal property taxes timely paid on personal property located in WV
 - Motor Vehicles are EXCLUDED when determining the amount of credit allowable
 - Limited to Actual Taxes paid within the tax year (Special 2024 exception applies).
 - If the taxpayer receives a discount, no credit will be provided on the amount of the discount.

- Tax must be timely paid
 - Must be paid by October 1 for the first half and by April 1 for the second half (only second half is eligible from property tax year 2023)

- Credit is refundable (rebate)

- Applies to income tax year 2024 and thereafter.

Small Business Property Tax Adjustment Credit -

- Taxpayers can begin claiming the credit on their income tax returns for all tax years beginning on and after January 1, 2024
- Income tax return will be available around January of 2025
- Can be claimed on the following returns:
 - IT 140 – Individual income tax return
 - IT 141 – Fiduciary income tax return
 - PTE 100 - West Virginia Income Tax Return S Corporation and Partnership (Pass-Through Entity)
 - EPT 100 – Elective Pass Through Entity Return
 - CIT 120 –Corporation Net Income Tax Return
- **No Rebate option for this credit**

Small Business Property Tax Adjustment Credit -

- **Taxpayers will be required to provide the following information (subject to change):**
 - A schedule of all personal property owned by the business and subject to personal property tax in WV, to include:
 - County where property was assessed
 - Taxpayer account number with the County
 - Tax ticket number
 - Amount of tax timely paid in the tax year (see special rule for tax year 2024)
 - The tax receipt from payment
 - Amount received as a credit under the Motor Vehicle Property Tax Adjustment Credit
 - A schedule of all related entities owning personal property in WV, to include:
 - Value of all personal property in WV
 - County where property was assessed
 - Taxpayer account number with the County
 - Tax ticket number

Required Forms and Documents

Required Forms

- CIT-120: Corporate Net Income Tax Return or
- PTE-100: Pass Through Entity or
- IT-141: Fiduciary Tax Return or
- IT-140: West Virginia Personal Income Tax Return
and
- SB-1: Small Business Property Tax Adjustment Credit

Additional Documentation Required

- A copy of the property tax receipt

SB-1


SB-1
Rev. 08/2024

SMALL BUSINESS PROPERTY TAX ADJUSTMENT CREDIT

BUSINESS IDENTIFICATION


1. FEIN		BUSINESS NAME		
2. IF SOLE PROPRIETOR COMPLETE SSN, FIRST NAME, AND LAST NAME				
SSN	FIRST NAME	LAST NAME		
3. ADDRESS		CITY	STATE	ZIP

Is the total of all your related entities \$1,000,000 or less in aggregate appraised value?

No  you are not eligible for this credit.

Yes Complete the section below with the information for this business and the related entities.

Are you holding a working interest in any oil, natural gas, or natural gas liquid producing property or any public service company that is centrally assessed by the state for property tax purposes?

Yes  you are not eligible for this credit.

No File this form with the required income tax return for this business.

PROPERTY TAX TICKET INFORMATION

4. LIST ALL PROPERTY TAX TICKETS FOR WHICH YOU WERE ASSESSED. COMPLETE AN ADDITIONAL SB-1 IF YOU HAVE MORE THAN 10 TICKETS				
A COUNTY	B TICKET NUMBER	C ASSESSED VALUE	D AMOUNT OF TICKET	E AMOUNT OF TICKET PAID ON TIME DO NOT INCLUDE DELINQUENT OR BACK TAX
5. TOTAL ASSESSED VALUE (SUM COLUMN C)			DIVIDE LINE 5 BY 0.6 IF OVER \$1,000,000 YOU ARE NOT ELIGIBLE	
6. TOTAL AMOUNT PAID ON TIME ON ALL TICKETS (SUM COLUMN E)				
7. TOTAL AMOUNT ELIGIBLE FOR MOTOR VEHICLE CREDIT (SEE INSTRUCTIONS)				
8. LINE 6 MINUS LINE 7				
9. TOTAL CREDIT (ENTER ONE HALF OF LINE 8)				



B 5 4 0 4 2 4 0 1 W

Allocation of Credit

- **For Small Businesses Filing Personal Income:**
 - Credit must be allocated among members of the business in the same way profits and losses are allocated for that taxable year.

This publication provides general information and is not meant to be a substitute for tax laws or regulations.

Beginning January 1, 2024, taxpayers are eligible to claim a Small Business Property Tax Adjustment Credit. The first opportunity to claim this credit will be on a 2024 WV income tax return, filed in 2025, for all timely paid property taxes made on qualifying real property in the 2024 calendar year. The same rules will apply for all following years.

Who Qualifies?

Small businesses with an aggregate appraised personal property value of \$1 million or less

What Qualifies?

50% of the amount of WV personal property tax timely paid minus credit received for the Motor Vehicle Property Tax Adjustment Credit.

To ensure that you qualify for the Small Business Property Tax Adjustment Credit, you will have to:

1. File your personal property assessment returns with your County Assessor timely. For businesses that means before September 1 and for individuals before October 1.
2. Pay your personal property taxes timely. That means the first half of the assessment must be paid before October 1 and the second half before April 1.

Location and contact information on your County Assessor can be found at tax.wv.gov.

Only eligible small businesses who are owners of the aggregated West Virginia personal property may claim the Small Business Property Tax Adjustment Credit. The credit is only available for 50% of the actual tax paid. Small businesses that file income on personal income returns and have multiple members must allocate the credit among its members in the same way that they allocate profits and losses for that taxable year.

Small Businesses	A business with personal property located in West Virginia that has an aggregate appraised value of \$1 million or less.
Aggregate Appraised Value	The true and actual value of all personal property owned by the Small Business in West Virginia, including the true and actual value of all personal property of related entities. This aggregate should include all automobiles. Automobile payments for which a Motor Vehicle Property Tax Credit was received will be factored out when determining the total amount of the Small Business Property Tax Credit that will be received if the small business is eligible.
Related Entities	A related entity is an individual, corporation, partnership, affiliate, association or trust or any combination or group that is controlled or in control of the Small Business. This means the Small Business directly or indirectly has 50% or more of the voting power or interest of the entity.
Ineligible Small Businesses	Small Business <u>does not</u> include any person who holds a working interest in any oil, natural gas or natural gas liquid producing property or any public service company that is centrally assessed by the state for property tax purposes.

With the passage of HB 125 in the 1st Special Session, taxpayers will not be penalized if they pay the second half of their ticket in 2023 because it is still considered due in 2024 and therefore timely paid.

For more information, you can:

- Call a Taxpayer Services Representative at (304) 558-3333 or toll-free at (800) 982-8297
- Email taxhelp@wv.gov
- Go Online to tax.wv.gov

Key Takeaway: Watch Your Vehicles.

Small Businesses will use their motor vehicles when determining their aggregate appraised value. If they qualify, meaning meet the \$1 million or less threshold, they will then remove their motor vehicles when it comes to calculating the actual amount of credit they can receive.

WEST VIRGINIA TAX DIVISION



WEST VIRGINIA TAX DIVISION



West Virginia Tax Institute

Legislative and Regulatory Update

Steve Stockton

Legal Section

October 27-29, 2024

Pipestem Resort State Park



Before we get started

This presentation is meant to be a source of general information and not as a substitute for tax laws, rules, or regulations and may not be relied upon as legal or tax advice or to support specific instances not addressed.

The material presented may contain simplified explanations of potentially complex legal and tax concepts so as to apply generally across broad areas of tax practice, both legal and accounting, and is intended for general overview and application.

Individual comments by presenters are meant to be illustrative in nature and are not intended as official Tax Department policy.

SOURCES OF INFORMATION

WV CODE

Latest updated version available on WV Legislature's website
<https://code.wvlegislature.gov/>

WV CODE OF STATE RULES (C.S.R.)

Latest updated version available on WV Secretary of State's website
<http://apps.sos.wv.gov/adlaw/csr/>

WV TAX DIVISION

<https://tax.wv.gov>

SOURCES OF INFORMATION

WV SOCIETY OF CPA'S (Guidebook to WV Taxes)

<https://www.wvscpa.org/resources/public-resources/tax-legislation>

IF ALL ELSE FAILS:

WV TAX DIVISION LEGAL SECTION

TaxLegal@wv.gov

Special Session

- SB 2033 amended W. Va. Code §11-21-4h and created new W. Va. Code §11-21-4i, reducing the personal income tax for tax years starting on or after January 1, 2025.
- HB 226 created new W. Va. Code §11-21-26 to provide a nonrefundable state child tax credit in the amount of fifty percent of the federal child tax credit (26 U.S.C. § 21). Effective retrospectively to all tax years starting on or after January 1, 2024.

Major Legislation

SB 858 amended W. Va. Code §11-3-25b to “clarify” appellate jurisdiction of OTA over all property tax matters even when a taxpayer fails to “file a petition in writing, register a complaint, or request an informal review as provided in 11-13-15c, 11-3-15d, 11-3-23a, 11-3-24, or 11-3-24a.” The effect on property tax rulings (W. Va. Code §11-3-24a) is unclear.

More Major Legislation

SB 803 amended W. Va. Code §11-4-3, the definitions for real property assessment. Added “family trust” to the definition of “owner” and added a definition of “family trust” that includes beneficiaries who are “immediate family members.” Also adds a definition of “immediate family members” that includes “a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, sons-in-law, daughters-in-law, fathers-in-law, mothers-in-law, brothers-in-law, sisters-in-law, and adoptive relationships.” Created a great deal of interest among county assessors. Is a “family trust” distinguishable from a family LLC?

Yet More Major Legislation

HB 5024 amended several sections in Article 21 to render “licensed private trust companies” (see Chapter 31I, new in 2023) exempt from income tax. The degrees of kinship allowable in a “licensed private trust company” are much more expansive than for a “family trust” (see SB 803).

Lesser Legislative Stuff

- HB 4971 created a new article (W. Va. Code §11-6M-1 through 3), providing salvage valuation for property used as “silicon and silicon carbide manufacturing equipment.” The introduced version of this bill included a much longer laundry list of specified elements.
- HB 5013 amended W. Va. Code §11-1C-2, changing the definition of “managed timberland” so that woodlots that are part of a subdivision can now be considered managed timberland.
- HB 5261 amended W. Va. Code §11-15-9u, expanding the definition of “small arms” to include a “receiver or frame” for purposes of the sales tax exemption for small arms and ammunition.

More Lesser Legislative Stuff

- SB 462 was the Personal Income Tax update.
- SB 483 was the Corporation Net Income Tax update.
- HB 5157 amended W. Va. Code §11-27-38 to provide for automatic increase of the tax rate on certain eligible acute care hospitals, dependent on approval by CMS (federal agency that administers Medicare, Medicaid, and other health programs).

Other Legislative Stuff

- HB 2759 amended W. Va. Code §11-17-39, dealing with rate increases for the healthcare provider tax.
- HB 3013 amended W. Va. Code §7-22-9 to allow Jefferson County to impose a special district excise tax.
- SB 446 amended W. Va. Code §11-14C-2 to remove methanol and methanol fuel from the definition of special fuel.

More Other Legislative Stuff

- SB 478 amended various sections of Chapter 11 and Chapter 18 to clarify portions of the Jumpstart Savings Program.
- SB 487 amended W. Va. Code §11-21-12d to extend the pensioner bailout reducing modification to 2028.
- SB 873 amended W. Va. Code §11-13A-9 to remove the provision that required the severance tax installment payment normally due on June 30 to be paid by June 15. The monthly installment payment for June is now June 30.

Legislative Stuff You May Not Care About

- SB 679 amended W. Va. Code §§11-16-23 and 60-7-13, as well as multiple sections in Articles 19-12E and 19-12F, all dealing with cannabinoids and kratom products. Primarily affecting ABC and the Department of Agriculture.
- SB 730 amended W. Va. Code §11A-1-17 to clarify sheriff's compensation for collection of taxes.
- HB 4812 amended W. Va. Code §8-13-5, capping fees paid to third parties who collect B&O taxes on behalf of cities. Fees cannot be more than 20% of taxes collected.

More Legislative Stuff You May Not Care About

- HB 4984 repealed W. Va. Code §§11-13I-1 through 3, the tax credit for employing former employees of the Colin Anderson Center.
- SB 755 amended multiple sections of Article 9E, Chapter 16 of the W. Va. Code to address “delivery sales” of tobacco products.

Oil and Gas Legislation

HB 4850 amended W. Va. Code §11-1C-10 to remove the sunset provision for the oil and gas property tax valuation methodology.



Finalized Legislative Rules

- 110 C.S.R. 15K, Aircraft Operated Under a Fractional Ownership Program
- 110 C.S.R. 21B, Citizen Tax Credit for Property Taxes Paid
- 110 C.S.R. 21G, Income Tax Paid at the Entity Level by Electing Pass-Through Entities
- 110 C.S.R. 21H, Income Tax Credits for Property Taxes Paid
- 110 C.S.R. 49, Administration of Tax on Purchases of Wine and Liquor Inside and Outside of Municipalities
- 110 C.S.R. 99, Privilege Tax on Sales of Hemp-Derived Cannabinoid and Kratom Products

Rules Pending Before the Legislature

- 110 C.S.R. 21C – Method of Claiming the Qualified Rehabilitated Buildings Investment Credit
- 110 C.S.R. 10G – Alternative Resolution of Tax Disputes
- 189 C.S.R. 3 – Statewide Procedures for the Maintenance and Publishing of Surface Tax Maps

Friendly Reminders

Soft drink tax (W. Va. Code §11-19-1, *et seq.*) was repealed effective July 1, 2024.



WEST VIRGINIA
TAX DIVISION



Questions? Really?

Please send them in an email to:

TaxLegal@wv.gov

DOCKET NO. 23-1355

Economic Obsolescence - Economic obsolescence can **best be measured** by either a market approach method or an income method. Due to the lack of sales volume for comparable commercial or industrial properties, an income approach is **normally used**. However a market approach method may be used where the specific facts and circumstances would indicate that that method would achieve a more accurate measure of value. W. Va. Code R. 110-1P-3.5.2 (2013).

Adjustments. -- When physically inspecting commercial and industrial personal property for appraisal, use three (3) types of depreciation: should be **considered**; physical deterioration depreciation, economic obsolescence and functional obsolescence. W. Va. Code R. 110-1P-3.4.3.3 (2013).

In re Tax Assessment of Foster Found.'s Woodlands Ret. Cmty., 223 W. Va. 14, 672 S.E.2d 150, (2008) (When a party has the burden of persuasion on an issue, that burden does not shift. The burden of production merely requires a party to present some evidence to rebut evidence proffered by the party having the burden of persuasion.) *See also* Champlin Realty Co. v. State Bd. of Tax Comm'rs, 745 N.E.2d 928 (Ind. T.C. 2001) (the taxpayer is required to present a prima facie case as to both the identification of causes and quantification of obsolescence. Once the taxpayer carries its burden of production with respect to the identification and quantification of obsolescence, the burden of production shifts to the State Board to rebut the taxpayer's evidence and justify its decision with substantial evidence.); Coomey v. Bd. of Assessors of Sandwich, 367 Mass. 836, 329 N.E.2d 117 (1975) (The burden of proof as to the existence of such a scheme is, of course, on the taxpayer. However, by proper proof, the taxpayer may shift the burden of production of evidence to the assessors.); TransCanada Hydro Ne., Inc. v. Town of Newbury, 206 Vt. 462, 180 A.3d 843, (2017) (Once the town produces evidence that the property was properly appraised, a presumption of validity attaches. This is a “bursting bubble presumption” that disappears if the taxpayer presents admissible evidence to show that the value exceeds fair market value. At that point, the burden of production shifts to a town to show its valuation is correct, but the burden of persuasion always lies with the taxpayer.); Weber v. Lane Cnty. Assessor, 2016 WL 336552, (Or. T.C. Jan. 27, 2016) (the taxpayer must introduce substantial evidence tending to show a value different from that asserted by the assessor in order for the burden to shift to Defendant to refute such a showing.)

DOCKET NO. 22-058

(a) *General rule.*- The net amount of a lawful, mathematically correct, uncontested claim for refund of any tax imposed by article twenty-one of this chapter shall be refunded to the taxpayer within ninety days after such a claim for refund is filed with the tax commissioner.

W. Va. Code Ann. § 11-10-14c (West)

(a) *Refunds or credits of overpayments.* -- In the case of overpayment of any tax (or fee), additions to tax, penalties, or interest imposed by this article, or any of the other articles of this chapter, or of this code, to which this article is applicable, the Tax Commissioner shall, subject to the provisions of this article, refund to the taxpayer the amount of the overpayment or, if the taxpayer so elects, apply the same as a credit against the taxpayer's liability for the tax for other periods. The refund or credit shall include any interest due the taxpayer under § 11-10-17 of this code. Emphasis added.

W.Va. Code Ann. §11-10-14(a)(West).

The Tax Commissioner's ability to determine a taxpayer's claim is set out in West Virginia Code Section 11-10-14(c) as follows:

(c) *Claims for refund or credit.* -- No refund or credit shall be made unless the taxpayer has timely filed a claim for refund or credit with the Tax Commissioner. A person against whom an assessment or administrative decision has become final is not entitled to file a claim for refund or credit with the Tax Commissioner as prescribed herein. The Tax Commissioner shall determine the taxpayer's claim and notify the taxpayer in writing of his or her determination. Emphasis added.

W.Va. Code Ann. §11-10-14(c) (West).

DOCKET NO. 23-129

After careful review of the pertinent law, we conclude that the circuit court did not err in finding that home inspectors are not professionals under West Virginia Code of State Rules section 110-15-8.1.1.1, and also did not err in upholding the four-year degree requirement, as we find it was a permissible exercise of the Tax Department's rule-making authority.

Keener v. Irby, 245 W. Va. 777, 788, 865 S.E.2d 519, 530 (2021)