



## **OTA Conference — Tax Update**

November 7, 2024

# Presenter

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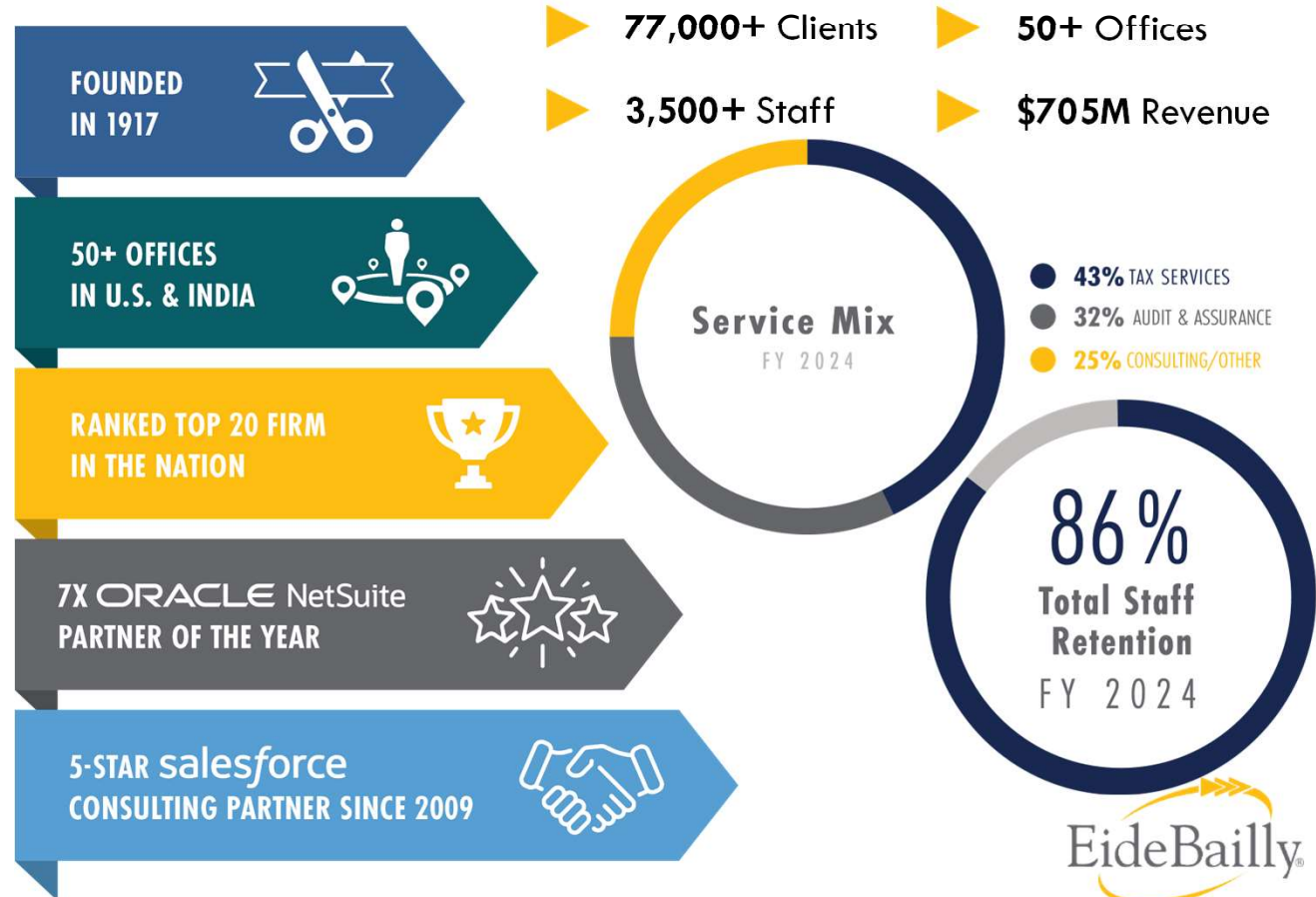
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# About Eide Bailly

## CORE SERVICES

- Tax Services
- Audit & Assurance
- Outsourced Accounting
- Transition & Exit Planning
- Forensics & Valuations
- Cost Segregations
- Internal Audit & Compliance
- Health Care Consulting
- Risk Advisory Services
- Digital/Technology Solutions
  - Business Intelligence
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  - NetSuite, Salesforce, Microsoft
  - Business Process Automation
  - System Integrations
  - Cybersecurity
  - Managed Services
- Transaction Advisory Services
- Energy Credits & Incentives



# Today's Agenda

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Currently Scheduled 2025 Tax Code Changes

TCJA Tax Codes Changes that are “Permanent”

Other Tax Planning Considerations for Businesses

IRS and FinCEN Updates

Comparing Republican and Democratic Tax Platforms



**Tax Provisions from TCJA set  
to expire in 2025**

# Temporary Individual Income Tax Provisions

- **Standard Deduction & Personal Exemption**

- The TCJA increased the standard deduction and eliminated personal exemptions.
- If the TCJA expires, the standard deduction for a married couple will be approximately \$16,525 in 2026, while the personal exemption will be about \$5,275.
- If this provision of the TCJA were extended through 2026, the standard deduction would be roughly \$30,725, and the personal exemption would be zero.

- **Individual Income Tax Rates**

- The TCJA lowered marginal income tax rates throughout much of the income distribution.
- For example, the TCJA cut the top marginal tax rate from 39.6% to 37%. These rates will increase to pre-2017 levels if the TCJA expires.



# Temporary Individual Income Tax Provisions

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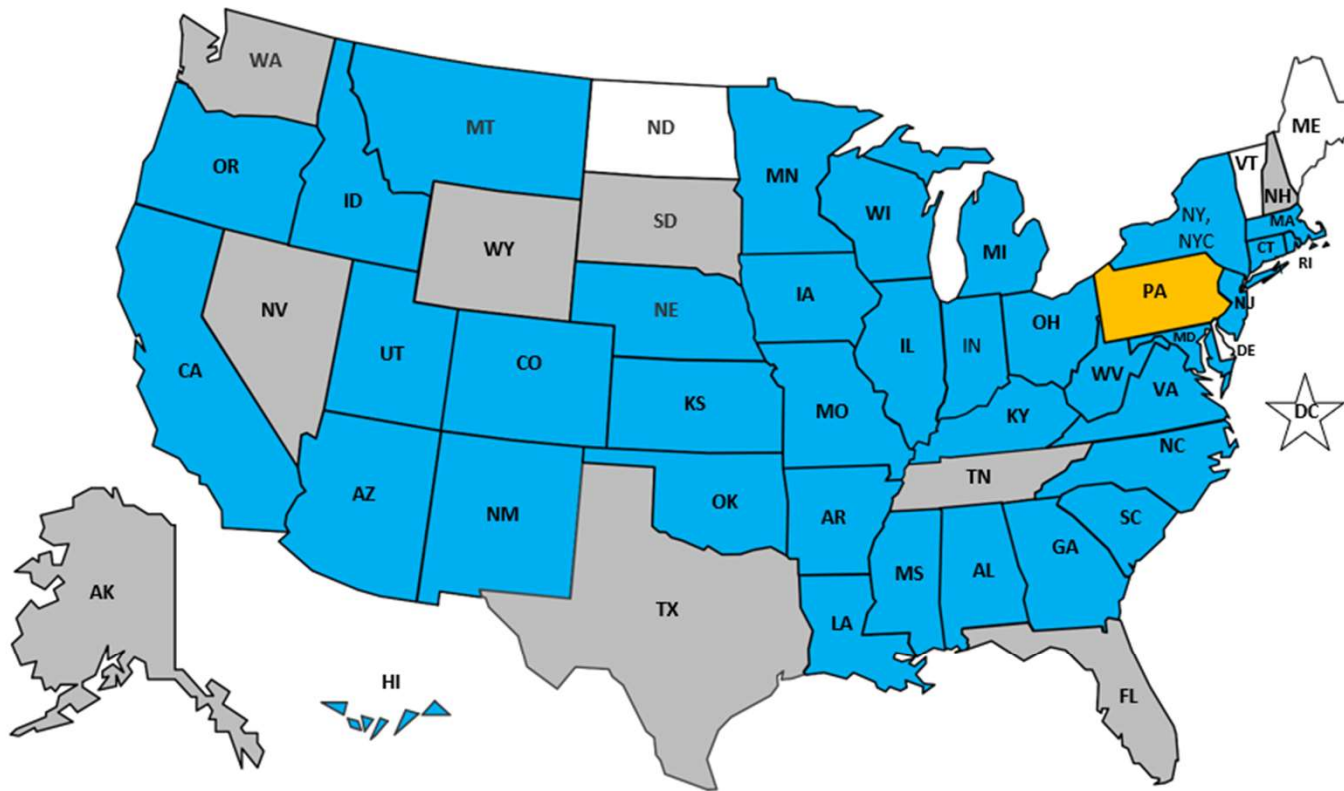
## State and Local Tax (SALT) Deductions

- The TCJA imposed a \$10,000 cap on the deductibility of state and local taxes (SALT).
- If this provision of the TCJA expires, all state and local property taxes and income taxes (or sales taxes in states without income taxes) will be deductible, primarily benefiting high-income taxpayers in high-tax states.
- **NOTE:** SALT workaround was for states to enact Pass-through Entity (PTE) Level Tax



# States with Enacted or Proposed Pass-Through Entity (PTE) Level Tax

As of May 14, 2024



- 36 states (& 1 locality) that enacted a PTE tax since TCJA SALT deduction limitation, effective for 2021 (or earlier) unless noted:
  - [AL](#), [AR<sup>1</sup>](#), [AZ<sup>1</sup>](#), [CA](#), [CO<sup>3</sup>](#), [CT<sup>4</sup>](#), [HI<sup>2</sup>](#), [GA<sup>1</sup>](#), [IA<sup>1</sup>](#), [ID](#), [IL](#), [IN<sup>1</sup>](#), [KS<sup>1</sup>](#), [KY<sup>1</sup>](#) (& [KY](#)), [LA](#), [MA](#), [MI](#), [MD](#), [MN](#), [MO<sup>1</sup>](#), [MS<sup>1</sup>](#), [MT<sup>2</sup>](#), [NC<sup>1</sup>](#), [NE<sup>3</sup>](#), [NJ](#), [NM<sup>1</sup>](#), [NY](#), [OH<sup>1</sup>](#), [OK](#), [OR<sup>1</sup>](#), [RI](#), [SC](#), [UT<sup>1</sup>](#), [VA](#), [WI](#), [WV<sup>1</sup>](#), and [NYC<sup>1</sup>](#)
  - <sup>1</sup> Effective in 2022
  - <sup>2</sup> Effective in 2023 or later
  - <sup>3</sup> Retroactive to 2018
  - <sup>4</sup> Mandatory 2018-2023, elective starting 2024
- 1 state with active proposed PTE tax bills:
  - PA – [SB 659](#) in Senate committee; [HR 1584](#) in House committee
- 9 states with no owner-level personal income tax on PTE income:
  - AK, FL, NH, NV, SD, TN, TX, WA, WY
- 4 states with an owner-level personal income tax on PTE income that have not yet proposed or enacted PTE taxes:
  - DC, DE, ME, and ND



# Temporary Individual Income Tax Provisions

- **Child Tax Credit**

- The TCJA increased the tax credit for each child under 17 from \$1,000 to \$2,000, and that is not adjusted for inflation.
- The maximum credit that can be refunded increased from \$1,000 to \$1,400 per child in 2018; that is adjusted for inflation and is set at \$1,700 in 2024.
- The TCJA also increased the income thresholds at which the credit phases out.
- The child tax credit will fall back to \$1,000 if the TCJA expires, which would make the real value of the credit about 25% lower than it was in 2017.

- **Estate Taxes**

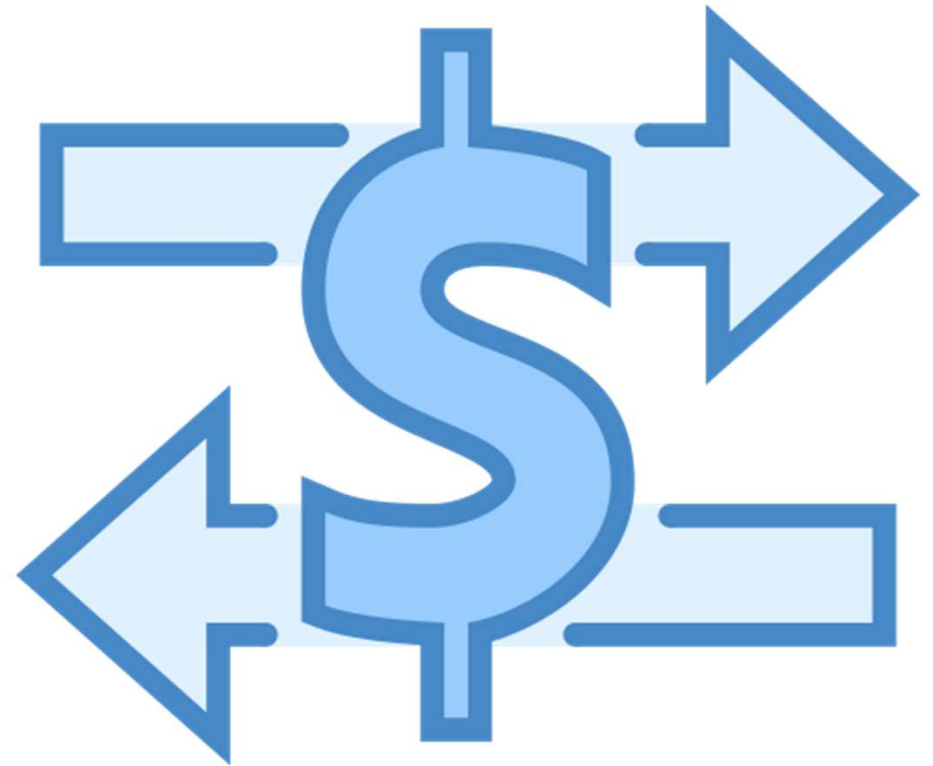
- The TCJA doubled the estate tax exemption.
- If this provision expires the exemption in 2026 will be about \$14.3 million for married couples, compared to \$28.6 million if the provision is extended.



# Estate Tax & Gift Tax

- 2024 Gift exclusion amount is \$18,000 per person.
- Lifetime estate exemption will fall back to \$5 million\* in 2026 (From 2024 at \$13,610,000 for an individual and \$27,220,000 for a married couple).
  - The exemption as of the sunset date is expected to be somewhere between \$6.5 million and \$7.5 million per person.

\*Base exemption subject to inflation indexing



# Temporary Individual Income Tax Provisions

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- **199A Deduction**

- The TCJA provided a 20% deduction for qualified pass-through income for sole proprietorships, partnerships, and S-corporations.
- If the TCJA expires, this deduction will no longer be available.

- **Alternative Minimum Tax (AMT)**

- The TCJA increased the AMT exemption amounts and raised the income levels at which the exemptions phase out, resulting in fewer taxpayers liable for the AMT.
- If this provision of the TCJA expires, the 2026 AMT exemption for married couples filing jointly will be about \$110,075, compared to about \$140,300 if the provision is extended.





# **Tax Provisions from TCJA that are “Permanent”**

# Permanent TCJA Income Tax Provisions

- **Which TJCA provisions are NOT expiring?**

- Most of the TCJA's provisions that affect corporations—including the reduction in the corporate tax rate from 35% to 21%— do not sunset.
- Net operating loss limited to offset 80% of taxable income with no carryback.
- Section 174 research and development expense disallowance and required amortization over five years.
- Section 163(j) interest expense limitation computed without the addback of depreciation expense.
- The phase out of bonus depreciation by 2027.

**NOTE** - \$610,000 (2024 threshold as adjusted for inflation) excess business loss limitation for individuals was extended by COVID relief to 2028



# EXCESS BUSINESS LOSS LIMITATION WAS EXTENDED THROUGH 2028

The 2024 excess business loss limits are \$305,000 for single taxpayers and \$610,000 on joint returns.





# **Other Tax Planning Considerations for Businesses**

# Fixed Assets Planning

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Section 179 up to \$1,200,000 for 2024 (Investment limit of \$2,890,000).

60% bonus depreciation in 2024 (40% in 2025).

Sec. 179D deduction for energy-efficient building improvements (current expense v. 39-year depreciation).

Fixed asset studies to minimize 39-year property.



# Gross Receipts for Limitations on Business Interest

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- For 2024 Section 163(j) limits business interest payments for taxpayers with gross receipts of \$30 million or more.
- The business interest limitation is 30% of ATI — and depreciation, amortization, and depletion are no longer added back in computing ATI.
- The amount of deductible business interest expense cannot exceed the sum of:
  - The taxpayer's business interest income,
  - 30% of the taxpayer's adjusted taxable income (ATI).





# IRS & FinCEN Updates

# IRS Exam Selection – Campaigns

- Business Aircraft Campaign
- Foreign Tax Credit
- Basis Shifting/Stripping
- IRC 355 Transactions
- DPAD
- FATCA Filing Accuracy
- Foreign Earned Income Exclusion
- 1120-F (non-filer, delinquent returns, interest expense)

- High Income Non-Filers
- Employee Retention Credit Claims
- Economic Substance
- IRC 965 Avoidance
- IRC 6426 Fuel Credit
- Micro-Captive Insurance Campaign
- Offshore Private Banking
- ERC Audits

- Related Party Transactions
- S Corp Distributions
- S Corp losses in excess of basis
- S Corp Built in Gains
- Conservation Easements
- TCJA Campaign
- Virtual Currency

# IRS Collections Update

- High-Wealth Initiatives:
  - High Income – High Balance Due Initiative.
  - High Income – Non-Filer Initiative:
    - Income over \$400k and no return since 2017.

**Figure 7: Staffing of Enforcement Personnel**

	POSITION TITLE	STAFFING 1/27/2024	FY 2024 HIRING TARGET	FY 2024 ANTICIPATED ATTRITION	STAFFING GOAL END OF FY 2024	NET STAFFING INCREASE FY 2024	
	REVENUE OFFICER	3,200	517	247	3,470	270	
	REVENUE AGENT	8,317	4,663	622	12,358	4,041	
	SPECIAL AGENT	2,183	402	85	2,500	317	
	<b>TOTALS</b>	<b>13,700</b>	<b>5,582</b>	<b>954</b>	<b>18,328</b>	<b>4,628</b>	

# New Beneficial Ownership Reporting Required In 2024

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Name of Beneficial Owner

Birthdate of Owner

Address of Owner

“A unique identifying number and issuing jurisdiction from an acceptable identification document (and the image of such document)”

# Beneficial Owners

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- Any individual who “directly or indirectly”:
  - “Exercises substantial control” over a reporting company, or
  - “Owns or controls” at least 25% of the “ownership interests” of a company:
    - *This definition excludes minors if parent or guardian info is reported; nominees, etc.; certain employees; those whose only interest is via inheritances; and creditors.*

# Company Applicant

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- FinCEN defines a company applicant to be only two persons:
  - The individual who directly files the document that creates the entity, or in the case of a foreign reporting company, the document that first registers the entity to do business in the United States.
  - The individual who is primarily responsible for directing or controlling the filing of the relevant document by another.



## **EXEMPTIONS FROM THESE RULES**

The rules provide 23 exemptions. “Many of these exempt entities are already subject to substantial federal and/or state regulation or already have to provide their beneficial ownership information to a governmental authority.”



# Exemptions Include

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1. Securities reporting issuer
2. Governmental Entity
3. Bank
4. Credit Union
5. Depository Institution Holding company
6. Money services business registered with FinCEN
7. Securities broker or dealer
8. Securities exchange or clearing agency
9. Other Exchange Act registered entity
10. Investment company or investment adviser
11. Venture capital fund advisor
12. Insurance Company
13. State-licensed insurance provider
14. Commodity Exchange Act registered entity
15. Accounting firm registered under Sarbox Sec. 102
16. Public utility
17. Financial market utility
18. Pooled investment vehicle
19. Tax-exempt entity
20. Entity assisting a tax-exempt entity
- 21. Large operating company**
22. Subsidiary of certain exempt entities
- 23. Inactive entity**



## LARGE OPERATING COMPANY

- Employs more than 20 full-time employees in the U.S.
- Has an “operating presence at a physical office within the United States,” and
- Filed a federal tax or information return demonstrating more than \$5 million “in gross receipts or sales”:
  - This means all companies with 20 or fewer employees or less than \$5 million receipts will have to file.



# Inactive Entity

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- In existence before January 1, 2020.
- Is not engaged in active business.
- Is not owned by a foreign person “whether directly or indirectly, wholly or partially”.
- Has not experienced any change in ownership in the preceding 12 months.
- Has not sent or received any funds over \$1,000 “either directly or through any financial account in which the entity or any affiliate of the entity had an interest” in the prior 12 months.
- Does not otherwise hold any type of assets including ownership interests.



## Timing Of Reports – Existing Companies

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- Reporting companies created or registered before January 1, 2024, will have one year (until January 1, 2025) to file their initial reports, while reporting companies created or registered after January 1, 2024, will have 90 days after receiving notice of their creation or registration to file their initial reports.
- Reporting companies have 30 days to report changes to the information in their previously filed reports and must correct inaccurate information in previously filed reports within 30 days of when the reporting company becomes aware or has reason to know of the inaccuracy of information in earlier reports.
- New companies formed after 1-1-25, must file within 30 days.



A red stamp with the word "PENALTY" in bold, uppercase letters, tilted slightly to the right. The stamp is on a light-colored, textured surface. In the bottom left corner, there is a black, rectangular object, possibly a scanner or a piece of equipment, partially visible.

**PENALTY**

## **PENALTIES**

- Civil penalties of up to \$500 per day.
- Criminal penalties of \$10,000 fines and up to two years imprisonment.



# **Comparing Republican and Democratic Tax Platforms**

# Corporate Tax Rate

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## Trump

- Retain 21% rate with 15% rate for unspecified domestic activity
- Trump also mentioned a general 20% rate at speech with a trade group



## Harris

- Increase rate to 28%
- Harris originally endorsed a 35% rate in the 2020 primary

# Business Tax Cuts



## Trump

- Retain the Section 199A pass-through deduction
- Past campaigns and statements have mentioned unspecified payroll tax cuts and restoring 100% bonus depreciation



## Harris

- Create new unspecified America Forward tax credit with labor requirements for companies engaged in “innovative fields,” particularly for “retooling or rebuilding an existing facility”
- Create unspecified standard deduction for small businesses
- Increase start-up expensing to \$50,000
- Enhance the low-income housing tax credit
- Create a tax credit for building starter homes
- Allow a credit for certain rehab costs



# Business Tax Increases



## Trump

- Repeal energy tax incentives from the IRA, particular those for electric vehicles
- Some Republicans have recently softened on broad repeal



## Harris

- Bar certain tax benefits for corporate landlords that raise rents
- Bar certain tax benefits for taxpayers buying more than 50 single-family homes
- While running in 2020, Harris supported a surtax for big banks and a financial transactions tax, though the financial transactions tax was earmarked for a “Medicare-for-all” plan she has so far not resurrected.

# Business Tax Increase

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**Harris has not explicitly endorsed all of Biden's platform, but is widely assumed to support many of the tax increases in recent budget proposals, including:**

- Stock buyback tax increase to 4%
- CAMT rate increase to 21%
- Barring deductions for all pay exceeding \$1 million for all employees
- Limiting Section 1031 like-kind exchanges to \$500,000 in gain
- Tightening digital asset rules
- Repealing oil and gas tax incentives
- Curbing specific types of corporate transactions

# Individual Tax Cuts



## Trump

- Exempt tip income from tax
- Exempt Social Security payments from tax
- Exempt overtime pay from tax
- Repeal SALT cap
- Extend the TCJA tax cuts
- Lower or eliminate income taxes for Americans living abroad
- Create a deduction for auto loan interest on domestic cars
- ‘Think about’ eliminating income taxes for military and first responders
- Republican platform document suggests “supporting home ownership through tax incentives”
- Trump has in the past discussed a 10% “middle class tax cut” and reducing the 22% tax bracket to 15%
- Trump has hinted at replacing income taxes to fullest extent possible with tariffs



## Harris

- Exempt tip income from tax
- Extend enhanced EITC and CTC
- Create first-time homebuyer credit
- Increase CTC to \$6,000 in first year of life
- Harris’ pledge not to raise taxes on those earning less than \$400,000 presumably implies extending TCJA cuts below this threshold
- While in the Senate, Harris proposed a refundable savers credit and increasing child and dependent care tax credit in the LIFT Act, and also supported a credit for those spending more than 30% on rent

# Individual Tax Increases



## Trump

- Trump has discussed ending the enhanced ACA premium tax credit



## Harris

- Expand the 3.8% NII tax and raise the top NII and Medicare rate to 5%
- The LIFT Act from Harris in 2020 proposed rescinding TCJA tax cuts for over \$100,000 in income, which would increase the top individual rate to 39.6%, though she has now reiterated Biden's pledge not to increase taxes on those earning less than \$400,000.

# Capital Gains



## Trump

- Trump discussed indexing capital gains to inflation before rejecting during his first term
- Trump has in the past criticized the tax treatment of carried interest and the TCJA increased the holding period for long-term gains treatment



## Harris

- Increase capital gains tax to 28%
- Implement “billionaire” minimum tax on unrealized gains
- Harris has not explicitly mentioned carried interest, but may implicitly support Biden’s proposal to tax carried interest as ordinary income

# Estate Tax

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**Trump**

- Trump would make TCJA estate tax provisions permanent



**Harris**

- Biden's budget would repeal the step-up in basis of inherited assets and require tax at death

# International



## Trump

- Implement a 10% tariff on all imported goods (Trump has also mentioned 20%) and 60% rate against China, potentially to offset other income tax cuts
- Trump and congressional Republicans have been deeply critical of the Pillar 2 agreement and have threatened reciprocal tariffs and other taxes on countries that impose certain taxes on U.S. income or U.S. multinationals



## Harris

- Harris's campaign statements appear to endorse the Biden administration's sweeping package of international tax proposals that would raise an estimated \$632 billion in revenue by aligning U.S. rules more closely with the Pillar 2 global minimum tax

**Q&A**





# Thank You!

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