2023 Federal Tax Updates

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2023 Federal/State Tax Institute

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Corporate Transparency Act (CTA)

> Effective on January 1, 2024, for some companies
> The CTA requires FinCen to create a national registry of "Beneficial Owners, Company Applicants, and Reporting Companies."
> On September 30th, 2022, FinCen implemented the "Reporting Rule" which advises who must file Beneficiary Ownership Information (BOI), what information must be provided, and when reports must be filed.
> Additional information about the reporting rules and guidance are available at www.fincen.gov/boi
> FAQs can be found at www.fincen.gov/boi-faqs

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Reporting Companies

- Reporting Company
  - Certain entities created before 1.1.24 shall file an initial report not later than 1.1.25
  - Any entity created after 1.1.24 shall file a report within 30 calendar days after creation (relief recently granted to extend to 90 days)
- Two categories of reporting companies:
  - Domestic Reporting Company
    - Is the company a corporation or a limited liability company (LLC)?
    - Under the law of a State or an Indian Tribe, was the company created by the filing of a document with a secretary of state or a similar office (LLP, LP etc.)?
  - Foreign Reporting Company
    - Was the company created under laws of a foreign country?
    - Has the company registered to do business in any U.S. State or Tribal jurisdiction by filing a document with an SOS office in State of Tribe?

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Some General Exemptions for Reporting Companies

- General exemption for large operating companies who meet all of the following
  - Employs more than 20 full time (30hr/week) employees in the United States,
  - Has an operating presence at a physical office within the United States; and
  - Filed a Federal Income Tax or Information Return in the United States for the previous year demonstrating more than $5,000,000 in gross receipts or sales
- Other exemptions for publicly traded companies, investment companies, insurance companies, accounting firms, tax-exempt entities and inactive companies - See Small Entity Compliance Guide for a full listing

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Who is a Beneficial Owner?

- Beneficial owner: An individual who has substantial control over the company or owns/controls at least 25% of the company
- Substantial control is exercised by meeting any of the following four criteria points (does not need to own any stock):
  - Individual is a senior officer
  - Individual has authority to appoint/remove certain officers or a majority of the directors of the reporting company
  - Individual is an important decision-maker over the business, finances or structure
  - Individual has any other form of substantial control over company
    - Board representation
    - Ownership of majority of voting rights
  - Ownership includes
    - Equity, stock or voting rights
    - Capital or profit interest
    - Convertible instruments
    - Option or privilege

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25% Test – May Not Be What It Seems

- Corporation – Greater of voting interests vs. proportional value of ownership interest
- Partnership – Combine individual capital and profit interest and divide by total outstanding capital and profit interests
- Indirect ownership counts

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Beneficial Owner Exceptions

- Beneficial Owner Exceptions
  - The following are exceptions from reporting as a beneficial owner in the company's BOI report:
    - Minor Child-need to report legal guardian instead
    - Nominee, intermediary, custodian, or agent – (advisors like CPA's or attorneys for the company)
    - Employees except those that may exercise control such as senior officers such as President, CFO, CEO, General Counsel
    - Future interests through right of inheritance
    - Creditor

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Company Applicant

- What is a "Company Applicant?"
  - Company Applicant: An individual who files or is responsible for the filings of documents that creates or registers the company. No company can have more than two. Companies or legal entities cannot be company applicants. Company applicants fall into two categories:
    - Direct Filer
      - The individual whom directly either physically or electronically filed the document with the office of the secretary of state creating the domestic reporting company or registered a foreign reporting company
    - Directs or Controls the Filing Action
      - Individual who is primarily responsible for ensuring the filing of the creation or first registration document
      - Could be the CPA, attorney or business partner
    - Reporting Company is required to report its company applicants if
      - On or after January 1, 2024, a domestic reporting company is created
      - On or after January 1, 2024, a foreign reporting company is first registered to do business in the US
      - If either a domestic or foreign reporting company is created **BEFORE** January 1, 2024, reporting of company applicants is **NOT REQUIRED**

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Reportable Items for Reporting Company

- Full Legal Name or DBA/Trade Name
- Complete current U.S address or if foreign, the primary business location in the U.S.
- State, Tribal, or Foreign Country of Formation
- If foreign, State or Tribal Jurisdiction of First Registration
- TIN (including EIN) or Foreign Tax ID Number (reporting company)

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Reportable Items for Beneficial Owner and Company Applicant

- Full Legal Name or DBA/Trade Name
- Date of birth
- Complete current U.S address
  - Applicant can use the address of the business
  - Business Owner must use the personal address
- Identifying number and <u>image</u> from passport or driver license or another form of governmental ID – can be replaced by a FinCen Identifier

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Filing Beneficial Ownership Information (BOI) Reports

- How to file a BOI report
  - Must be filed electronically through FinCEN's filing system
  - System will not be available until January 1, 2024
- Willful failure to file/ false reports under the Reporting Rule:
  - Civil monetary penalties of $500 for each day that the violation continues or has not been remedied; and/or
  - Criminal penalties of not more than $10,000, imprisonment of not more than two years, or both
  - Changes to reports need to be filed within 30 days after the change
    - Any changes about reporting companies such as name or address
    - Any changes about beneficial owners
      - New beneficial owners who exercise control or who meet the 25% test
      - Minor child reaching age of majority
    - Does not appear need to report if there is changes to company applicant's information
    - No requirement to report a company's termination or dissolution
  - CTA creates a safe harbor from penalty for persons acting in good faith to correct inaccurate information submitted within 90 days of the inaccurate report

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Secure Act 2.0

- Setting Every Community Up for Retirement Enhancement

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Expanding Automatic Enrollment in Retirement Plans

- Adds Section 414A
- Beginning 2025, newly create 401K and 403(b) automatically enrolls participants at a minimum 3% deferral rate but not to exceed a 10% rate
- Each following year, the rate increases by 1% until a minimum of 10% but not to exceed 15%
- Employee must elect out

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Expanding Automatic Enrollment in Retirement Plans

- Does not apply to
  - Simple Plans
  - Plans established before enactment
  - Governmental or Church Plans
  - New and Small Business
    - 3 years or less
    - 10 employees or less

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Modification of Credit for Small Employer Pension Startup Costs

- Before Secure 2.0, the credit was
  - 50% of administrative costs
  - Maximum $5,000
- After Secure 2.0,
  - Credit was increased to 100% for employers with 50 employees or less
  - For employers with between 51 and 100 employees, credit remains at 50%
  - For employers with more than 100 employees, credit remains at 0%
  - Available for first three years of plan's existence
  - Effective for tax years after 12.31.22

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Modification of Credit for Small Employer Pension Startup Costs

- Additional credit per employee available for employer contributions
- Credit is limited to $1,000 per employee multiplied by an applicable percentage
- Applicable percentage is
  - Year 1-2 100%
  - Year 3 75%
  - Year 4 50%
  - Year 5 25%
- Credit is phased out by 2% multiplied by number of employees in excess of 50
- No credit allowed for employees who make more than $100,000

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Savers Match

- Before Secure 2.0
  - If the taxpayer met certain income limitations, then they could receive a credit for contributions to IRA, 401K or an Able Account
- After Secure 2.0,
  - Above credit was repealed
  - A new matching federal contribution that will be deposited into a taxpayer's IRA or retirement plan
  - Match is equal to 50% of taxpayer's retirement plan contributions up to $2,000 per individual

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Savers Match

- Dependents, full-time students and nonresident aliens not eligible
- Phase-Out Levels (MAGI)
  - Joint $41,000 - $71,000
  - HoH $30,750 - $53,250
  - Single $20,500 - $33,500
- Effective December 31, 2026

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Increase in Age for RMD

- RMD age increases to 73 (from 72) beginning 1.1.23
- If taxpayer turns 72 in 2023, RMD is pushed back to 4.1.2025 rather than 4.1.2024
- RMD age increases 75 beginning on 1.1.2033 for those individuals who obtained age 74 after 12.31.2023

Tax Year	Birth Date	RMD Age
Through 2019	Before July 1, 1949	70 ½
2022 through 2022	July 1, 1949 through 1950	72
2023 through 2032	1951 – 1959	73
2033 and beyond	1960 and beyond	75

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Higher Retirement Plan Catch Up Contributions

- Before Secure 2.0 – if age 50, additional catch-up contribution of $7,500 ($3,500 Simple) allowed in 2023
- After Secure 2.0
  - For individuals of ages of 60-63, limit is increased to greater of $10,000 ($5,000 for Simple Plans) or 50% more than the regular catch-up amount
  - When individual turns 64, contribution amount reverts back to the normal amount
  - Catch-up contributions must be Roth contributions if wages exceed $145,000 in prior tax year (provision does not apply to Simple Plans)
  - Sole Proprietors, Partners and Simple Plans not subject to Roth provision
  - Effective after 2024 except Roth provision delayed until 2026

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Student Loan Payments

> Employees can receive matching contributions from employers to their 401(k), 403(b) or Simple Plan for qualified student loan payments

> Qualified student loan payments – payments made by an employee in repayment of qualified education loan incurred by employee to pay qualified higher education expenses limited to lesser of 402(g) deferral limitation ($23,000 in 2024) or the employee's compensation

> Effective for contributions made after December 31, 2023

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Additional Nonelective Employer Contributions to Simple Plans

> Before Secure 2.0 – requires employers with Simple Plans to make contributions to employees of either 3% of compensation deferred or 2 % of compensation

> After Secure 2.0 – allows an employer to make additional contributions to each employer in a uniform manner, as long as the contribution doesn't exceed the lesser of up to 10% of compensation or $5,000

> Effective after December 31, 2023

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Contribution Limit Elective Deferrals for Simple Plans

- Before Secure 2.0 - $15,500 and additional catch-up contribution at age 50 is $3,500 for 2023 as indexed for inflation
- After Secure 2.0
  - Deferral limit and catch-up contribution is increased by 10% for employers with no more than 25 employees
  - An employer with 25-200 employees is permitted to provide higher deferral limits but only if the employer provides 4% match of compensation deferred or employer contribution of 3% of compensation
- Effective for tax years beginning after December 31, 2023

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Nontrade or Business SEP Contributions

- Employers of domestic employees (household employees) are allowed to provide retirement benefits under a SEP
- Contribution will not be deductible
- Effective as of date of enactment

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Starter 401(k) Plans

- Available for employers who currently do not have a plan
- Requires all employees to be enrolled by default at a 3% - 15% deferral rate
- Annual deferrals limited to $6,500 and $1,000 catch-up contributions indexed for inflation
- Employers cannot make matching or nonelective contributions
- Attractive as it avoids nondiscrimination and top-heavy testing rules

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Modification of Age for Able Accounts

- Tax advantaged savings programs for certain individuals with disabilities
- Current Law – Disability or blindness had to occur before age 26 for individual to be eligible for Able Account
- Secure 2.0 – Increases age to 46
- Effective for taxable years beginning after December 31, 2025

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Improving Coverage for Part Time Workers

- Before Secure 2.0
  - Secure 1.0 expanded 401(k) access to part-time employees after 12.31.20
  - Required qualified plans to include long-term, part-time employees who have worked 500 hours per year in past three consecutive years provided they were at least 21 years old or
  - Employees who have completed one year of service with over 1,000 hours of service
  - Rule does not apply to collectively bargained plans
- After Secure 2.0
  - Reduces the 3-year requirement beginning after December 31, 2024 to 2 years

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Special Distributions from Tuition Programs into Roth IRAs

- Allowed to rollover up to $35,000 over the course of a taxpayer's lifetime from any 529 account in their name to a Roth
- Subject to Roth IRA annual contribution limits
- 529 plan had to be open for 15 years
- Rollover cannot exceed the total amount contributed to the account more than 5 years before the rollover
- Roth AGI income limits not applicable to these types of conversions
- Effective to distributions after December 31, 2023

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Reduction in Excise Tax in Qualified Retirement Plans

- Before Secure 2.0
  - Failure to take RMD results in a 50% penalty on portion of RMD which was not distributed
- After Secure 2.0
  - 50% penalty is reduced to 25%
  - If failure is corrected in a timely manner defined as within 2 years, the excise tax is reduced to 10%
  - IRS may be less forgiving for reasonable cause
  - Effective for taxable years after date of enactment

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Distribution from Retirement Plan to Charities

- Allows one time $50,000 distribution to a charitable remainder unitrust, charitable gift annuity or charitable remainder annuity trusts
- Also indexes for inflation the QCD $100,000 contribution
- Effective for distributions made in taxable years ending after the date of enactment

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Birth or Adoption Recontributions

- Before Secure 2.0 – Distributions of up to $5,000 used for adoption or birth can recontributed to retirement plan before January 1, 2026
- After Secure 2.0 – Recontribution must be made within three years
- Effective for distributions made after date of enactment and retroactively to the three-year period beginning on the day after the date on which such distribution was received

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Penalty Free Withdrawals for Certain Emergency Expenses

- Provides additional exception to 10% penalty for certain distributions used for unforeseeable or immediate financial needs relating to personal or family emergency expenses
- One distribution of $1,000 is allowed per year and must be repaid within three years if that is desired
- No additional similar distributions are allowed during 3-year time frame unless original loan is repaid
- Effective for distributions after December 31, 2023

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Other Penalty Free Withdrawals

> Domestic Abuse Victims
  > Lesser of $10,000 or 50% of the account
  > 3-year repayment option and will be refunded income taxes
  > Taxpayer self-certifies
  > Effective for distributions after December 31, 2023
> Taxpayers with terminal illness
  > Physician certifies that taxpayer has less than 84 months to live
  > Certification must be provided to plan administrator
  > Effective for distributions after enactment

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Other Penalty Free Withdrawals

> Federal Declared Disaster area victims
  > Up to $22,000 distribution allowed
  > May be taken into income over a 3-year period
  > Repayment option available
> Distributions used to purchase long-term care contracts
  > Effective 3 years after date of enactment
> No 10% penalty for any of these situations

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Statute of Limitation for Excess Contributions or Certain Accumulations on IRAs

- Before Secure 2.0
  - Form 5329 was required to be filed otherwise statute remained open
- After Secure 2.0
  - Institutes a three-year period of limitations beginning when taxpayer files Form 1040 for the year of violation
  - Six-year period for excess contributions
  - Effective as of date of enactment

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Roth Plan Distribution Rules

- Before Secure 2.0
  - Owners of Roth employer retirement accounts were required to take RMDs
  - RMDs were not required for Roth IRAs
  - Employees would have to roll it out to an IRA
- After Secure 2.0
  - Eliminates the RMD rule for the employer accounts
  - Effective December 31, 2023

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Surviving Spouse Election to be Treated as an Employee

- Surviving spouse can step into the shoes of deceased spouse for RMD purposes for employer plan
- Surviving spouse who is older can use the age of deceased spouse for RMD purposes
- Effective after December 31, 2023

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Simple and SEP Plans – Roth Contributions

- Before Secure 2.0
  - Cannot make Roth contributions to Simple IRAs or SEP Plans
- After Secure 2.0
  - Simple IRAs and SEP plans allow Roth Contributions
  - Effective after December 31, 2022

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Optional Treatment of Employer Matching or Nonelective Contributions as Roth Contributions

- Before Secure 2.0
  - Matching contributions were made on pre-tax basis
- After Secure 2.0
  - Can receive matching or nonelective contributions on a Roth Basis
  - Contributions would be subject to income tax
  - Withholding could be an issue

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