# OTA TAX UPDATE

November 19, 2021

# PRESENTER

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# AGENDA

Tax Planning Considerations

State Passthrough Entity Elections

Deferral of Employment Taxes

IRS Update

Q&A

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# TAX PLANNING

# $1 TRILLION INFRASTRUCTURE BILL SIGNED ON 11/15/2021

## Certain Tax-Related Provisions included

- Revival of Superfund Taxes

- Cryptocurrency Reporting – Same as Cash for payments in excess of $10,000

- Modification of Employee Retention Tax Credit – Sunset after 9/30/21 (except some start ups)

- 14-Day Extension for filing a Petition in Tax Court

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# QUALIFIED OPPORTUNITY ZONE INCENTIVES

- If capital gains are reinvested in a Qualified Opportunity Zone (QOZ) through a Qualified Opportunity Fund (QOF), taxpayers may defer and partially reduce capital gains recognition.

- QOZ – a low-income population census tract that is designated by a state as a QOZ.

- QOF – a self-certified entity taxed as a partnership or corporation that holds at least 90 percent of its assets in QOZ property.

- Important – only the gain amount needs to be reinvested, not the entire proceeds from the sale.

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# FIXED ASSETS

Section 179 up to $1,050,000.

100% bonus depreciation.

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

Fixed asset studies to minimize 39-year property.

# BUSINESS LOSS LIMITS

The 2017 tax law imposed limits on business losses that can be claimed on individual returns. These limits were waived for 2018-2020, but are back for 2021. The limits are $250,000 for single taxpayers and $500,000 on joint returns, adjusted for post-2018 inflation ($262,000 and $524,000 in 2021).

# EXPIRED/EXPIRING PROVISIONS

- **NOL's** – CARES Act allowed for a 5-year carryback for 2018 – 2020 NOL's, but 2021 NOL's must be carried forward and the NOL deduction is limited to 80% of taxable income.

- **Bonus Depreciation** – 100% deduction expires after 2022. Beginning in 2023 bonus depreciation deduction is a declining percentage through 2026.

- **199A** – The IRC Sec. 199A deduction that allows a noncorporate taxpayer a 20% deduction on qualified income, is still scheduled to sunset in 2025.
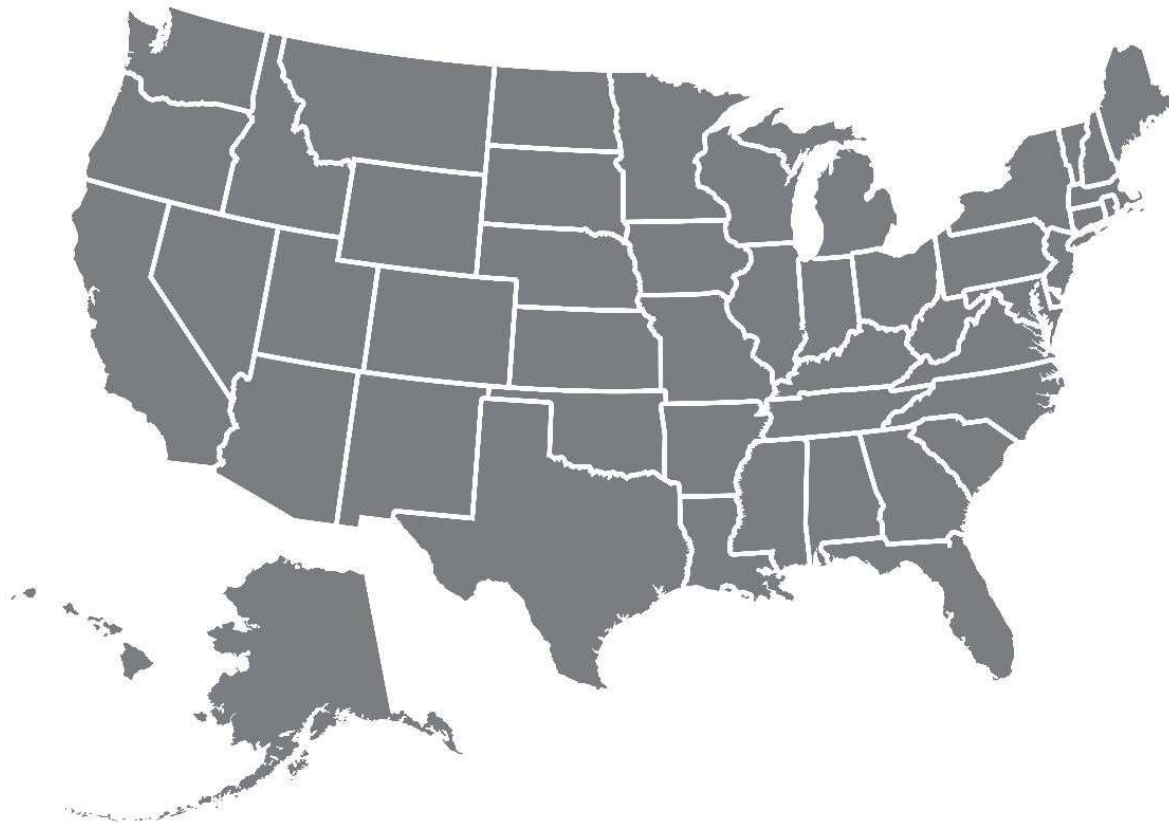
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# OPTIONAL STATE ENTITY-LEVEL TAXES
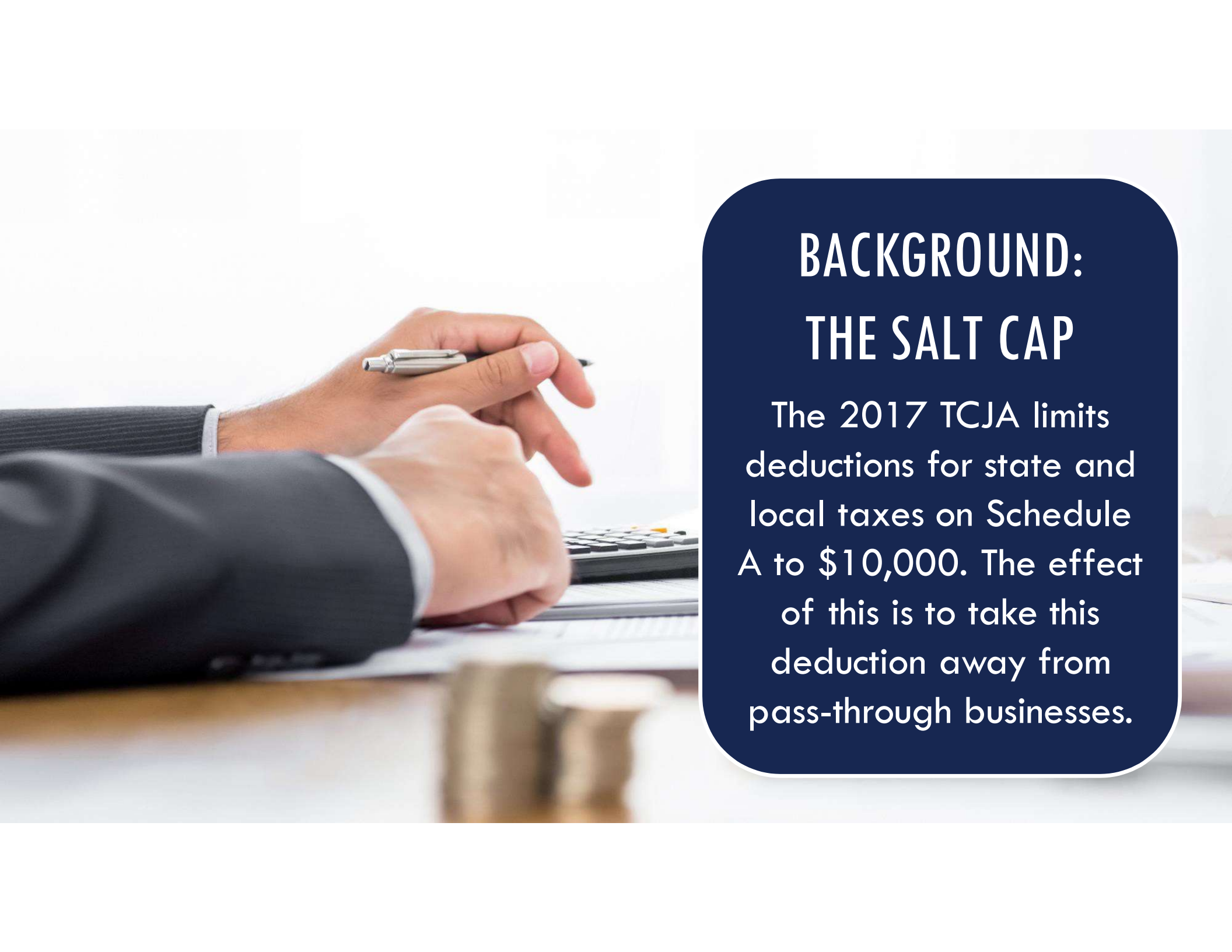
# BACKGROUND: THE SALT CAP

The 2017 TCJA limits deductions for state and local taxes on Schedule A to $10,000. The effect of this is to take this deduction away from pass-through businesses.

# STATE LEVEL TAXES

A number of states have enacted optional entity-level taxes that come with a shareholder credit for entity taxes paid, as a way to avoid the $10,000 SALT cap.

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# WHICH STATES

- **Enacted**: Alabama, Arkansas, Arizona, California Colorado, Connecticut, Georgia, Idaho, Illinois, Louisiana, Maryland, Minnesota, Michigan, New Jersey, New York, Oklahoma, Oregon, Rhode Island, South Carolina, Wisconsin

- **Proposed**: Massachusetts, North Carolina, Ohio, Pennsylvania.

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# ESTATE AND GIFT ISSUES

Biden latest proposal this year has no estate or gift tax changes:

- Lifetime exemption unchanged

- Rates unchanged

- So far specific estate planning tools untouched

# ALSO…

- Lifetime exemption will fall back to $5 million in 2026 (From the current $11,700,000).

- There's no guarantee that the larger exemption will survive until then, or that there won't be income taxes imposed on large capital gain gifts before then.
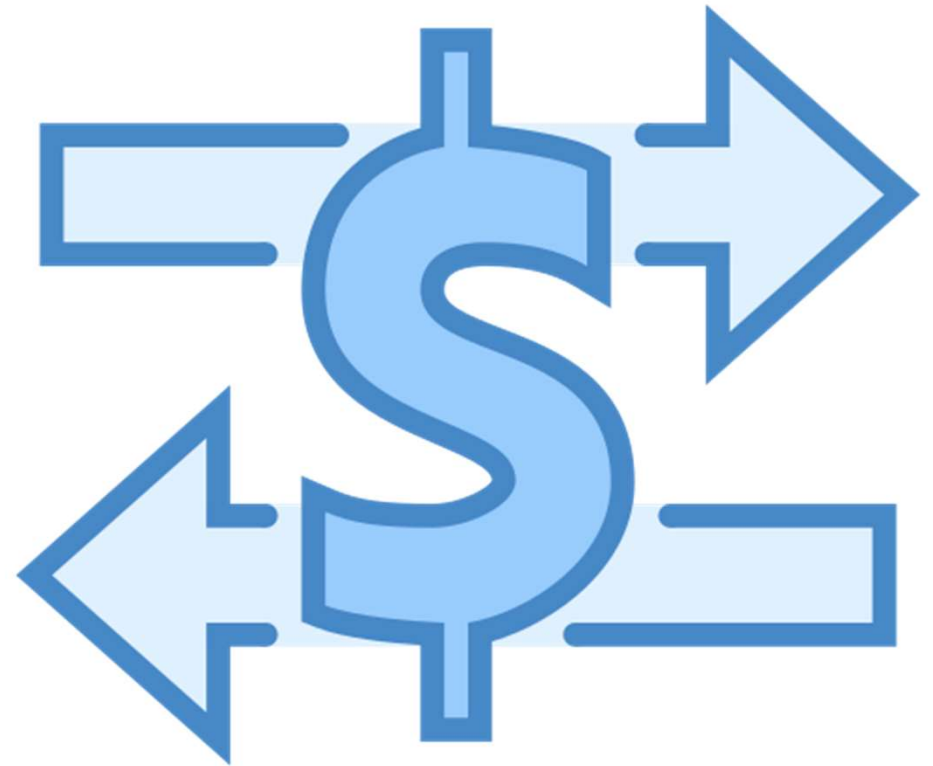
# DEFERRAL OF EMPLOYMENT TAX — CARES ACT

# EMPLOYER PAYROLL TAX DEFERRAL DUE DATES

- The Cares Act allowed employers to defer their share of Social Security tax due between March 27, 2020, and Dec 31, 2020.

- Repayment of Employer Deferral:

  - December 31, 2021 – first 50% due

  - December 31, 2022 – remaining amount

# IMPORTANT NOTE ON EMPLOYEE DEFERRAL

- If the employee no longer works for the organization, the employer is responsible for repayment of the entire deferred amount. The employer must collect the employee's portion using their own recovery methods.

Form **941** Employer's Quarterly Federal Tax Return

(Rev. July 2020 ) Department of the Treasury — Internal Revenue Service

- There have been 5 revisions to the 941 since 2020:
  - Quarter 1 2020 – Rev Jan 2020
  - Quarter 2 2020 – Rev April 2020
  - Quarter 3 and 4 2020 – Rev July 2020
  - Quarter 1 2021 – Rev March 2021
  - Quarter 2 and 3 2021 – Rev July 2021

# UPDATE - IRS OPERATIONS AND RECENT IRS GUIDANCE

# IRS OPERATIONS - DELAYS

- Continuing service delays due to pandemic:
  - Live phone support
  - Processing tax returns filed on paper
  - Answering mail from taxpayers
  - Reviewing tax returns – even those filed electronically

- Unprocessed individual returns (Forms 1040) – 9 million at Oct. 23 (vs. 7.1 million at Oct. 16).

- Unprocessed amended individual returns (Forms 1040-X) – 2.6 million (down from 7. million):
  - Returns being processed in order received
  - IRS - "The current timeframe can be more than 20 weeks"

# IRS OPERATIONS – DELAYS (CONTINUED)

- Forms 1139 and 1045:
  - IRS - "Currently, we cannot provide a timeframe"
  - Anecdotes – taking 4 to 6 months to get refunds – sometimes longer…
- Unprocessed Forms 941 – 834,000 at Oct. 27
- Unprocessed Forms 941-X – 376,000:
  - IRS - "Working hard to get through the backlog"
  - IRS - "Please don't file a second return or contact IRS about the status of your return"

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# IRS OPERATIONS – DELAYS (CONTINUED)

- IRS Resources:
  - [Where's My Refund?](#)
  - [Where's My Amended Return?](#)
  - [IRS Operations During COVID-19](#)
  - [Taxpayer Advocate Service](#) (TAS)
    - Independent organization within the IRS – advocates for taxpayers
    - EB Tax Controversy group submitting more requests for TAS assistance
      - Seeing more penalties being assessed (often in error)
      - Delays in assigning TAS cases
        - Pre-COVID – typically within 10-14 days
        - Now taking at least 45 days

# Q&A

# Thank You!

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## CPAs & BUSINESS ADVISORS

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