

National Association of Real Estate Companies – Fall 2024 Conference

Post Election Tax Update

December 6, 2024

Presented by: Deloitte Tax, LLP



The Post-Election Tax Policy Landscape

Sunsetting TCJA provisions

Absent action by Congress, significant changes are coming

	Current Law	Upon Sunset of the TCJA
Top ordinary income tax rate	37%	39.6%
Section 199A deduction	In effect	Eliminated
Bonus depreciation	Decreases 20% per year from 2023 until completely phased out for property placed in service after 12/31/2026	
Section 461(l) limitation	Applies to tax years beginning before 1/1/2029	Eliminated for tax years beginning after 12/31/2028
Charitable deduction	Cash gifts to public charity offset 60% of adjusted gross income (AGI)	Cash gifts to public charity offset 50% of adjusted gross income (AGI)
Limit on SALT deduction	\$10,000	None
Mortgage limitation	\$750,000 acquisition indebtedness	\$1M acquisition indebtedness + \$100,000 home equity
Miscellaneous deductions subject to the 2% floor	Eliminated	Reinstated
PEASE limitation	Eliminated	Reinstated
Standard deduction	2024 - \$29,200 married filing jointly/\$14,600 single 2025 - \$30,000 married filing jointly/\$15,000 single	Reverts to pre-TCJA amounts
Personal exemption	Eliminated	Reinstated

Don't lose sight of legacy planning

Consider using the remaining Basic Exclusion Amount (BEA) before the potential sunset

The basic exclusion amount (BEA) is increased annually for inflation

The annual gift tax exclusion amount is \$18,000 for 2024 and \$19,000 for 2025

The 2017 Tax Cuts and Jobs Act (TCJA) doubled the BEA from \$5 million to \$10 million, indexed for inflation since 2012, for tax years 2018–2025

Under the tax reform law, the increase is only temporary. Thus, in 2026, the BEA is due to revert to its pre-2018 level of \$5 million, as adjusted for inflation.

		For estate/GST ¹ tax purposes	For gift tax purposes
Year	Rate	Basic exclusion amount	Basic exclusion amount
2026	40%	Returns to 2017 amounts	
2025	40%	\$13,990,000	\$13,990,000
2024	40%	\$13,610,000	\$13,610,000
2023	40%	\$12,920,000	\$12,920,000
2022	40%	\$12,060,000	\$12,060,000
2021	40%	\$11,700,000	\$11,700,000
2020	40%	\$11,580,000	\$11,580,000
2019	40%	\$11,400,000	\$11,400,000
2018	40%	\$11,180,000	\$11,180,000
2017	40%	\$5,490,000	\$5,490,000

¹Generation-Skipping Transfer



Trump's 2024 campaign continues to focus on his America First agenda

The former president would like to cut corporate taxes for domestic manufacturers

Specific tax and trade policy proposals President Trump campaigned on:

- Extend individual and business tax changes from TCJA that are due to sunset¹
- Lower the corporate income tax rate to 15% for companies that make their products in America²
- Eliminate income taxes on Social Security benefits³
- Eliminate income taxes on tips; unclear if payroll taxes would also be eliminated⁴
- Eliminate income taxes on overtime pay; unclear if payroll taxes would also be eliminated⁵
- Provide a tax deduction for the “major costs” associated with newborn babies⁶
- Ensure state and local taxes (SALT) are fully deductible for individuals⁷
- Impose tariffs of 10-20% on most imported goods, tariffs of 60%+ on imports from China⁸, and 100% tariffs on goods from countries that break from the US dollar for trade⁹
- Allow a deduction (retroactive) for costs paid by individuals to install power generators
- Allow deduction for interest paid on automobile loans (for domestic vehicles only)
- Restore R&D expensing and 100% bonus depreciation
- Create a new tax credit for family care givers

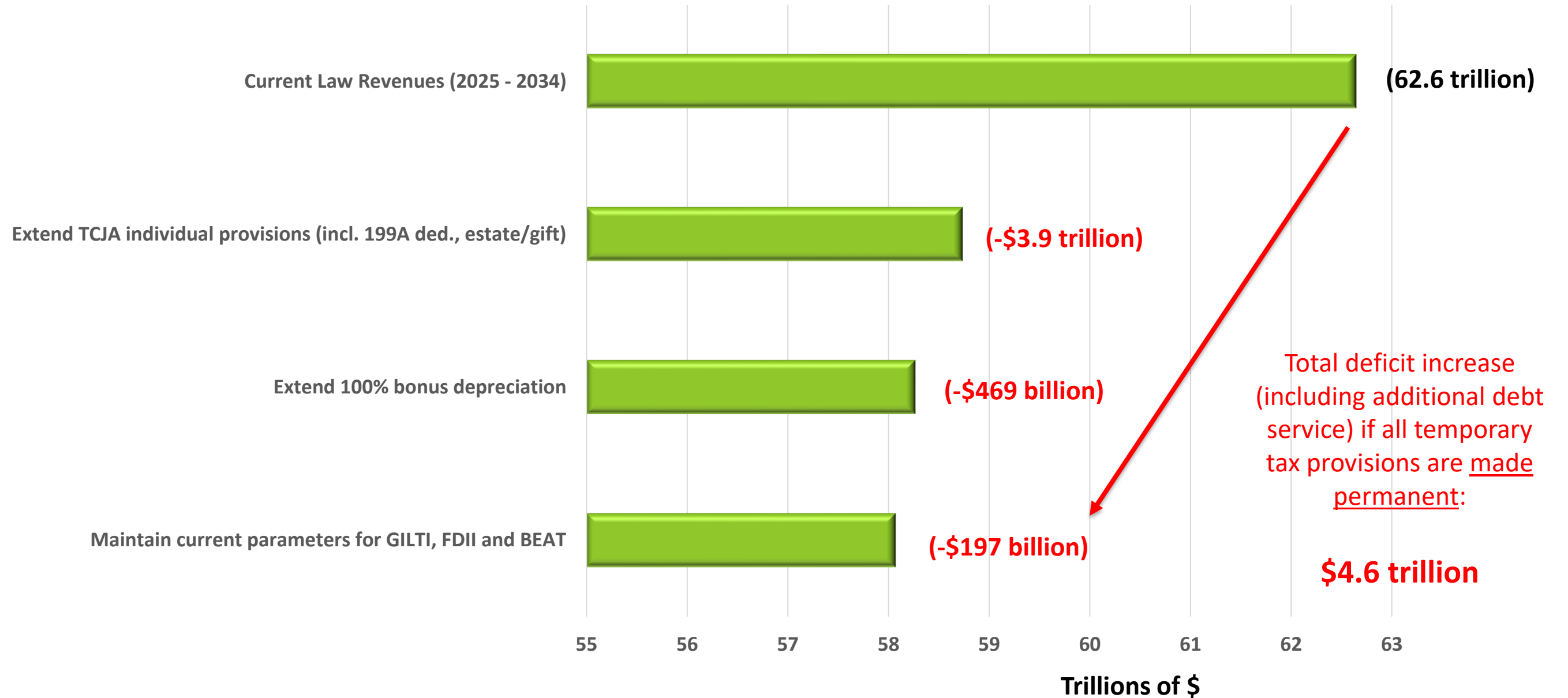
Sources: ¹ [Trump-Vance campaign press release](#), Aug. 19, 2024; ² [Trump speech](#), Sept. 5, 2024; ³ [Trump Truth Social post](#), July 31, 2024; ⁴ [Trump speech](#), July 18, 2024; ⁵ [Trump-Vance campaign press release](#), Sept. 12, 2024; ⁶ [Trump speech](#), Aug. 30, 2024; ⁷ [Trump speech](#), Sept. 18, 2024; ⁸ [Trump interview transcripts](#), *Time*, published April 30, 2024; ⁹ [Trump pledges '100% tariff' for countries that shun dollar](#),” by Stephanie Lai, Bloomberg, Sept. 7, 2024

The fiscal reality facing our elected leaders

The 'current law' caveat

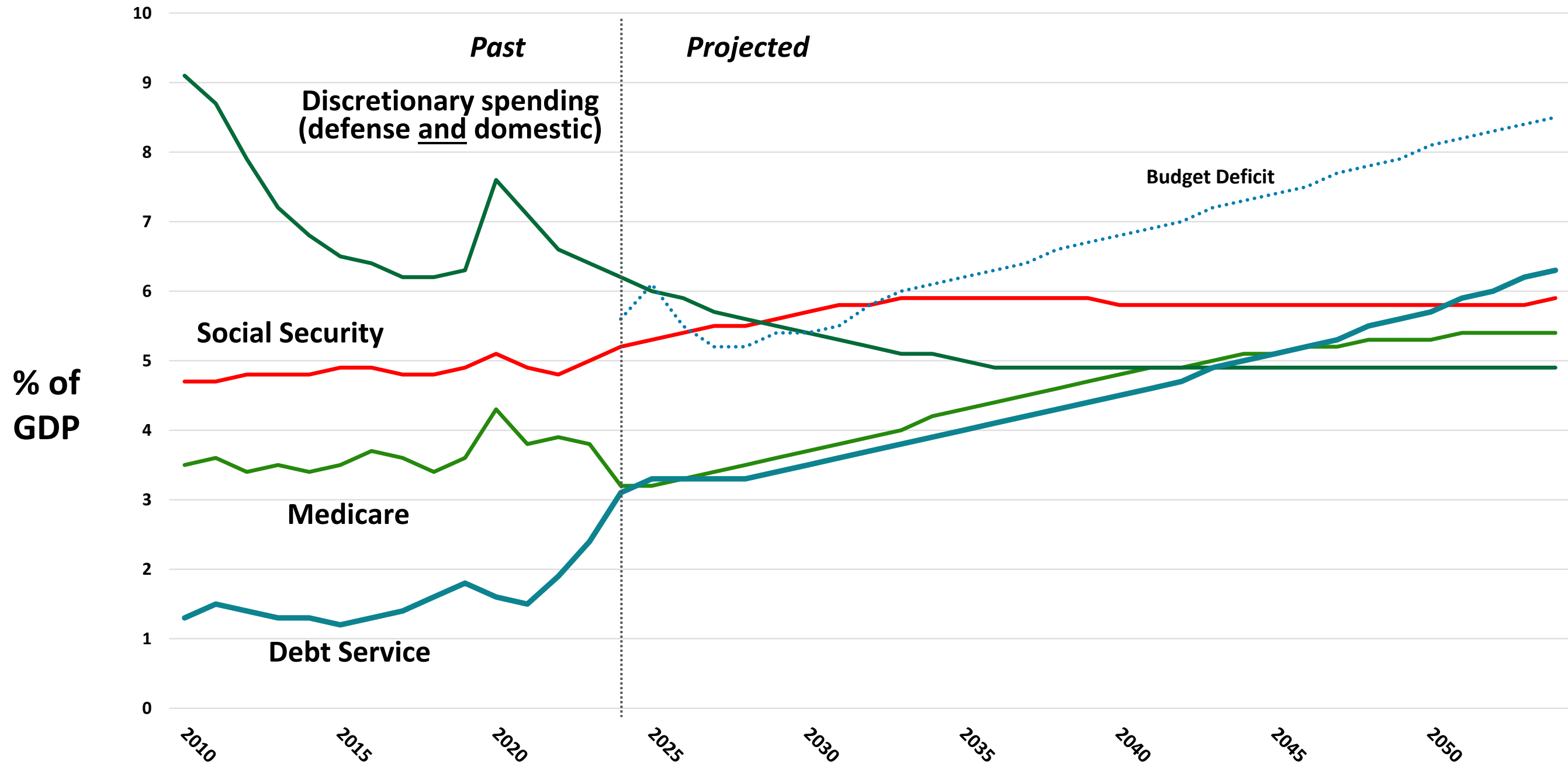
Extending temporary TCJA tax provisions would worsen the deficit outlook

Revenue impact (deficit increase) of selected tax policies



Debt service costs on track to become the government's largest expenditure

Even under 'rosy' current law baseline and favorable interest rate assumptions, net interest costs will mount



How are your 3-D chess skills, Mr. Chairman?

The interactions and tradeoffs in the TCJA cliff negotiations are triggered by the sunset of key provisions expiring at the end of 2025...

Individual tax rates & brackets

Standard deduction & personal exemption

Child tax credit

State & local tax (SALT) deduction

Estate & gift taxes

Individual AMT relief

Passthrough entity taxation

Delayed changes to international tax rules

R&D amortization

Business interest deduction limits

Capital expensing

WOTC and NMTC

CFC look-through rules

ACA premium tax credits

...and will likely draw in many that are not

Corporate tax rate

Other campaign promises

162(m) expansion

Corporate SALT deduction

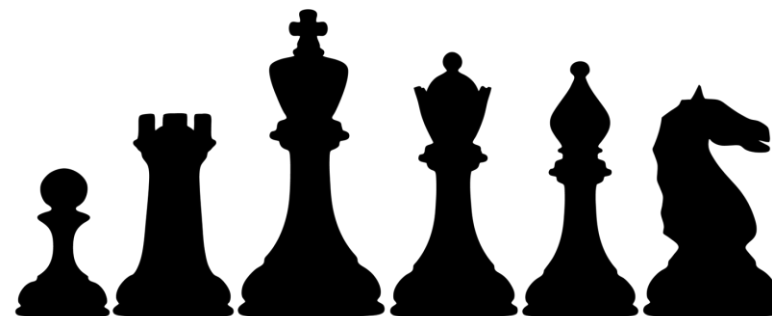
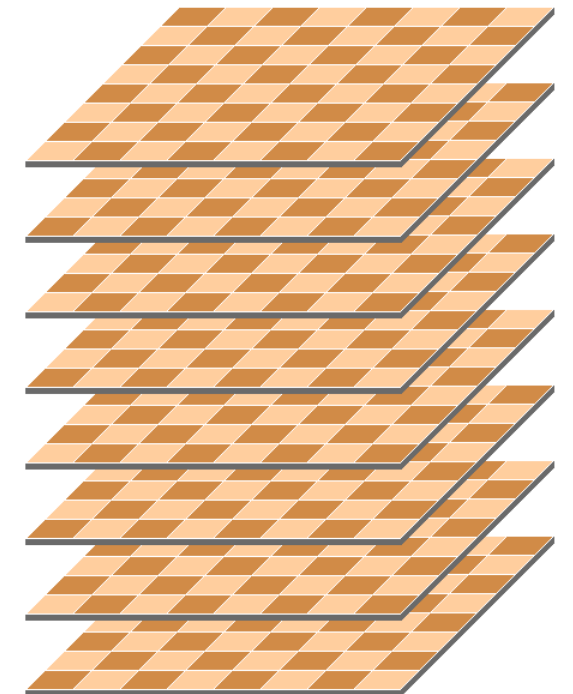
Stock buyback excise tax rate

IRS funding

Clean energy tax credits

Tax treatment of non-profits

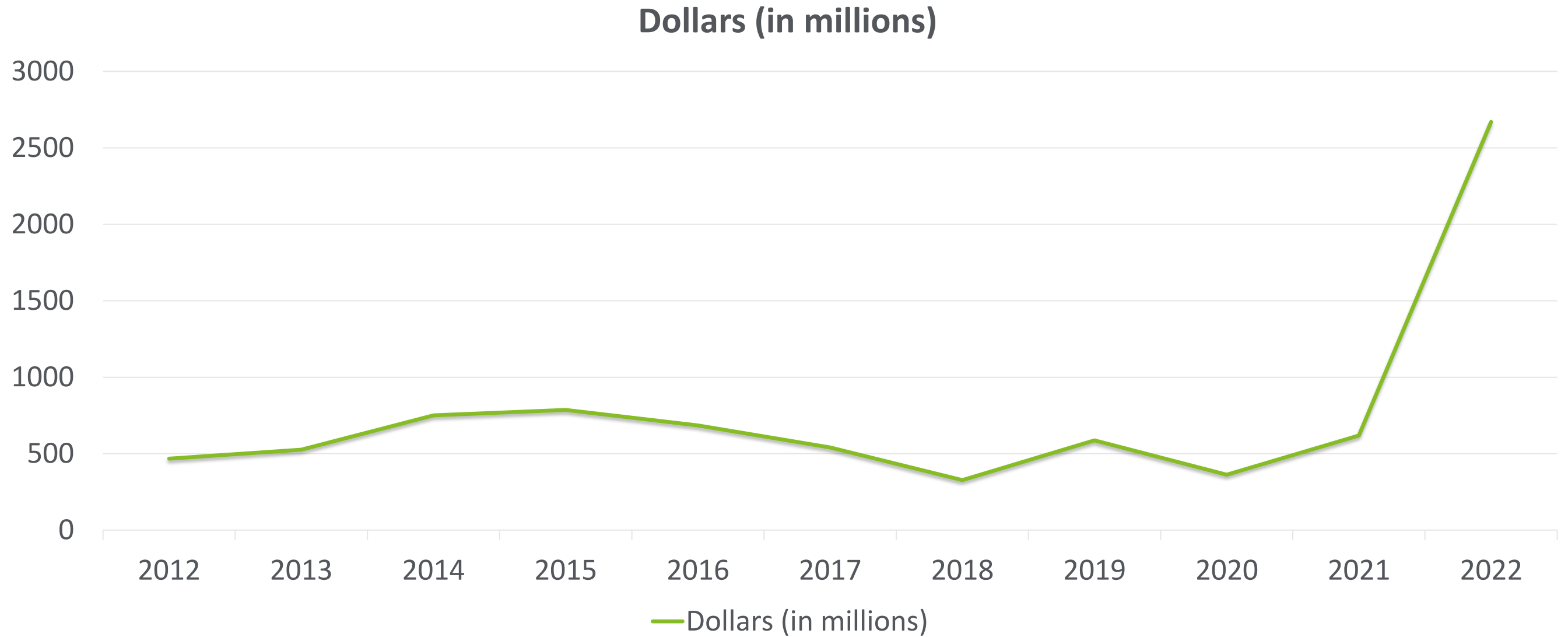
Tariffs



IRS Audit Updates

IRS Total Assessed Additional Tax (in Millions) for audits of Taxpayers w/ \$10 Million+ of Total Positive Income (as of June 2023)

[GAO-24-106112, TAX COMPLIANCE: Opportunities Exist to Improve IRS High-Income/High-Wealth Audits](#)



Estimated IRA Spending through FY 2031

Table 4: Estimated FTE Funded with IRA through FY 2031

Appropriation	FY22 Actual	FY23 Actual	FY24	FY25	FY26	FY27	FY28	FY29	FY30	FY31
Taxpayer Services		10,518	7,279	12,562						
Enforcement		495	4,088	7,239	17,300	24,100	31,900	33,000		
Operations Support		2,317	2,944	3,808	5,000	4,900	5,300	5,500	3,600	
BSM		327	193	300						
Energy Security			1,810	1,810	1,400					
Direct File Study		4								
IRA Funded FTE	0	13,661	16,314	25,719	23,700	29,000	37,200	38,500	3,600	
Discretionary/Other FTE	79,070	69,329	72,097	64,008	64,000	64,000	64,000	64,000	64,000	64,000
Total FTE	79,070	82,990	88,411	89,727	87,700	93,000	101,200	102,500	67,600	64,000

[Publication 3744-A \(Rev. 4-2024\) \(irs.gov\)](https://www.irs.gov/publications/p3744-a)

Trends in IRS Audits

- **Individual Income Tax**

- Schedule C/F Losses

- IRC § 183 hobby
- Inflated Cost of Goods Sold

- SECA for LPs (*Soroban*)

- Schedule E active/rental losses

- Basis
- IRC § 469 calendaring
- Rental Agreements
- Sports Industry Losses

- **Individual Income Tax**

- Charitable Contributions

- Substantiation
- Non-Cash Charitable
- Conservation Easements
- Assignment of Income

- Aircraft

- Business use
- Depreciation

- Investment Interest Expense

Soroban & Self-Employment Tax

Federal self-employment tax and implications of the *Soroban* case

On November 28, 2023, the Tax Court determined in *Soroban Capital Partners LP v. Commissioner* (161 T.C. No 12) that limited partner status does not automatically exclude a partner's distributive share of income from self-employment taxes.

- Treasury and the IRS have recently revealed that new proposed regulations addressing the definition of “limited partner” under section 1402(a)(13) are actively being developed and apparently are in an advanced stage of drafting.
- The IRS has asserted deficiencies involving state law limited partners and multiple partnerships have petitioned the Tax Court for review. It remains uncertain whether a ruling in one or more of these cases will bring clarity to the scope of the limited partner exception.
- Procedural matters are generally outside the scope of this discussion. However, taxpayers should be aware the IRS considers Schedule K-1 Box 14 self-employment income reporting as a “partnership-related item” and thus subject to BBA procedures, even though SECA itself cannot be assessed under the BBA. The IRS generally will open simultaneous exams on the BBA partnership and its partners to the extent SECA is a relevant issue.
- What factors should a partner receiving a Schedule K-1 reporting self-employment income consider if the partner believes that the partnership’s determination was incorrect?

Federal self-employment tax and implications of the *Soroban* case (cont.)

The lack of statutory and regulatory guidance, coupled with limited case law discussion, provides uncertainty for taxpayers as to how a functional analysis test might be applied.

Potential Sources

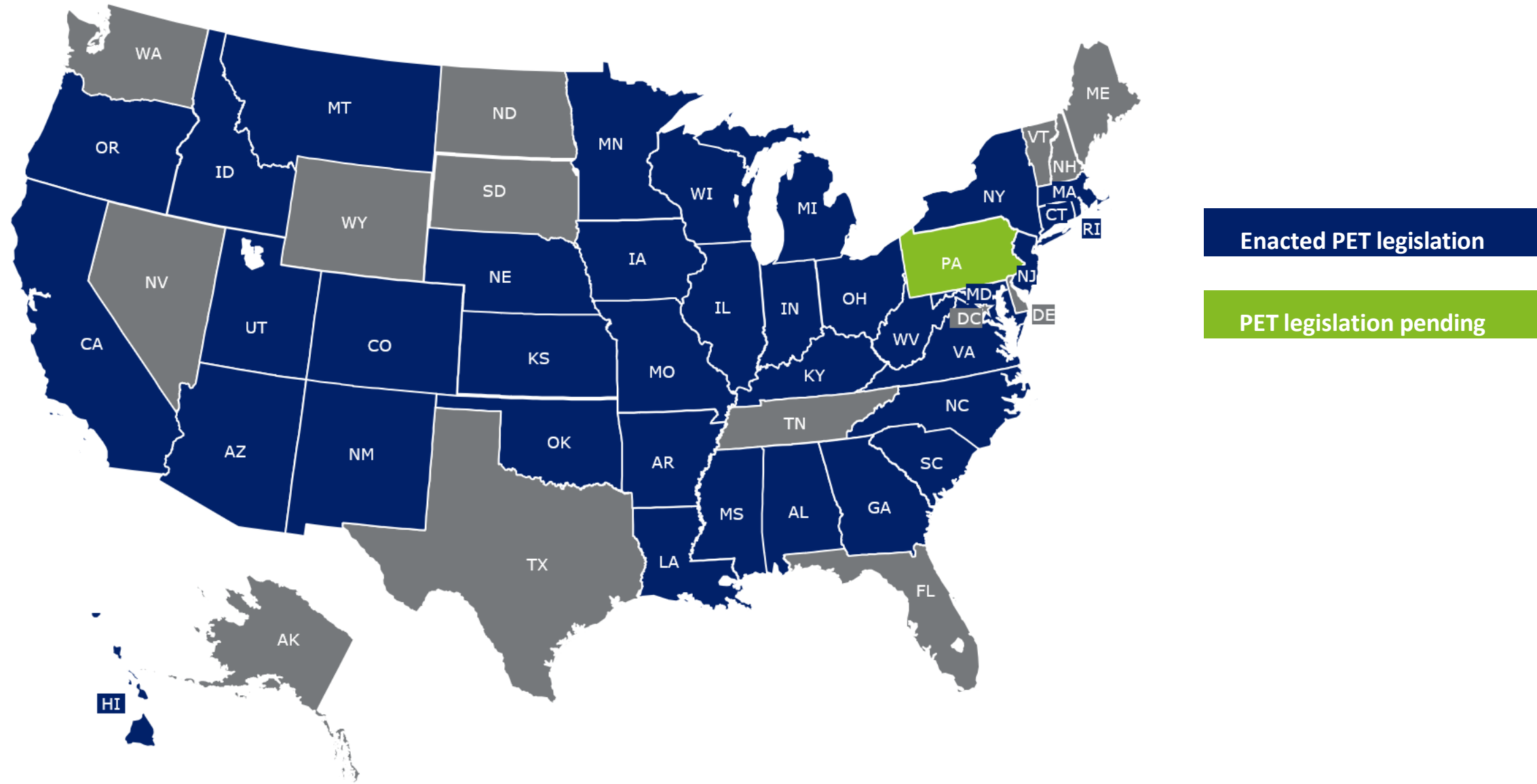
- Legislative history
- 1997 Proposed Regulations
- *Renkemeyer, Campbell & Weaver, LLP v. Commissioner, 136 TC 137 (2011)*
- Section 469 Passive Activity Regulations
- Other

Potential Factors

- Time incurred in the partnership's trade or business
- Personal liability for the partnership's debts
- Participation in management and/or authority to contract on behalf of the partnership's trade or business
- Nature of the partnership's trade or business (*e.g.*, services vs. non-services)
- Type of interest (*e.g.*, capital or profits), the manner in which acquired, and the function of other partners that own interests with similar or identical terms
- Other

Pass Through Entity Tax

Map of PET Regimes as of November 1, 2024



*Some jurisdictions such as DC, NH, NYC, TN, and TX impose an income tax directly on passthrough entities.

Considerations for PETs

Federal Income Tax Issues:

- Timing and allocation of payment when deducting for federal purposes (Cash vs Accrual).
- Taxability of refund relating to PET credit
- Reporting of state tax deduction for federal income tax purposes (e.g., Line 1 or 13)
- An S corporation is not permitted to have disproportionate distributions under the second class of stock rules

Other Issues:

- Partnership agreement provisions need flexibility in allocating PET expense to partners
- ASC 740 considerations
- Sunset Date- Certain state PET regimes will automatically sunset when the SALT Cap sunsets (e.g., CA, CO, IA, IL, MA, MI, MN, OR, UT, VA)
- Estimated tax payments needed

State Income Tax Issues:

- Be conscious of election requirements and due dates when evaluating whether to make these elections
 - California- Tax Payment required to elect PET due by 6/15 of applicable year
 - New York – Election due by March 15th of the applicable year (e.g., March 15, 2025, for tax year 2025)
 - Election can be binding for multiple years (e.g., AL, LA, MI, MS, OK)
- Understand facts and residency of partners
- Credits in other states may not be available (*i.e.*, resident state credits for taxes paid)
- Ability to transfer PET credit to composite returns and/or satisfy partner's filing requirement
- Potential increased tax liabilities under elective tax
- Treatment of income to entity and tax-exempt partners
- Applicability of corporate rules for electing passthrough entities in certain states



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