TAX

IN MOTION

Optimizing federal tax positions at year-end

November 2, 2023

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2023 YEAR-END PLANNING FORUM

With you today

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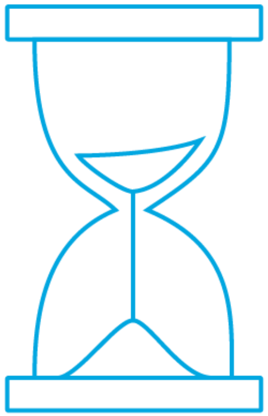
Agenda



- Year-end accounting methods considerations
- Year-end clean energy incentive considerations

2023 YEAR-END PLANNING FORUM

Learning objectives

By the end of this presentation, participants will be able to:

1. Evaluate federal tax credits that may be available to a business
2. Analyze accounting methods to execute your business decision in a tax efficient manner
3. Assess year-end tax planning opportunities and compliance challenges

Year-end accounting methods

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Current state of affairs

- Political environment and policy on Capitol Hill
- Look to next Congress in 2025… but what happens in the meantime?
  - TCJA continues to ramp down towards expiration at end of 2025
  - Some things already in effect:
    - Bonus ramped down in 2023 to 80%; 2024 to 60%
    - 163(j) computational differences started in 2022

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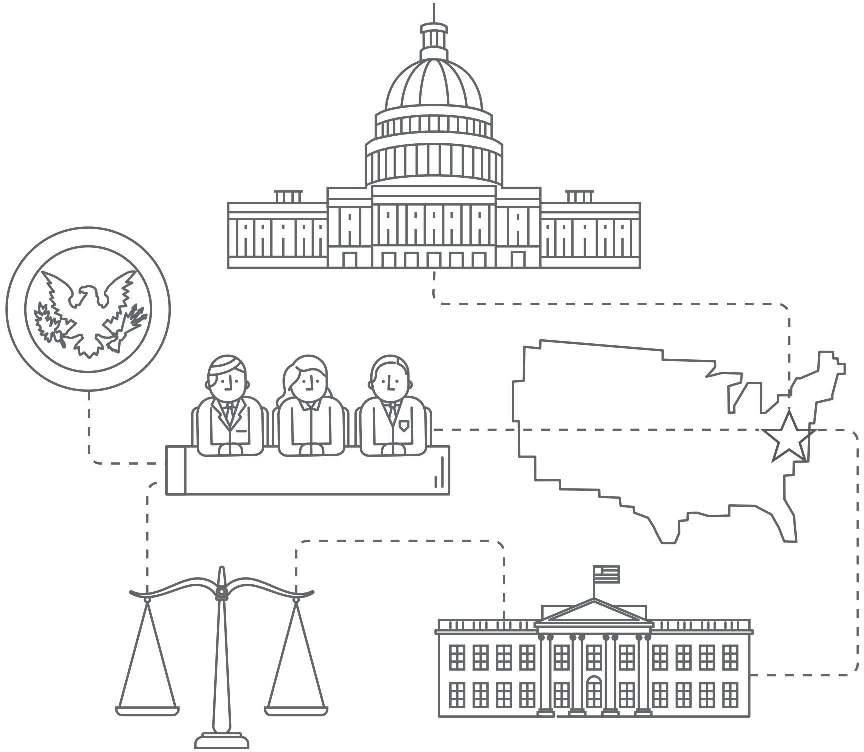
Federal policy

- Interest rates from zero to 60 overnight
- Possible taper in 2024–2025; possible increases in 2023/early 2024
- Coupled with Hill policy, tax regulatory change and TCJA planned provisions
  - We have a lingering tax nightmare on our hands
- Ways to play?
  - Timing, facts, elections, methods, credits, other tax attributes



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Year-end accounting method considerations

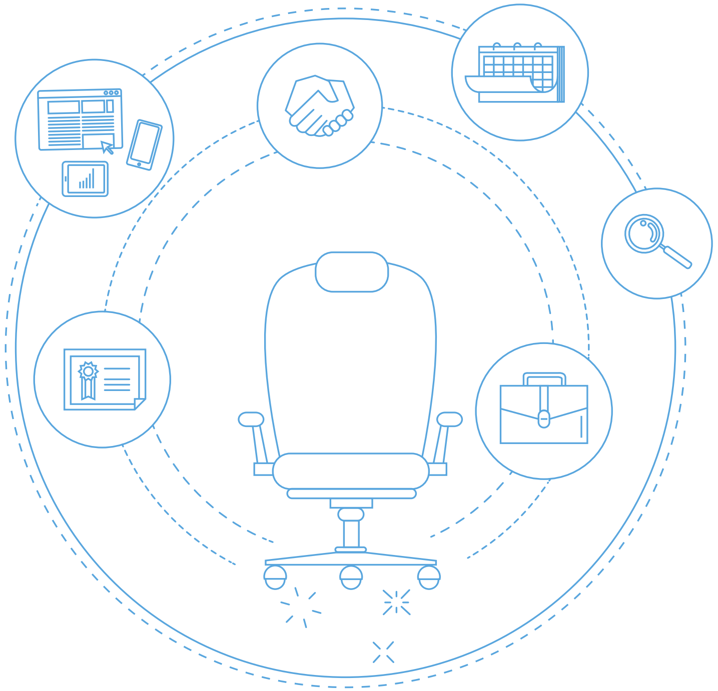
Accounting methods can be used to increase or decrease taxable income

Certain changes require IRS consent

- Automatic
- Non-automatic: must be filed by year-end!

Other changes don't require consent

- Change in underlying facts
  - Must be addressed prior to the year-end to be effective for that taxable year
- Elections



Year-end accounting method considerations

- Non-automatic (advance consent) accounting method changes

•Item for which the change is desired is not within the list of automatic changes or taxpayer is precluded from filing an automatic change for various reasons

•Request to change method of accounting must be filed with the commissioner during the requested year of change

•Requires taxpayer to pay IRS user fee, presently $11,500 for the single applicant, discounted pricing for subsequent applicants

•IRS Office of Chief Counsel reviews requests and affirmatively grants or denies consent

Year-end accounting method considerations

- Planning opportunities, non-automatic changes, 3.5 month rule

General rule: A taxpayer generally meets economic performance for a service or property liability as such services or property is provided to the taxpayer.

Exception: A taxpayer is permitted to treat services or property as provided to it if the taxpayer makes payment to the person providing the services or property and the taxpayer reasonably expects the person to provide the services or property within 3.5 months of payment.

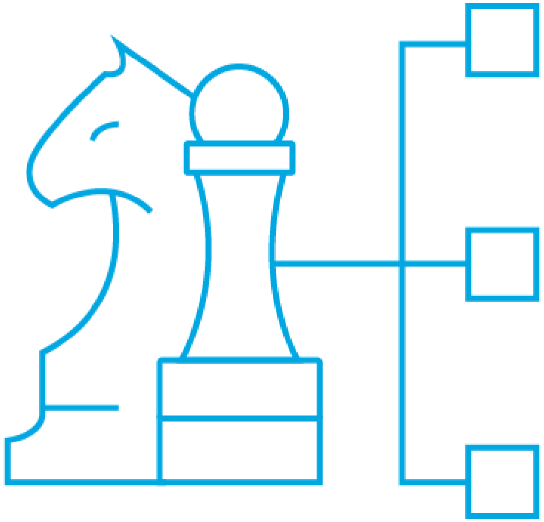
Example: On Dec 31, 2023, taxpayer prepays firm for its fiscal year-end audit. Taxpayer reasonably expects the audit report to be issued by March 15, 2024. Taxpayer may, provided it is on the 3.5-month rule method, deduct the amounts paid for 2024 audit services provided to it in its 2023 income tax return.

Year-end accounting method considerations

- Planning opportunities, non-automatic changes – section 460 contracts
  - Long-term manufacturing and long-term construction contracts are required to be accounted for under the percentage of completion method
  - A change to the percentage of completion method is a non-automatic change
  - The percentage of completion method computes income from a long-term contract using a cost-completion factor. The timing of payments received on a long-term contract generally does not factor into the income recognition under the percentage of completion method

Year-end accounting method considerations

- Planning opportunities, non-automatic changes, risk mitigation



- Impermissible use of a cash and accrual methods
- Impermissible timing of deductions for warranty obligations, refunds, other reserves (outside of inventory)
- Impermissible timing of deductions for deferred compensation liabilities

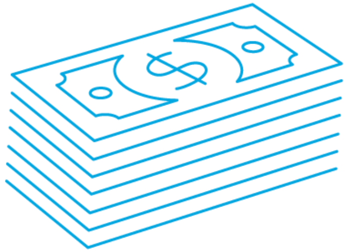
Year-end accounting method considerations

- Change in underlying facts
  - Taxpayer's accounting method for the item does not change; however, there is a change in the timing of income recognition or expense deduction for such item.

Example: A taxpayer has a vacation pay plan in which the vacation pay doesn't completely vest at year-end. Accordingly, because the liability is not fixed as of the end of the year, the taxpayer deducts the vacation pay when it is vested and paid out to an employee. Subsequently, the taxpayer changes its vacation pay plan to one in which the vacation pay is vested at year-end. This factual change to the vacation plan may change the timing of the vacation pay deduction but the taxpayer's method has not changed.

Year-end accounting method considerations

- Planning opportunities, changes in underlying facts
  - Review contracts and structuring of payment terms
    - Advance payments: defer or accelerate revenue recognition
    - Prepayments: defer or accelerate deductions
  - Discretionary bonus plans
    - Revise terms of plan
    - Board resolution before year-end
  - Intercompany agreements
    - To support pass-through treatment of amounts paid to or received from related parties



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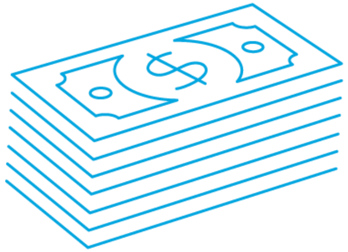
Year-end accounting method considerations

- Planning opportunities, bonus depreciation
  - As part of TCJA, accelerated first-year depreciation phases down from 100% to 20%, starting in 2023
  - For property placed in service between Jan. 1, 2023 and Dec. 31, 2023 applicable percentage of accelerated first-year depreciation is 80%
  - For property placed in service between Jan. 1, 2024 and Dec. 31, 2024 applicable percentage of accelerated first-year depreciation is 60%
  - Reviewing capital projects now may allow for acceleration of placed-in-service date to capture more additional first-year depreciation



Year-end accounting method considerations

- Elections
  - Elections are not treated as changes in method of accounting
  - Allows for annual determination of how to treat item
  - Generally, elections must be made with a timely-filed tax return
- Elections typically result in an increase to taxable income
  - Can be used for planning or to reduce administrative burdens
  - Depreciation-related elections:
    - Elect out of bonus depreciation
    - Elect straight-line depreciation
    - Elect ADS depreciation
  - Capitalize prepaid expenses
  - Book safe harbor method for repair/improvement costs

Year-end accounting method considerations

- Elections, cont.
  - Capitalize overhead and/or wages
  - Success-based fees
  - De minimis election for tangible property costs (reduces current year taxable income!)
  - Section 404(a)(6) grace period contributions (reduces current year taxable income!)

Year-end accounting method considerations

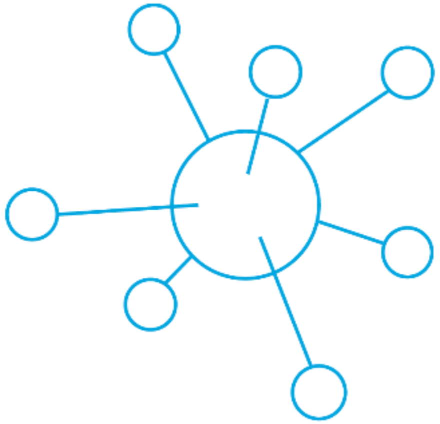
Section 174

- Compare 2022 treatment with notice 2023-63 released on Sept. 8, 2023
- Consider implementing changes to tracking of costs to streamline future analyses
  - Cost center accounting; allocation of indirect costs
  - Tracking domestic vs. foreign expenditures
- Review existing intercompany agreements; revise/update or formally document arrangements as needed
  - Ensure written arrangements exist in order to support positions taken regarding which entities incur 174 costs
- Review arrangements with customers and/or third-party contractors and revise as needed
- Review overall R&D footprint for global opportunities

Clean energy incentives: Year-end considerations

2023 YEAR-END PLANNING FORUM

Year-end clean energy credit considerations



Inflation Reduction Act of 2022 expanded clean energy incentives

- Significant 2023 Treasury guidance

Placed in service

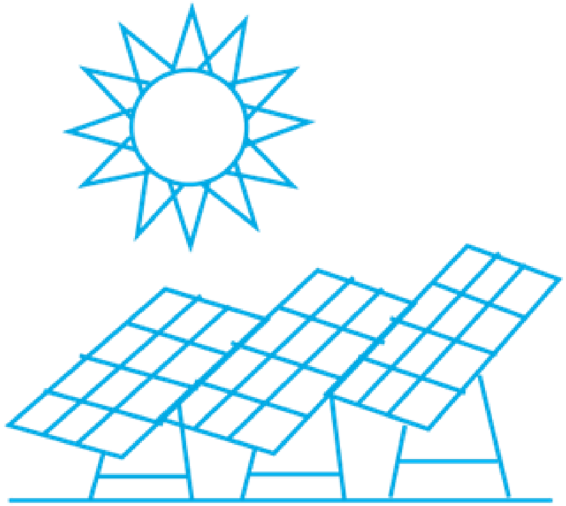
- Eligible property
- Timing
- Guidance
- Documentation

Transferability/monetization

- Registration
- Due diligence
- Risks
- Documentation

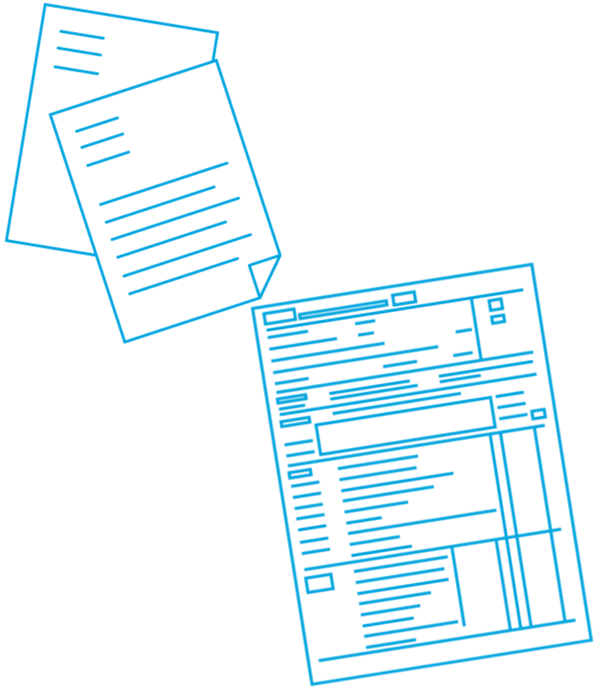
Placed in service, key considerations

- Manufacturer adding $20M solar, battery and microgrid project to facility
- No taxable income
- Planning to sell clean energy credits generated



What are the year-end considerations for projects being placed in service in 2023?

Transferability/monetization, key considerations



- Profitable manufacturing portfolio company
- Has $15M to $20M in taxable income
- Wants to purchase clean energy tax credits to offset tax liability

What are the year-end considerations for buyers of energy tax credits under new IRA rules?

With you today

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THANK YOU FOR YOUR TIME AND ATTENTION

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