Tax Outlook: Strategic Planning for the Year Ahead

Rehmann

EMPOWER YOUR PURPOSE

Meet Today's Panel

Tony Licavoli, CPA
Principal | Advisory & Tax
anthony.licavoli@rehmann.com

Lisa Pohl, JD
Principal & Director of SALT | Advisory & Tax
lisa.pohl@rehmann.com

Paul Mene, JD
Senior Manager | Advisory & Tax
paul.mene@rehmann.com

Today's Agenda

- Federal Tax
- State and Local Tax
- Credits and Incentive planning
- Corporate Transparency Act


Federal Tax Update

Inflation Reduction Act Recap

- 15% corporate minimum tax on adjusted financial statement income for corporations with more than $1B financial statement income
- 1% excise tax on corporate stock buybacks for publicly traded corporations
- Extension of the excess business loss limitation rules until Dec. 31, 2028
- Significant increase in IRS funding
- Energy-related credits and incentives

Recent Federal Tax Changes

- Interest Expense Limitation: For tax years beginning after **Dec. 31, 2021**, the addback for depreciation, depletion, & amortization will no longer be allowed when calculating adjusted taxable income

- R&D Capitalization: Effective **Jan. 1, 2022**, research and development expenditures are required to be capitalized

- Restaurant Meals: Effective **Jan. 1, 2023**, restaurant meals revert back to 50% deductible

Bonus Depreciation Phaseout

Starting in 2023 100% bonus depreciation will begin to phaseout from 2023-2026

Phaseout Schedule

- 2022 – 100% bonus depreciation
- 2023 – 80% bonus depreciation
- 2024 – 60% bonus depreciation
- 2025 – 40% bonus depreciation
- 2026 – 20% bonus depreciation
- 2027 – 0% bonus depreciation

Other Expiring TCJA Provisions

Provisions expiring Dec. 31, 2025

- Individual tax rates, brackets and deductions
- Increased estate and gift tax exemption
- Pass-through business deduction
- SALT deduction cap

Provisions expiring Dec. 31, 2028

- Excess business loss limitation

Employee Retention Credit (ERC)

Recent Developments

IRS Moratorium on Processing New Claims

- No new ERC claims are being processed through end of 2023
- Doesn't apply to claims filed before the issuance of the notice
- Deadline to claim ERC:
  - 2020 tax periods: April 15, 2024
  - 2021 tax periods: April 15, 2025

IRS Claim Withdrawal Process

- IRS response to aggressive credit mills and promoters
- Process for withdrawing ERC pending claims
- Doesn't apply to taxpayers who already received refunds and cashed checks, but additional guidance may be coming to cover

State and Local Tax Update


Michigan Taxability of Delivery
and Installation Charges

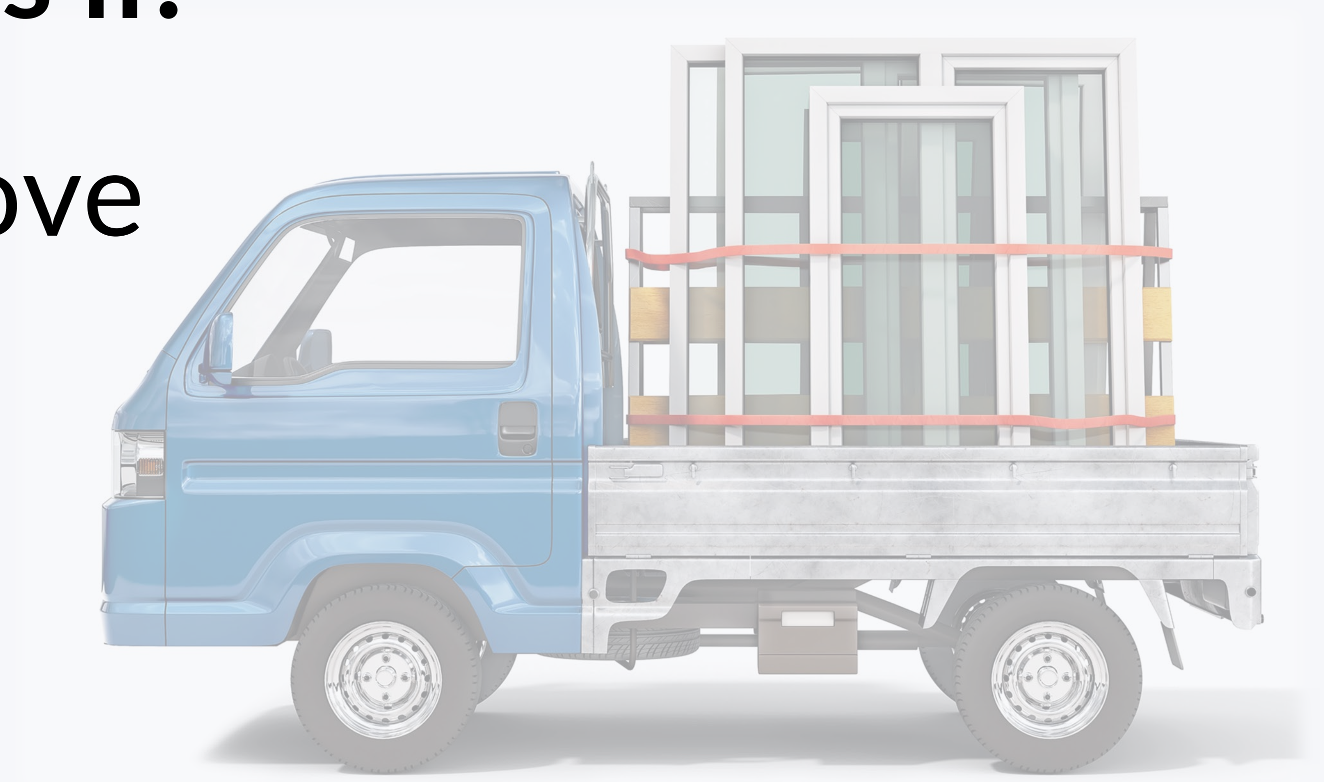
Taxability of Delivery and Installation Charges for Sales and Use Tax – RAB 2023-16

Beginning April 26, 2023, most delivery and installation charges are not subject to tax as long as the seller:

- Separately itemizes delivery and installation charges on an invoice to a customer
    AND
- Keeps books and records that show how the tax levied was calculated for these transactions.

Delivery and installation charges remain subject to sales and use taxes if:

- Not billed or recorded in a manner that satisfies both conditions above
    OR
- The transaction involves the sale of electricity or gas by a utility



Taxability of Delivery and Installation Charges for Sales and Use Tax – RAB 2023-16 (cont.)

A customer may request a refund from a seller for tax charged on delivery or installation in error. There are two possible outcomes:

- The seller declines. Sellers are not required to refund tax to their customer for tax collected in error on these charges.
- The seller agrees. Note that the seller can request a refund from Treasury but will only receive the refund after their customer is refunded.

Planning Considerations

What if I am the seller?

- Make sure all charges for delivery (including transportation, shipping, postage, handling, crating, and packing), along with installation charges (including assembly), are separately stated on your invoices, match your books and records, and that your systems no longer apply sales tax to those charges.
- For the 2023 tax year, exempt delivery or installation charges should be reported on your sales tax returns as “other exemptions and/or deductions”. Beginning in tax year 2024, a dedicated deduction line will be available.

What if I am the buyer?

- Make sure whomever is in charge of accounts payable is reviewing invoices to make sure all delivery and installation charges are separately stated and are not taxed.
- Look for refund opportunities related to purchases made on or after April 26, 2023.

Income and Sales Tax Nexus

Rehmann

PL 86-272 Income Tax Protection - Internet Activity

On Aug. 4, 2021 the MTC published guidance to its member states that revised its interpretation of what is protected under PL 86-272, indicating many internet activities exceed PL 86-272 protections such as:

- Certain internet cookies
- Post-sale assistance via chat or email
- Online job applications
- Remote fixing or upgrading products
- Warranty sales
- Etc.

PL 86-272 Income Tax Protection – Internet Activity

What we are seeing so far:

- Some states have published guidance that they are following MTC guidelines:
  - CA TAM 2022-01;
  - NY draft regulation;
  - MN proposed legislation;
  - NJ P.L. 2023, c. 96 and TB-108
- Many other state administrators are indicating that they will follow as well: DC, ID, KS, MT, NE, ND, TN and UT .
- Some might just apply new standard upon audit, like AR.
- States like CA are being challenged in court.

PLANNING OPPORTUNITY FOR MICHIGAN PASSTHROUGH ENTITIES

As states adopt the new MTC guidelines, this could result in Michigan tax savings based on a reduction of throwback for apportionment to states that will assert the entity has lost PL 86-272 protection.

Sales Tax - Economic Nexus Standards

- Every state imposing a sales tax has economic nexus standards for out-of-state sellers, which require these sellers to collect sales tax once they meet that state's threshold level of sales and/or number of transactions (invoices).
  - The trend continues of states eliminating their transaction threshold:
    - LA – effective August 1, 2023
    - SD – effective July 1, 2023
  - Don't forget to look at how the state defines "sales" for their threshold as some do not include exempt sales.
- Commonly overlooked property/services that are taxable by many states:
  - Digital goods, such as downloaded apps
  - Charges for streaming videos and music
  - Remotely fixing and/or updating software

Business Transactions – Nexus Considerations

Nexus (and related tax exposures) for various types of state taxes are commonly overlooked by taxpayers involved in a buy/sell transaction.

What if I am the **buyer?**

- Make sure you review potential nexus for all tax types, even if they indicate that a nexus review was previously completed.
- Set up appropriate escrow balances for identified tax concerns and require seller to remediate the exposures before releasing the escrow.

What if I am the seller?

- Take inventory of what has or has not been reviewed to proactively identify areas of concern that could be addressed before the sale (ex. get missing sales tax exemption certificates).
- Review and challenge the amount of any tax escrows to make sure reasonable.

Credits and Incentives

§41 Research and Development ("R&D") Tax Credit

R&D Tax Credit History

Original Congressional Intent:
Incentive to increase research spending over the amount a company would be expected to spend on research

Current Congressional Intent:
To increase research spending and provide an incentive to keep research-intensive cost centers in the United States

In 2015, the credit was made permanent.

Important sections of the code/regulations:

- IRC §41
- Treas. Reg. 1.41
- IRC §174

Value of the credit:

- Federal: ~6% tax saving
- State level: Approx. 7%-7.5% tax saving

Section 41 Credits

Eligible research expenditures

- Wages
- Supplies
- 65% of Contract Research Expenses
- Computer Rental/Lease Costs

Items to consider

- Research Credit is typically scrutinized by the IRS (Campaign)
- IRS has not officially sanctioned any particular approach/methodology, but heavily weighs contemporaneous documentation/business components
- Research credits can be carried back 1 year and forward 20 years (for taxable years after 1997)

Overview of the R&D Tax Credit

- The R&D tax credit is an incentive for companies to develop new or improved:
  - Products
  - Production processes or
  - Software

- The credit is determined based on incremental qualified expenses over an established base amount

- The credit is a permanent tax benefit which can:
  - Lower an entity's effective tax rate
  - Increase earnings per share
  - Increase cash flow

Qualified R&D Activities:
The “Four-Part Test”

1 Technological in Nature

The activity performed must rely on principles of:

- Physical Science
- Biological Science
- Computer Science
- Engineering

2 Qualified Purpose

The activity must relate to a new or improved:

- Function
- Performance
- Reliability
- Quality

3 Eliminate Uncertainty
Section 174 Test

The activity must be intended to discover information that would eliminate uncertainty concerning the capability or method for developing or improving a product or process, or the appropriateness of the product design.

4 Process of Experimentation

Does the activity involve:

- An evaluative process
- Evaluation of alternatives
- Confirmation of hypotheses through modeling, testing, simulation, or systematic trial and error
- Refining or discarding of the hypotheses

R&D Tax Credit and 174 R&E
(Capitalization and Amortization) Interplay

2022 Tax Years & Beyond

- Elimination of immediate expensing for “specified R&E expenditures”
- Requirement to capitalize and amortize over 5 years (15 years if foreign research costs)
- Software - development costs now part of the definition of specified R&E expenditures

174 Legislative Updates

IRS

- IRS solicited comments from public accounting firms and industries up until Nov. 23, 2023
- Plan to provide Final regulations in Q1 or Q2 of 2024

Congress

- More than 3 bills in last year and half have been introduced to repeal to historical definition
- Bills with Congress
- State Legislation
- State conformity


Energy Tax Credits
Rehmann

Push for Renewable Energy

The Biden Administration plans to eliminate fossil fuels as a form of energy generation in the U.S. by 2035. The White House set out a target of 80% renewable energy generation by 2030 and 100% carbon-free electricity five years later.

With 79% of total U.S. energy production still coming from fossil fuel sources as of 2021, achieving this goal will require billions of dollars in investments. Last year, investments in America's energy transition hit a new record of $141 billion, according to BloombergNEF.

Inflation Reduction Act

- Passed by the Biden Administration in FY22.
- Tax implications at a Federal, State, and Local tax level
- Commercial and Residential incentives available
- Significant legislation focused on tackling climate change

The U.S. Department of the Treasury will be at the forefront of implementation, delivering $270 billion in tax incentives as part of the $369 billion the Inflation Reduction Act dedicates to combating climate change. Treasury will engage a broad spectrum of taxpayers and stakeholders to inform implementation of this landmark legislation, in order to accelerate the building of a clean energy economy while working to ensure no community is left behind."

— U.S Department of Treasury

Two main areas

to cover involving both new and amended Internal Revenue Code sections

Electric Vehicle Tax Credits

- IRC 30D (New Clean Vehicle Credit)
- IRC 25E (Previously Owned Vehicle Credit)
- IRC 45W (Commercial Clean Vehicle Credit)
- IRC 30C (Alternative Refueling Property Credit)

Solar Tax Credits

- IRC 45 (Production Tax Credit)
- IRC 48 (Investment Tax Credit)

Additional Property Considerations (ITC)

- ITC – upfront credit based on eligible project expenses
- PTC – earned over time based on electricity generated
- Property that qualifies for Energy Credit
    - Geothermal energy property
    - Solar energy property to generate electricity, or solar energy property to illuminate
    - Qualified fuel cell property.
    - Qualified microturbine property
    - Combined heat and power system property
    - Qualified small wind energy property
    - Waste energy recovery property
    - Geothermal heat pump system property
    - Energy storage technology property - after 2022 only
    - Qualified biogas property - after 2022 only
    - Microgrid controllers property - after 2022 only

Computation Considerations

Base Tax Credit	Wage & Apprenticeship Requirements
For Projects Less than 1 MWAC: ITC: 30%	**For Projects Less than 1 MWAC:** ITC: N/A
For Projects Greater than 1MWAC: ITC: 6%	**For Projects Greater than 1MWAC:** ITC: 24%

Bonus Credits

Description	ITC %
Domestic Content Minimums (% attributable to US manufactured products)	+10%
Siting in Energy Community	+10%
Siting in Low-Income Community or Indian Land (< 5 MWAC)	+10%
Qualified Low-Income Residential Building Project or Economic Benefit Project	+20%


Corporate
Transparency Act

Overview

- The **Corporate Transparency Act (CTA)** was enacted in Jan. 2021
- Designed to increase the detection of money laundering
- Requires certain entities to disclose their beneficial owners
- Reporting to begin Jan. 1, 2024
- Entities formed prior to Jan. 1, 2024 are required to file an initial report by Jan. 1, 2025
- Not an annual filing requirement ***but*** required to file updated reports if changes occur
- Filings will be submitted electronically via the FINCEN website

Who Reports?

Required to Report

- Any **domestic entity** (corp, LLC, LP, etc.) created by filing a document with the Secretary of State or similar state or tribal office
- Any **foreign entity** registered to do business in the US by filing a document with the Secretary of State or similar State or Tribal office
- Twenty-three (23) specific types of entities are exempt from reporting:
  - Large operating companies
    - More than 20 full time employees in US
    - More than five million in US sourced revenue
    - Physical operating presence in the US
  - Inactive companies
  - Tax-exempt entities
  - Governmental authority
  - Subsidiary of certain exempt entities

Beneficial Owners

A **beneficial owner** is any individual who, directly or indirectly either:

- owns or controls at least 25 percent interest or
- exercises substantial control which would include senior officers, individuals who can appoint and remove senior officers and anyone who directs, determines or has substantial influence over important decisions made by the company

A **company applicant** is the individual who directly files the formation documents or is primarily responsible for directing or controlling the filing of the relevant document by another

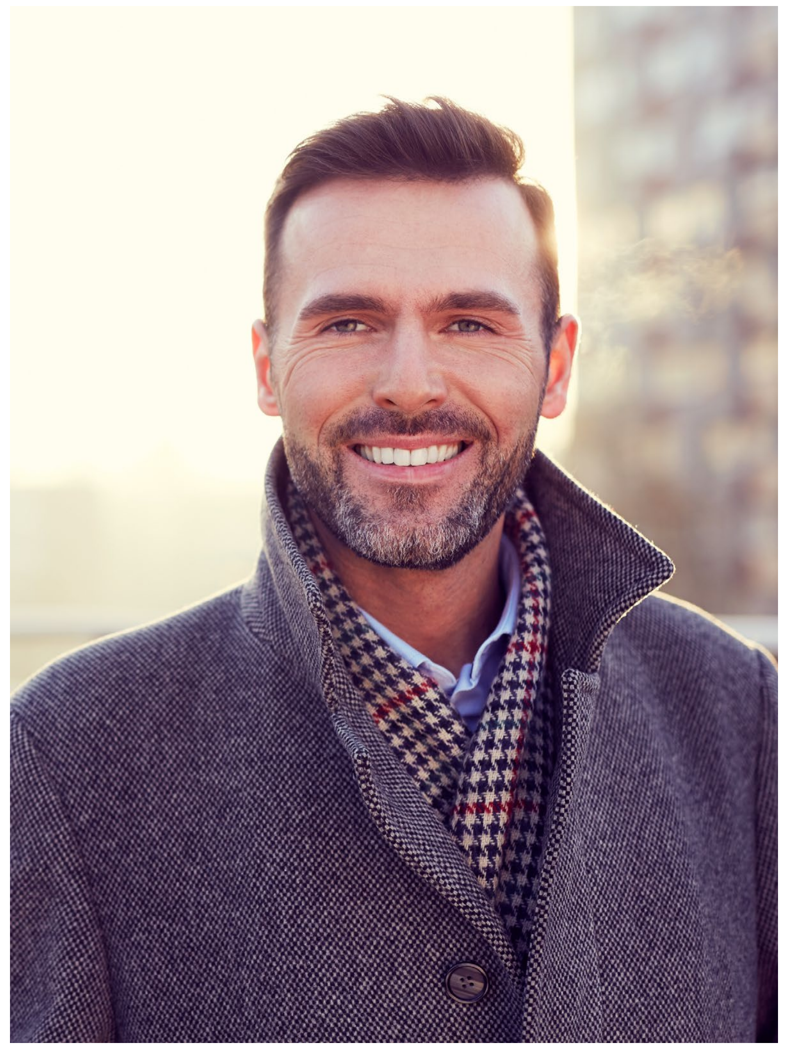
Beneficial Owners
Ownership Interest

- Individuals who **directly or indirectly** own or control at least 25 percent of the ownership interests

- No constructive ownership

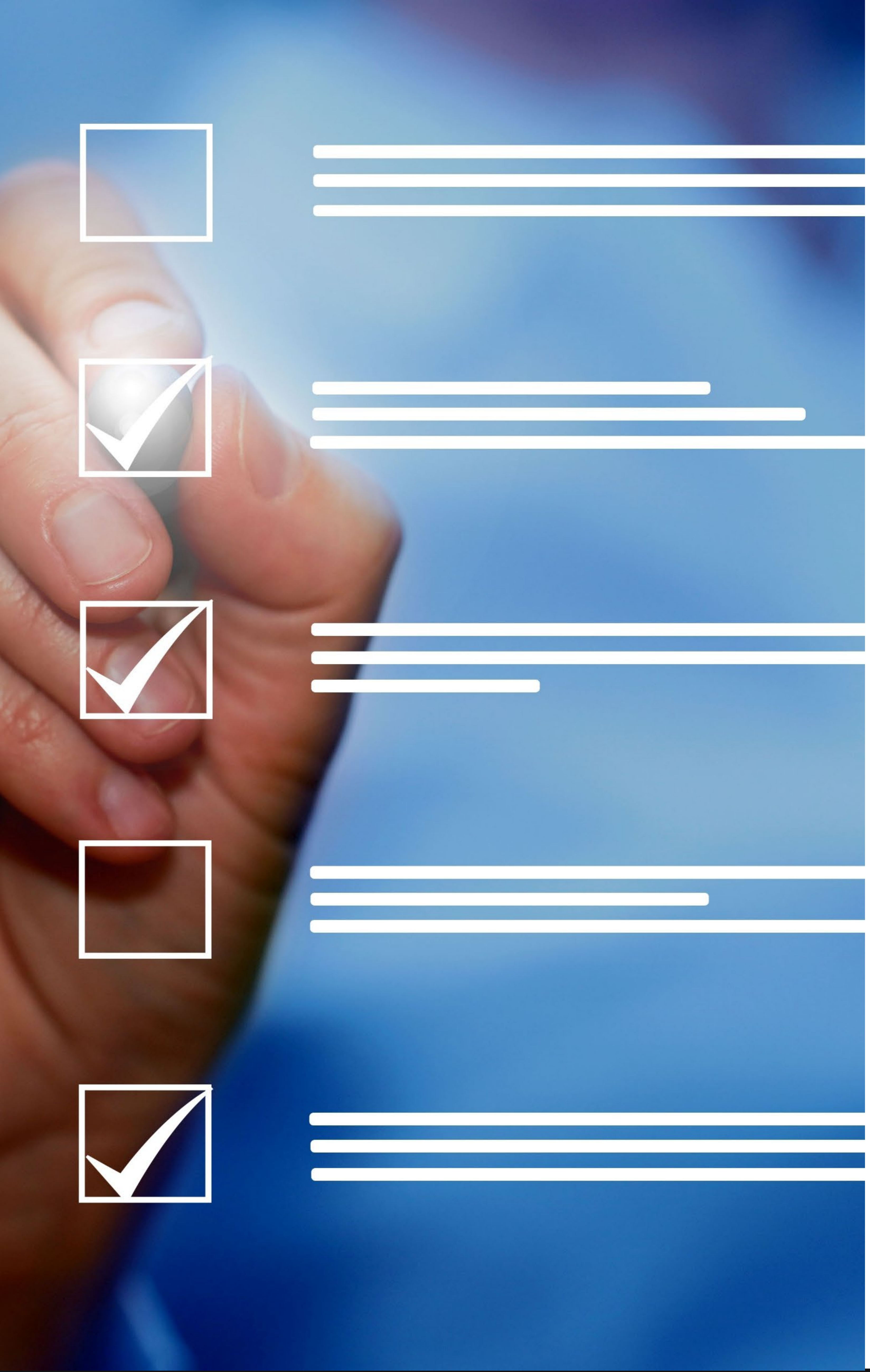
- Ownership interest includes:
    - equity, stock, or voting rights
    - a capital or profit interest
    - convertible instruments
    - options or other non-binding privileges to buy or sell any of the foregoing
    - any other instrument, contract, or other mechanism used to establish ownership



Beneficial Owners
Substantial Control

- Does not require an ownership interest
- An individual exercises substantial control over a reporting company if the individual:
    - Senior officer including a president, CEO, COO, CFO, general counsel, or any other officer, regardless of official title, who performs a similar function
    - Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body)
    - Directs, determines, or has substantial influence over important decisions made by the reporting company
    - Has any other form of substantial control over the reporting company



Reporting Requirements

- For **reporting entities**:
  - Legal name of the business
  - Any trade or DBA name
  - Current address
  - EIN or TIN

- For **beneficial owners and company applicants**:
  - Legal name
  - Date of birth
  - Current address of the individual’s residence
  - Unique government ID number and the issuing jurisdiction including a US passport, ID issued to the individual by a State, driver’s license issued to the individual by a State or a passport issued by a foreign government to the individual if the individual does not possess any of the above documents
  - An image of the government ID document

Additional Items

Key Dates

- Entities created before Jan. 1, 2024 must file a report by Jan. 1, 2025
- Entities created on or after Jan. 1, 2024 but before Jan. 1, 2025 must file a report within 90 days of the entity receiving confirmation that the entity formation was effective
- Entities created on or after Jan. 1, 2025 must file a report within 30 days of the entity receiving confirmation that the entity formation was effective
- If there's a change in the information previously reported concerning the reporting company or its beneficial owners, the entity must file an updated report within 30 days after the change occurs

Penalties

- Civil Penalty - $500 per day
- Criminal Penalty - Up to a $10,000 fine, imprisonment of no more than 2 years, or both
  - Could apply to an individual (including senior officer), reporting company or other entity
  - Safe harbor - If person acting in good faith corrects inaccurate information submitted to FinCEN within 90 days of the inaccurate report


QUESTIONS

THANK YOU

Rehmann is a fully integrated financial services and advisory firm that provides accounting and assurance, comprehensive technology, accounting and human resource solutions, specialized consulting and wealth management services.

For more than 75 years, Rehmann has provided forward-thinking solutions to our clients. With nearly 900 associates in Michigan, Ohio and Florida, we are the momentum behind what’s possible. We focus on the business of business – allowing companies and individuals to focus on what makes them extraordinary. We offer the future with the confidence of unrivaled expertise and integrity – driving impact that empowers our world.