The webcast will start at 1:00 p.m. Eastern

- Visit capincrouse.com/tax-year-end-review to access these materials from today's webcast:
  - Handout
  - Recording
- To receive CPE credit, you must respond to the polling questions, which are not available on mobile devices. To receive CPE credit, you must log in on a computer.
- CPE certificates will be emailed to you within the next few weeks.

CAPINCROUSE LLP

2023 Nonprofit Tax Review

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CAPINCROUSE LLP

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Polling Question 1

Do you want CPE credit?

- Yes
- No

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Agenda

- Employee Retention Credit Updates
- Inflation Reduction Act Energy Credits
- Proposed DAF Regulations
- Supporting Organization Final Regulations
- SECURE 2.0 Update
- Beneficial Ownership Reporting
- FBAR Signatory Authority
- Disaster Filing Relief for Applicable Tax Filings
- IRS Priority Guidance Plan for 2024
- Year-End Tax Considerations

Employee Retention Credit Update

- Created by the CARES Act in 2020; has been modified and expanded by subsequent legislation
- Provides a fully refundable tax credit to eligible employers based upon qualified wages paid to employees
- Now enshrined in Section 3134
- Various IRS Notices have provided further guidance
  - Notice 2021-20; Notice 2021-23; Notice 2021-49; Notice 2021-65

Employee Retention Credit Update (continued)

- Due dates for claiming the ERC are:
  - April 15, 2024, for 2020 quarters
  - April 15, 2025, for 2021 quarters
- On September 14, 2023, the IRS announced a moratorium on processing new ERC claims until **at least** December 31, 2023

Employee Retention Credit Update (continued)

- IRS is focusing on enhanced vetting of the more than 800,000 unprocessed 941-X Forms in its queue
- IRS is also encouraging claimants of the credit to reevaluate their eligibility for the credit with a trusted tax advisor
- On October 19, 2023, the IRS announced a withdrawal process for those who had not received their claims, or had not yet deposited or cashed their claims
- The IRS will announce a separate process for those who have received their ERC claims very soon (December 2023)

Employee Retention Credit Update (continued)

- To be eligible for the withdrawal process, all of the following must apply:
  - The claim was made on an adjusted employment tax return
  - The only change made on the return was a claim for the ERC
  - The organization wants to withdraw the entire amount of the ERC claim
  - The IRS has not paid the claim, or the check has not been cashed or deposited

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Employee Retention Credit Update (continued)

- More guidance will be forthcoming for those employers who were misled into claiming the ERC and have already received payment
- The IRS continues to warn against marketers and “scammers.” Some signs to watch out for:
  - Aggressive marketing, direct mailing, and leaving out key details
  - Large upfront fees and/or fees based on a percentage of the amount of ERC claimed
  - Claims that there is nothing for the employer to lose

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Employee Retention Resources and Services

Scan the QR code or visit **capincrouse.com/erc** to access helpful free resources and see how we can assist you.

Polling Question 2

Has your organization claimed the Employee Retention Credit?

- Yes
- No

Inflation Reduction Act

- Originally estimated $370 billion in incentives for clean energy investments
- 10-year lifespan of incentives
- Used to be very limited means of utilizing the tax benefits with these tax credits. The Inflation Reduction Act (IRA) changed this.
- Further, IRC section 6417 changed the landscape with the Elective Pay Option (Direct Pay)

Inflation Reduction Act (continued)

- Investment Tax Credits (ITC) and Production Tax Credits (PTC)
  - ITC have the following characteristics:
    - Based on the qualified cost of the eligible property
    - The credit percentage is dependent on meeting requirements and can range from a base of 6% to as high as 70%
    - Credit is available in tax year when project is placed in service
    - Five-year recapture period

Inflation Reduction Act (continued)

- Investment Tax Credits (ITC) and Production Tax Credits (PTC)
  - PTC have the following characteristics:
    - Tax credits based on production and sale of manufactured product to an unrelated third party, with some exceptions
    - Credit earned annually over a 10-year period and based on the production and sale of energy or production and sales of renewable energy property components
    - No recapture as credit is earned based on production and sale each year

Inflation Reduction Act (continued)

Section	Type of Technology	Types of Enhancement	Direct Pay Eligible?
30C	Alternative Fuel Vehicle Refueling	PWA	YES
45	Production Tax Credit	PWA, DC, EC	YES
45Q	Carbon Oxide Sequestration	PWA	YES
45U	Zero Emissions Nuclear Power Production	PW (no apprenticeship)	YES
45V	Clean Hydrogen Production	PWA	YES
45W	Qualified Commercial Clean Vehicles	N/A	YES
45X	Advanced Manufacturing Production	N/A	YES
45Y	Clean Electricity Production Credit (effective January 1, 2025)	PWA, DC, EC	YES
45Z	Clean Fuel Production	PWA	YES
48	Investment Tax Credit	PWA, DC, EC, EJ	YES
48C	Qualifying Advanced Energy Project	PWA	YES
48E	Clean Electricity Investment Credit (effective January 1, 2025)	PWA, DC, EC, EJ	YES

Inflation Reduction Act (continued)

- Both ITC and PTC require some **enhancements** in order to maximize the percentage of the credit
- ITC have the following enhancements:
  - Prevailing Wage/Apprenticeship (PWA) or meet exemption
  - Domestic Content
  - Energy Community
  - Environmental Justice Allocation (affordable housing and/or low-income or tribal land)

Inflation Reduction Act (continued)

- Both ITC and PTC require **enhancements** in order to maximize the amount of the credit
- PTC have the following enhancements:
  - Prevailing Wage/Apprenticeship (PWA) or meet exemption
  - Domestic Content
  - Energy Community

Inflation Reduction Act (continued)

- Some of the most relevant credits for tax-exempt organizations relate to:
  - Investment Tax Credit (48)
  - Production Tax Credit (45)
  - New Energy-Efficient Homes (45L)
  - Alternative Fuel Vehicle Refueling (30C)

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Inflation Reduction Act (continued)

Receiving the Direct Pay Benefit requires the following steps:

1. **Construct and implement the project that will generate the credit**
   - Verify eligibility
   - Verify the required enhancements
   - Verify the project costs
   - Place project in service

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Inflation Reduction Act (continued)

2. Register

- Electronic registration
- Receive a unique registration number
- Must be done prior to filing a return
- The number should be included on the tax return

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Inflation Reduction Act (continued)

3. Claim the credit

- Determine the tax year, which is based on accounting period
- File the applicable tax return
- Must be a timely filed return

4. Receive the refund that can be used for future operations

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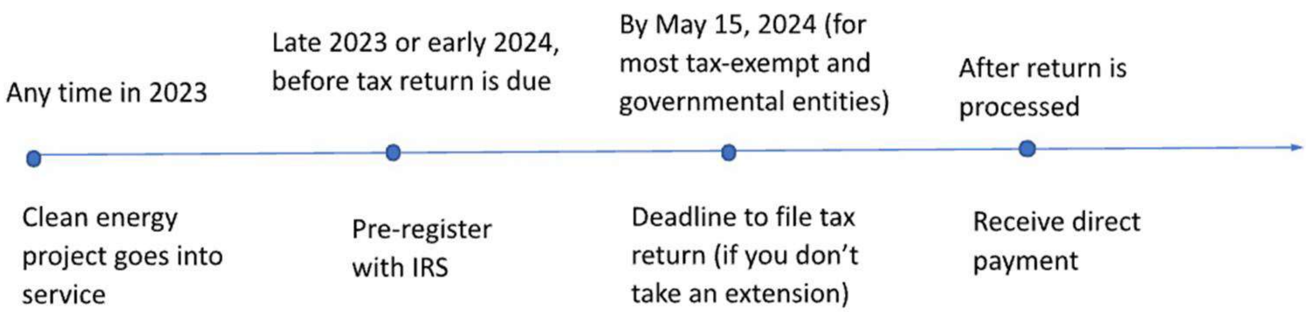
Inflation Reduction Act (continued)

Sample timeline for receiving credit:



Polling Question 3

The Inflation Reduction Act energy project credits do not require you to construct a project before receiving the credit.

- True
- False

New Proposed Donor Advised Fund Regulations

- The proposed regulations address donor advised fund statutory provisions added to the Internal Revenue Code by the Pension Protection Act of 2006
- The emphasis is on definitions of:
  - Donor advised fund (and what is not)
  - Sponsoring organization
  - What constitutes "advisory privileges"
  - Who is a donor advisor, including service on an advisory committee
  - A taxable distribution under IRC § 4966
  - Qualified recipients of DAF distributions

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New Proposed Donor Advised Fund Regulations (continued)

- In addition, the proposed regulations:
  - Permit the use of equivalency determination when making distributions to foreign organizations
    - Expenditure responsibility was already contemplated by the statute
  - Clarify when a fund manager is liable for the excise tax imposed by IRC § 4966 on taxable distributions
- The proposed regulations do not address the excise tax imposed by IRC § 4967 on prohibited benefits

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Supporting Organization Final Regulations

- The Pension Protection Act of 2006 (PPA) made several revisions to the requirements to be considered a supporting organization. The final regulations that were released in October 2023 address section 1241 of the PPA.

- The final regulations largely adopted the 2016 proposed regulations

- Section 1241 made several changes to the requirements an organization must satisfy to qualify as a Type III supporting organization

Supporting Organization Final Regulations (continued)

- A facts and circumstances test is employed when determining control for the purposes of the prohibition on a Type I or III supporting organization accepting gifts or contributions from a controlling donor

- Type III supporting organizations may substantiate contributions to their supported organizations using electronic means to satisfy the notification requirement

SECURE 2.0 Update

- SECURE 2.0 created a requirement that catch up contributions to a 403(b) or 401(k) plan (i.e., by persons over age 50) are required to be deposited in a Roth account within the plan effective January 1, 2024
- IRS Notice 2023-62 delayed implementation of this rule to January 1, 2026

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Beneficial Ownership Information Reporting

- Beginning on January 1, 2024, many companies in the U.S. will be required to report information about their beneficial owners to the Financial Crimes Enforcement Network (FinCEN)
- Entities will have one year from January 1, 2024, to file their initial beneficial ownership information (BOI) report. After that initial report is filed, there is no ongoing filing requirement, unless an amendment is needed due to a change in the reported information.
- The term "reported entity" is broad. All entities are required to file unless a specific exemption applies. See this FAQ page for the 23 exemptions.

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Beneficial Ownership Information Reporting (continued)

- **Nonprofit entities are exempt from the filing requirement.** This includes entities that assist nonprofit entities and subsidiary entities controlled by nonprofit entities.
  - **Assisting entities** are those that operate exclusively to:
    i. provide financial assistance to **or**
    ii. hold governance rights over any one of the tax-exempt entities,
    iii. the assisting entity is organized and owned (or controlled) exclusively by one or more U.S. persons that are U.S. citizens, and
    iv. a majority of the entity's funding comes from U.S. persons that are U.S. citizens
  - **Subsidiary entities** are those whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more tax-exempt entities

FBAR Reporting Generally

- Per the Bank Secrecy Act, an organization must annually report certain foreign financial accounts to the Treasury Department. This is called a Report of Foreign Bank and Financial Accounts (FBAR), and it is reported on FinCEN Form 114.
- Penalties for noncompliance are steep
- Every U.S. person (including individuals and corporations) must file an FBAR to report a **financial interest** in accounts located outside of the U.S. if the aggregate value of those accounts exceeds $10,000 at any point in the calendar year
  - An **indirect financial interest** through voting stock control, majority partnership interest, or **board control** of a foreign entity creates a filing requirement

FBAR Signatory Authority

- Individuals with signature authority over an account are also required to report
- A case decided in February 2023 broadens the ambit of what is considered signature authority
- Generally, it means an individual who, alone or in conjunction with another, can control the disposition of money, funds, or other assets held in a financial account by direct communication to the person with whom the financial account is maintained
  - This includes more than merely having a signature card on file
  - It includes the ability of a person to give an instruction by any means (e.g., fax, e-mail, telephone, telex, telegram, or other means) and have that instruction carried out

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FBAR Signatory Authority (continued)

- Some implications to consider:
  - The authority exercised must be enough to direct the distribution of the assets, not merely to direct investments
  - Further, there are several relevant exceptions:
    - Certain accounts jointly owned by spouses – There is not a separate per-spouse filing requirement if (1) the financial accounts that the non-filing spouse is required to report are jointly owned with the filing spouse; (2) the filing spouse reports the jointly owned accounts on a timely filed FBAR that is e-signed; and (3) the filers have completed and signed Form 114a
    - U.S. persons who are entities included in a consolidated FBAR filed by a greater-than-50% owner

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Polling Question 4

FBAR reports must be filed if an individual has:

- A financial interest in a foreign financial account
- Signatory authority over a foreign financial account
- Both

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Disaster Relief for Applicable Tax Filings

- From time to time, the IRS grants tax-filing relief to taxpayers impacted by a disaster in their area. This relief usually comes in the form of a brief allowance for a filing delay.
- The IRS provides a helpful resource that gathers the various disaster relief announcements for people and organizations located in affected states:
  - irs.gov/newsroom/tax-relief-in-disaster-situations
  - You can search by year or by state

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IRS 2023-2024 Priority Guidance Plan

- Every year, the IRS releases its list of priorities for the purpose of allocating resources through the fiscal year
- The current plan year runs from July 1, 2023, through June 30, 2024
- There are 237 guidance projects listed, with some relevant to exempt organizations
  - May want to review the section on energy credits (pg. 7 – 8)
  - Guidance revising Rev. Proc. 80-27 regarding group exemption letters. Notice 2020-36 was published on May 18, 2020.
  - Guidance under section 4966 regarding donor advised funds
  - Regulations under section 4967 regarding prohibited benefits, including excise taxes on donors, donor advisors, related persons, and fund management

Year-End Tax Reporting

- *IRS E-file Shutdown Date for Filing of Business returns*
  - Shutdown for “Send Submissions” only is scheduled to begin at 11:59 a.m. (noon) Eastern time, Tuesday, December 26, 2023
  - Transmitters can continue to use the other service requests except “Send Submissions” until 11:59 p.m. (midnight) Eastern time on Tuesday, December 26, 2023
  - Any acknowledgements not retrieved by 11:59 p.m. Eastern time on December 26 cannot be accessed until MeF opens for production in January 2024

Year-End Tax Reporting (continued)

- *W-2 Forms*
  - If you have historically paper-filed your W-2 Forms with the Social Security Administration (SSA), know that **the threshold for mandatory electronic filing has dropped to 10 forms (includes Forms 1099)**
  - The deadline for filing and for sending to the employee remains January 31

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Year-End Tax Reporting (continued)

- *1099-NEC and 1099-MISC*
  - You should periodically review the rules for when a 1099-NEC and 1099-MISC is required
  - Due dates for filing are February 28, 2024 (if paper-filing) or April 1, 2024 (if filing electronically)
  - Recipients should receive their 1099 Forms by January 31

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Year-End Matters

- Tax-deductible contribution receipting
  - Timing of issuing receipts
    - Receipts must be received by the donor by the earlier of:
      a. the date on which the donor actually files their federal income tax return, or
      b. the due date (including extensions) of the return
    - If your organization issues annual donor statements, rather than receipts as gifts are made, as a matter of good donor relations, annual donor statements should be issued by January 31 to ensure donors have this information before filing their returns

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Year-End Matters (continued)

- Tax-deductible contribution receipting (continued)
  - To claim a deduction for a gift that is $250 or more, a donor must obtain a contemporaneous written acknowledgement (i.e., a receipt) of the gift from the charity
  - Required elements of contemporaneous written acknowledgment:
    - The acknowledgement must have the elements described in IRS Publication 1771
    - Receipts should specifically include a statement regarding goods and services provided in exchange for a gift **or** a statement that no goods or services were provided (a quid pro quo statement)

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Year-End Matters (continued)

- Tax-deductible contribution receipting (continued)
  - Sample quid pro quo statements
    - Churches commonly use this text:

      "No goods or services were provided in exchange for your gift other than intangible religious services"
    - Other organizations commonly use this text:

      "No goods or services were provided in exchange for your gift"
    - If goods or services were provided, use this text:

      "You received goods or services with an estimated fair market value of $__ in exchange for your gift"

Polling Question 5

"Quid pro quo" language is a required element in all donation receipts.

- True
- False

Year-End Matters (continued)

- Gifts to staff and volunteers
  - Internal Revenue Code section 102(c) states that gifts to employees are generally considered compensatory and, therefore, included in their taxable income
  - However, there are some exceptions to this rule so long as the gift can qualify as a de minimis fringe benefit under Internal Revenue Code section 132(a)(4)
    - The gift must be of such a value that accounting for it is unreasonably or administratively impracticable
      - Cash and gift cards are never unreasonably or administratively impracticable

Year-End Matters (continued)

- Gifts to staff and volunteers (continued)
  - Some examples found in the Treasury Regulations include:
    - Traditional holiday gifts of property (not cash) with a low fair market value
    - Holiday parties
    - Occasional theater and sporting event tickets
  - Some common nonexcludable items include:
    - Gift cards (whether to a specific location or a credit card gift card)
    - Gifts of cash

Year-End Matters

- Housing allowance
  - A housing allowance must be designated in advance of payment by an official action of the governing body, such as a board resolution
  - Best practice is to have these designations completed by December 31
    - But no later than the first payroll run in 2024

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Year-End Matters (continued)

- Review ministerial taxation reporting more generally
  - Ministers are not subject to FICA taxation
  - Voluntary withholding arrangements should be updated using Form W-4
  - If you have hired any new ministers or newly ordained, licensed, or commissioned any minister, check with your payroll provider to ensure they are correctly classified and the withholdings are accurate

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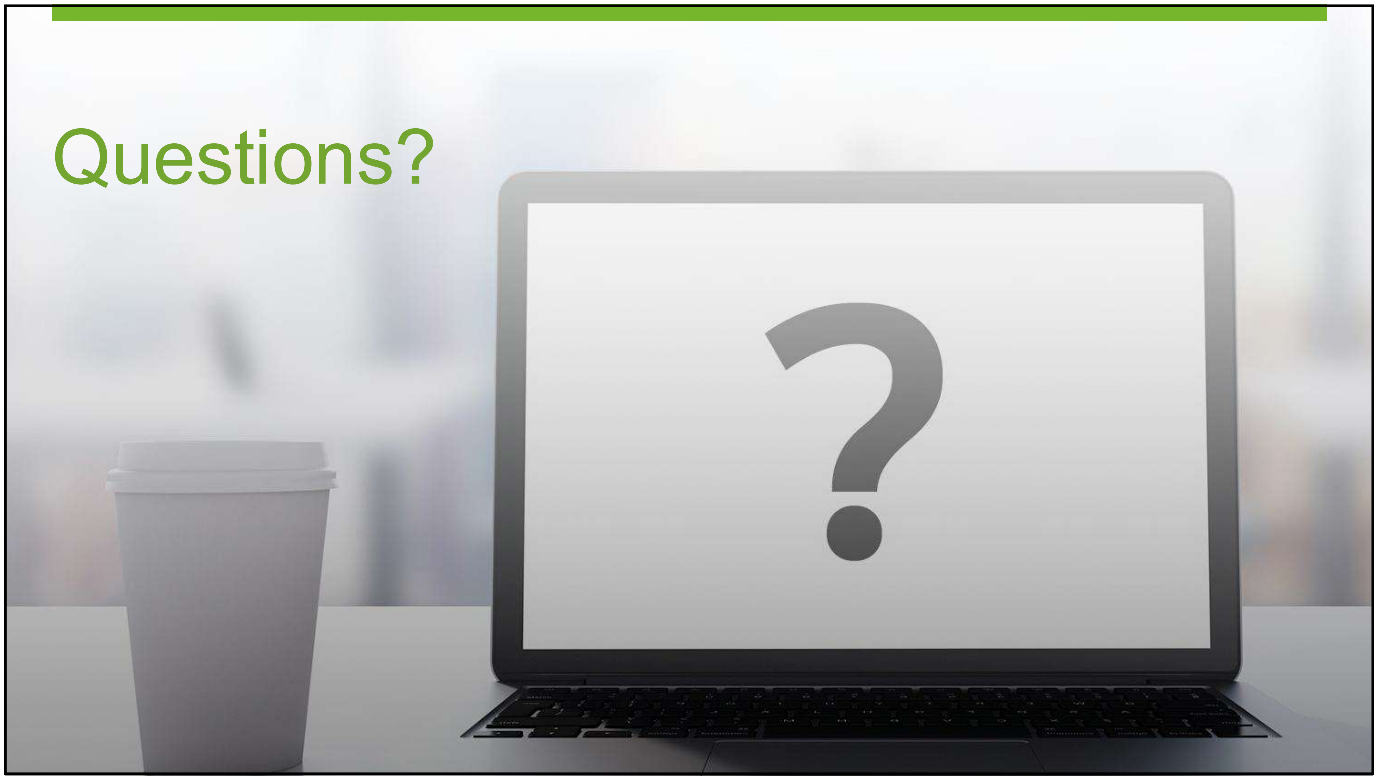
Questions?



Thank you!

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