2020 Year-End Tax Planning

For Privately-Held Businesses

1 CPE Credit Available

AAFCPAs issues CPE in accordance with NASBA regulations

To be eligible for CPE you must:

- Submit answers to all polling questions when they pop up
- Complete and submit evaluation
- Remain logged in to the webinar for the entirety of the program

We will email CPE certificates by mid-November to the email address you provided

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2017-2020

- The 2017 Tax Cuts and Jobs Act (TCJA)
- The 2019 Further Consolidated Appropriations Act
- The 2019 Setting Every Community Up for Retirement Enhancement (SECURE) Act
- The 2020 Families First Coronavirus Response Act (FFCRA)
- The 2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act
- And other federal and state pandemic-related stimulus initiatives.

Families First Coronavirus Response Act (FFCRA):

Covered employers are private sector employers with fewer than 500 workers at the time the leave is granted, and government entities.

Reason for Leave	Leave Entitlement	Daily Pay Rate Cap	Total Pay Cap
• Employee is experiencing COVID-19 symptoms and seeking medical diagnosis. • Personal quarantine or isolation order. • Advised by heath care provider to self-quarantine due to COVID-19 concerns; or • Employee is subject to federal, state, or local quarantine order.	All employees No waiting period No requirement to use other paid sick time first FT Employees: 80 hours PT Employees: Avg. of 2- week period Variable Schedule: Avg. 6-month lookback	Regular pay rate up to $511 per day	$5,110
• Care for family member affected by COVID-19, or subject to government quarantine or isolation order, advised by health care provider to self-quarantine due to concerns related to COVID-19	30 days of employment No waiting period No requirement to use other paid sick time first FT Employees: 80 hours PT Employees: Avg. of 2- week period Variable Schedule: Avg. 6-month lookback	2/3 of regular pay up to $200 per day	$2,000
• Care for son or daughter under the age of 18 whose school or daycare is closed due to COVID-19, or an adult son or daughter over the age of 18 who has a mental or physical disability and is incapable of self-care	30 days of employment No waiting period Up to 12 weeks	First 10 days unpaid, but can use accrued PTO After 10 days, 2/3 of regular pay up to $200 per day	$10,000

Net Operating Losses

- For tax years beginning before 2021, the 80% income limitation for NOL Deductions is temporarily repealed. (Pre -2018 Rules)
- For losses arising in 2018-2020, a five-year carryback is allowed, you may affirmatively elect to forgo this carryback. Revenue Procedure 2020-24.
- This applies to all taxpayers, including pass-through businesses and sole proprietorships.

Election to forgo carryback must be made on the first return for a tax year ending AFTER March 27, 2020. For example, a calendar year corporation would now be permitted to make the relinquishment election for 2018 or 2019 on its timely filed return for 2020 (due in 2021).

Form 1139 for carryback claims in 2019 & 2020.

Form 1120X for 2018 carryback.

Tax Year NOL Generated	Carryback Period	Carryforward Period	Limitation on NOL Utilization in Carryforward Period		
			Tax Years BEFORE 2018	**Tax Years 2018 – 2020**	**Tax Years AFTER 2020**
Pre-2018 NOL	2 Years	20 Years	No Limit	No Limit	No Limit
2018 – 2020 NOLs	5 Years	Indefinite	No Limit	No Limit	80% Limit
Post - 2020 NOLs	N/A	Indefinite	N/A	N/A	80% Limit

Excess business loss limitations & Interest Limitation

Sec. 461(l) – Business Loss Limitations

- The Sec. 461(l) excess loss limitation is repealed for tax years **2018 through 2020.**

Section 163 (j) – Interest Deduction Limitation

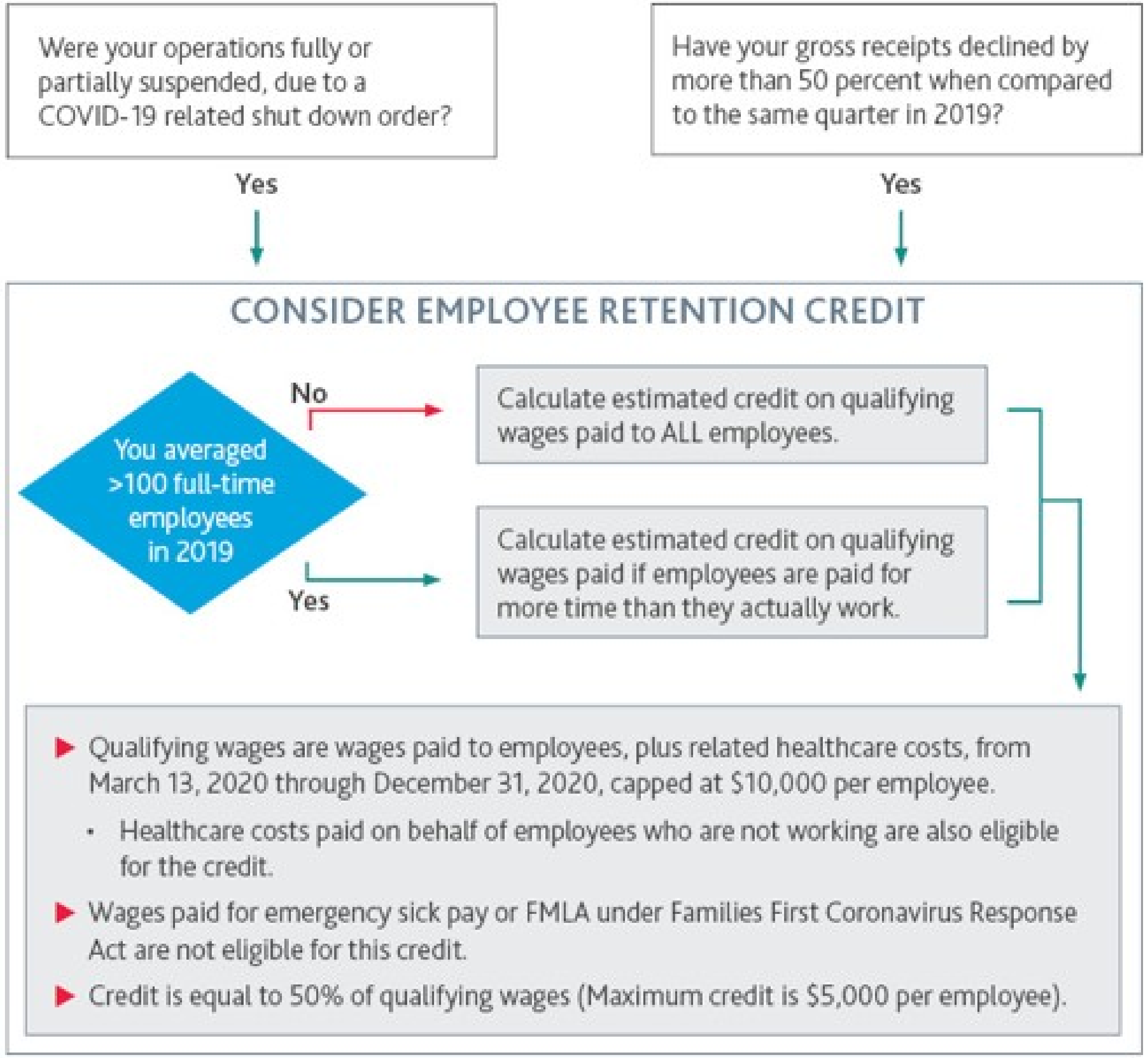
- For tax years beginning in **2019 and 2020**, Sec. 163(j) is amended to increase the adjusted taxable income percentage (ATI) from 30% to 50%.
- 2021 the limitation drops back to 30% of ATI.
- 2022, ATI is redefined as taxable income plus interest expense, no longer an adjustment for depreciation and amortization.
- 2025 163(j) provision sunsets.

Qualified Improvement Property & Charitable Deductions

Qualified improvement property: A technical correction was made to the TCJA regarding qualified improvement property under Sec. 168 by making it 15-year property, and eligible for bonus depreciation. These improvements can now be expensed immediately.

Corporate taxpayer who makes cash contributions to public charitable organizations in 2020 can take a deduction up to 25% of taxable income; this is up from the 10% limitation.

Employee Retention Credit



IRS FAQs: https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act

Employee Retention Credit
The Procedure

- Reduce deposits of payroll taxes on Form 941
- Form 7200 for refundable portion
- Contact your payroll provider

Deferral of Social Security Taxes

Option	Timing	Value of Deferral	Future Due Date
Employer Side (CARES ACT)	Wages from March 27, 2020 to December 31, 2020	6.2% employer Social Security Tax – All wages	50% Dec 31, 2021 & 50% December 2022.
Employee Side (Presidential Memo)	Wages from Sept 1, 2020 to December 31, 2020.	6.2% employer Social Security Tax – Wages under $4,000 biweekly ($104,000 annually)	Between January 1, 2021, and April 30, 2021,

Benefits for Employees

Student Loans Paid By Employers – Expansion of IRC Section 127

- Up to $5,250 excluded from employee income

Disaster Relief Payments – Section 139 Payments

- Medical expenses not covered by insurance (e.g., co-pays, deductibles, over-the-counter medicines and cleaning supplies);
- Expenses incurred for childcare and tutoring services;
- Expenses incurred to allow the employee to work from home (e.g., the cost of a personal computer, printer, supplies, internet service, etc.);
- Commuting expenses;
- Caregiver and domestic service expenses;
- Funeral expenses; and
- Legal and accounting expenses.

Main Street Lending Program & Exchange Stabilization Loans

Nonprofits

Main Street Lending Program Nonprofit Loan Options	Nonprofit New Loans	Nonprofit Expanded Loans
Term	5 years	
Minimum Loan Size	~~$250,000~~ $100,000	$10 million
Endowment Cap	$3 billion	
Years in Operation	At least 5 years	
Eligibility Criteria (See Term Sheets for More Detail)	• Minimum employees 10 (previously 50) • Total non-donation revenues equal to or greater than 60% of expenses for the period from 2017 through 2019 (previously 70% of revenues) • 2019 operating margin of 2% or more, (previously 5%) • Current days cash on hand 60 days (previously 90 days) • Current debt repayment capacity—ratio of cash, investments and other resources to outstanding debt and certain other liabilities—of greater than 55% (previously 65%)	
Maximum Loan Size	The lesser of $35 million, or the borrower's average 2019 quarterly revenue	The lesser of $300 million, or the borrower's average 2019 quarterly revenue
Risk Retention	5%	
Principal Repayment	Principal deferred for two years; years 3-5: 15%, 15%, 70%	
Interest Payments	Deferred for one year	
Rate	LIBOR + 3%	

Main Street Lending Program & Exchange Stabilization Loans

For-profits

Main Street Lending Program Loan Options	New Loans	Priority Loans	Expanded Loans
Term		5 years *(previously 4 years)*	
Minimum Loan Size	~~$250,000~~ $100,000 *(previously $500,000)*		$10M
Maximum Loan Size	The lesser of $35M, or an amount that, when added to outstanding and undrawn available debt, does not exceed 4.0x adjusted EBITDA *(previously $25M)*	The lesser of $50M, or an amount that, when added to outstanding or undrawn available debt, does not exceed 6.0x adjusted EBITDA *(previously $25M)*	The lesser of $300M, or an amount that, when added to outstanding or undrawn available debt, does not exceed 6.0x adjusted EBITDA *(previously $200M)*
Risk Retention	5%	5% *(previously 15%)*	5%
Principal Repayment	Principal deferred for two years, years 3-5: 15%, 15%, 70% *(previously principal deferred for one year and 33.33% repayment due in years 2-4)*	Principal deferred for two years, years 3-5: 15%, 15%, 70% *(previously principal deferred for one year and 15%, 15%, 70% repayment due in years 2, 3, and 4, respectively)*	
Interest Payments		Deferred for one year	
Rate		LIBOR + 3%	

Forgiveness Considerations

- EIDL Grant (up to $10k)
- Size of Loan (Audit over $2m)
- Covered period length (8 or 24 weeks)
- Rent or Lease payments to related parties vs. Mortgage Interest
- Non-Deductibility of Expenses (For now)
- Employees making over 100k
- At Least 60% of expenses on payroll
- State Tax Implications
- Forgiveness Reductions
- Backup Documentation & Certifications

Forgiveness Applications & Instructions

- Form 3508S – Loans under 50k
- Form 3508EZ – Less complicated loans but over 50k
- Form 3508 – All Loans

Treasury Department Website: https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses

PPP Loan Accounting

<u>Business entities</u> have four options for accounting for the forgiveness of the PPP funds:

1

<u>Option 1</u>: Account for the loan as a *financial liability* in accordance with FASB ASC 470 and accrue interest in accordance with FASB 835-30.

- Consider this the "loan" option.
- Initial recognition: record a loan payable.
- Forgiveness recognition: record the loan payable as a write off to the outstanding loan payable balance and a "gain on debt extinguishment" once notified of forgiveness.
- No need to impute additional interest.

2

<u>Option 2</u>: Account for the loan as a *conditional contribution* in accordance with FASB ASC 958-605.

- Must substantiate that they expect to meet the PPP's eligibility criteria for forgiveness, and document what those criteria are.
- Initial recognition: record a refundable advance (liability).
- Forgiveness recognition: reduce the refundable advance balance and recognize revenue (other income) once the organization feels those criteria are met.
- Must disclose the accounting treatments and related impact.

3

<u>Option 3</u>: Account for the loan as a *financial liability* in accordance with FASB ASC 450-30.

- Consider this another "loan" option.
- Initial recognition: record a loan payable.
- Forgiveness recognition: record once notified of forgiveness.
- No need to impute additional interest.

4

<u>Option 4</u>: Account for the loan as a refundable advance in accordance with IAS 20

- Consider this the "grant" option.
- Initial recognition: record a refundable advance (liability).
- Forgiveness recognitio n: reduce the refundable advance balance and recognize revenue (other income) OR reduce the related expenses, once the organization feels there is reasonable assurance the conditions are met, and the forgiveness will be received.

PPP Loan Accounting

<u>Nonprofits</u> have two options for accounting for the forgiveness of the PPP funds:

1

<u>Option 1</u>: Account for the loan as a *financial liability* in accordance with FASB ASC 470 and accrue interest in accordance with FASB 835-30.

- Consider this the "loan" option.
- Initial recognition: record a loan payable.
- Forgiveness recognition: record the loan payable as a write off to the outstanding loan payable balance and a "gain on debt extinguishment" once notified of forgiveness.
- No need to impute additional interest.

2

<u>Option 2</u>: Account for the loan as a *conditional contribution* in accordance with FASB ASC 958-605.

- NFP must substantiate that they expect to meet the PPP's eligibility criteria for forgiveness, and document what those criteria are.
- Initial recognition: record a refundable advance (liability).
- Forgiveness recognition: reduce the refundable advance balance and recognize revenue (other income) once the NFP feels those criteria are met.
- NFPs must disclose the accounting treatments and related impact.

PPP Loan Accounting (cont.)

Financial statement disclosures to consider

Terms (including interest rate, maturity and other compliance requirements)

Accounting Treatment

Single Audit Impact – **Non-Profits**

PPP loans will not be subject to the Single Audit requirements. Accordingly, do not report PPP funds in their Schedule of Expenditures of Federal Awards

Do not charge any expenses paid with PPP loans or any other Federal CARES Act funds to other Federal awards. (No Double Dipping)

Resources

- AAFCPAs COVID-19 Business Resource Center & Task Force
  - https://www.aafcpa.com/covid-19-business-resources/
- Treasury Department Website
  - https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses
- IRS Website
  - https://www.irs.gov/newsroom/whats-hot

Polling Question #1

Did your business take advantage of one or more of the credits, loans, grants, benefits, etc.?

*CPE Requirement

2020 State & Local Tax (SALT) Update

STATE RESPONSES TO CARES ACT

Dependent on IRC Conformity

- Rolling – automatically tie into IRC as changes are adopted
- Fixed date – adopt IRC as of a specific date; can update through subsequent legislation
- Selective – selectively conforming to specific provisions of the IRC
- Decoupling

CARES Act Provisions being addressed by states

- Due date extensions
- 163(j) Business Interest Limitation
- NOL limitations and carryback rules
- Reclassification of QIP to be eligible for 100% bonus depreciation
- State taxability of PPP loan forgiveness

Guidance still being issued on TCJA – now states must decide which provisions of CARES Act they will follow or decouple from

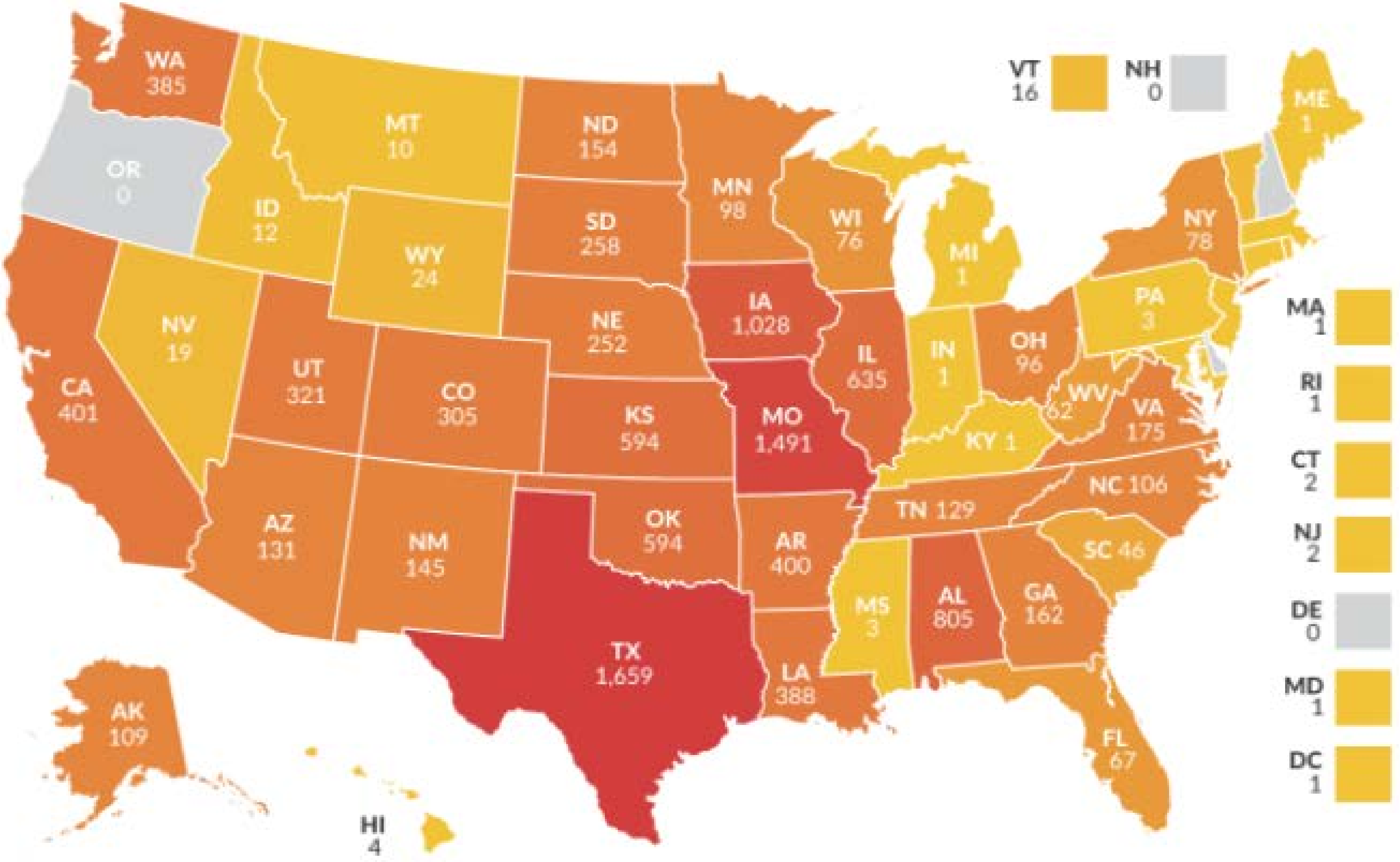
State Tax Implications of Remote Workers

- Individual Income Tax Withholding
  - Convenience rules (AR,CT,DE,NE,NY,PA)
  - State and Federal Legislation
    - MA Regulation 830 CMR 62.5A.3 issued October 16th
    - NH Governor threatens to sue MA in US Supreme Court
    - US Bill H.R. 7968 – Multistate Worker Fairness Act
- Potential nexus issues for income tax and sales & use tax
- Income tax apportionment ramifications
- Some states providing relief while state of emergency is ongoing

SALES TAX OVERVIEW

- 45 states (plus DC) have sales tax
- 5 states have no state-wide sales tax system (NOMAD)
- There are approximately 12,000 state and local tax jurisdictions in the United States
- Accelerated trends toward e-commerce/digital goods and services
- Selling new products or increased sales can trigger nexus
- Tax relief – waiving penalties and interest, extending due dates, temporary exemptions for essential products

Total Sales Tax Jurisdictions by State, 2020



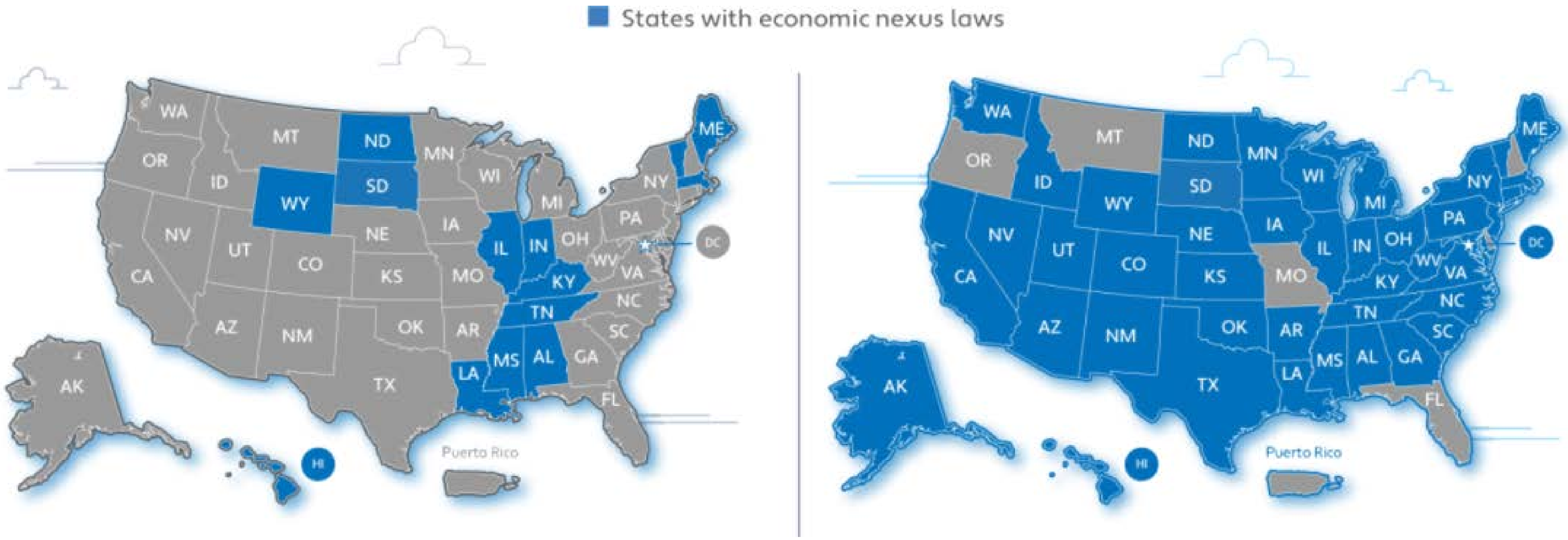
Source: Vertex, Inc.

Wayfair Remote Sellers- Economic Nexus

- 43 states (plus DC) have economic nexus laws for sales tax
- "Holdouts" are FL & MO
- Kansas only state to have no small seller exemption
- Many states have eliminated or otherwise moved away from transaction threshold
- Marketplace facilitator laws implemented in a number of new states

- **FL** – S.B. 126 introduced but not passed. Governor has stated he will not support any efforts to enact economic nexus
- **MO** – S.B. 529 introduced but little action has occurred. If enacted, it would be effective 1/1/22
- **GA** - Reduced the sales threshold from $250,000 to $100,000 as of 1/1/20
- **IL** – Remote sellers will be required to collect local tax in addition to state tax effective 1/1/21
- **KS** – H.B. 2014 proposed imposing a $100K threshold but the bill was not addressed before adjournment

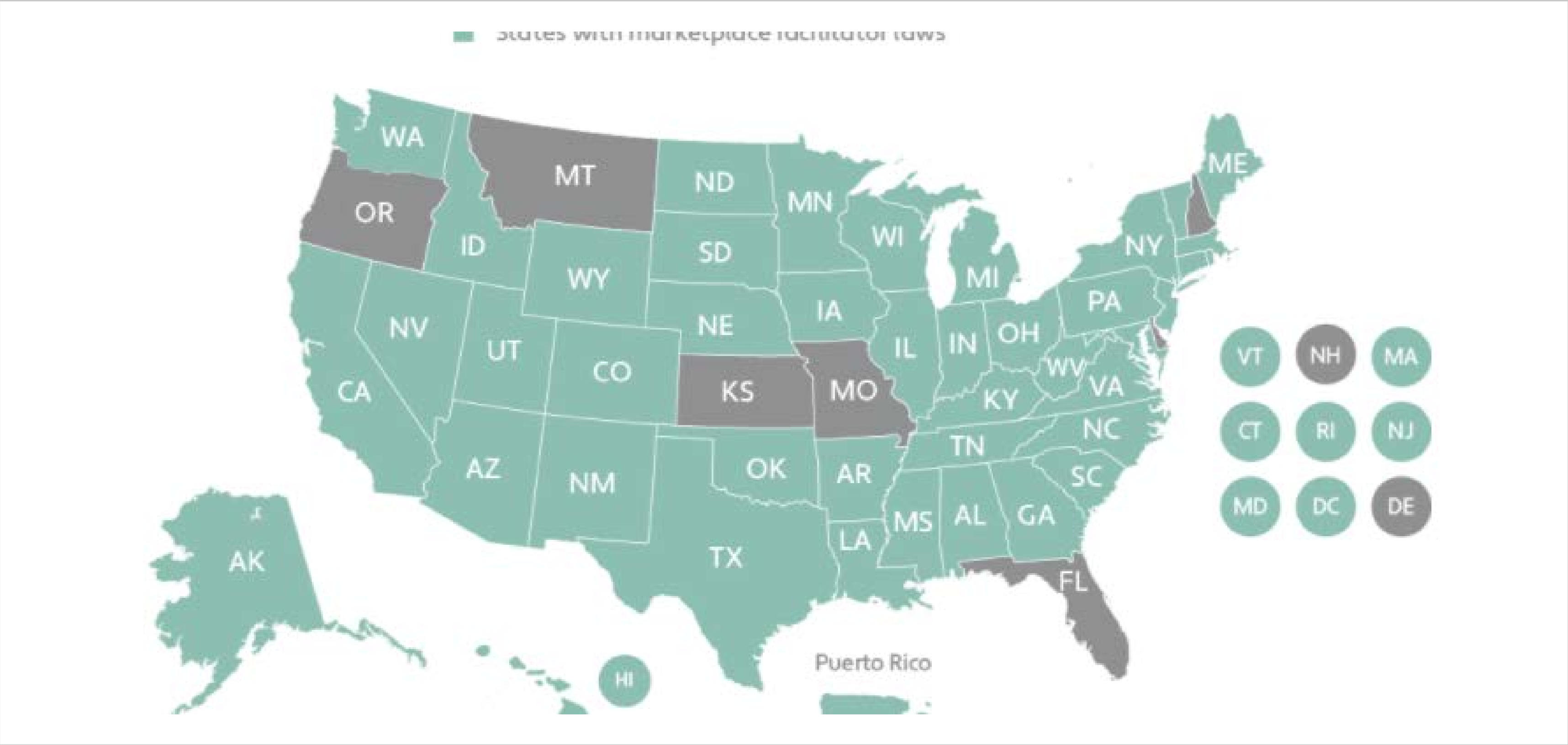
Wayfair Remote Sellers 2020 Updates



Economic Nexus – Then & Now

Marketplace Facilitator Laws

- 41 states (plus DC) currently have marketplace facilitator laws
- Requires companies that are primarily e-commerce platforms (e.g. Amazon, eBay, Etsy, etc.) to collect and remit sales tax for sales made on its platform
- Results in more sales from small businesses being taxed, thus higher revenue for states
- *May* apply to businesses providing other services, such as:
    - Payment processing
    - Ticket services
    - Online accommodation rentals
    - Ride share services



Marketplace Facilitator Laws 2020

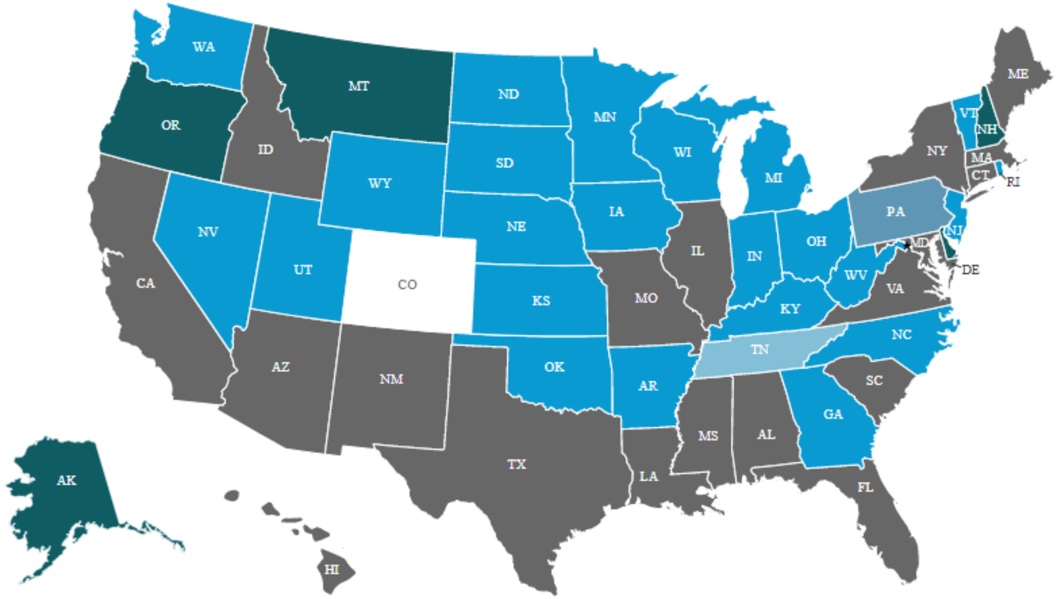
Sales Tax Compliance Considerations

- Ensure use tax paid in situations where sales tax not collected or paid
- Certificate management – exemption and reseller
- Review for product taxability and nexus across all states
- Stay up to date on changing state/local sales & use tax rates
- Collect tax as required and remit with timely filed tax returns

Streamlined Sales and Use Tax Agreement (SSUTA)

- Originally SSTP – arose as Congress attempted to prohibit states from collecting tax on online commerce
- Exists to streamline and simplify sales tax collection and administration across many states
- State-level administration, uniform tax base, simplified tax rates, uniform sales sourcing rules
- 24 states are full members (not Massachusetts)
- If registered, remote sellers generally eligible for free sales tax compliance services

STREAMLINED STATE STATUS AS OF SEPTEMBER 2020



Full member states

Associate member states (flex to full)

Advisory states (not conforming)

Non-sales tax states

Project states (not advisory)

Non-participating state

Economic Nexus Update – Other Taxes

Several new states will impose economic nexus for other corporate taxes (income/franchise/gross receipts/CAT)

- HI GET– If sales exceed $100K
- OH CAT – If sales exceed $150K
- OR CAT – If sales exceed $750K
- TX Franchise - If sales exceed $500K
- WA B&O Tax – If sales exceed $100K

Strategic Resolution and Planning

- Voluntary Disclosure Agreements
- Amnesty Programs
- State Credits & Incentives
- Cost/Benefit Analysis re: Prospective vs Retroactive Compliance
- Nexus Study
- Multistate SALT Analysis

Poll Question 2

Are you confident your business complies in all states where it has nexus for sales and income/franchise tax?

*CPE Requirement

International Tax Considerations for Multi-National Companies


Verdict:
GILTI

What is GILTI?

Global Intangible Low-Taxed Income (IRC §951A)

- New tax regulation established by the Tax Cuts & Jobs Act of 2017
- Applies to 10% US shareholders of Controlled Foreign Corporations (CFCs)
- **NOT** solely linked to intellectual or intangible property
- Functions as an anti-deferral of income inclusion from foreign earnings
- This is an annual inclusion, **NOT** a one-time charge

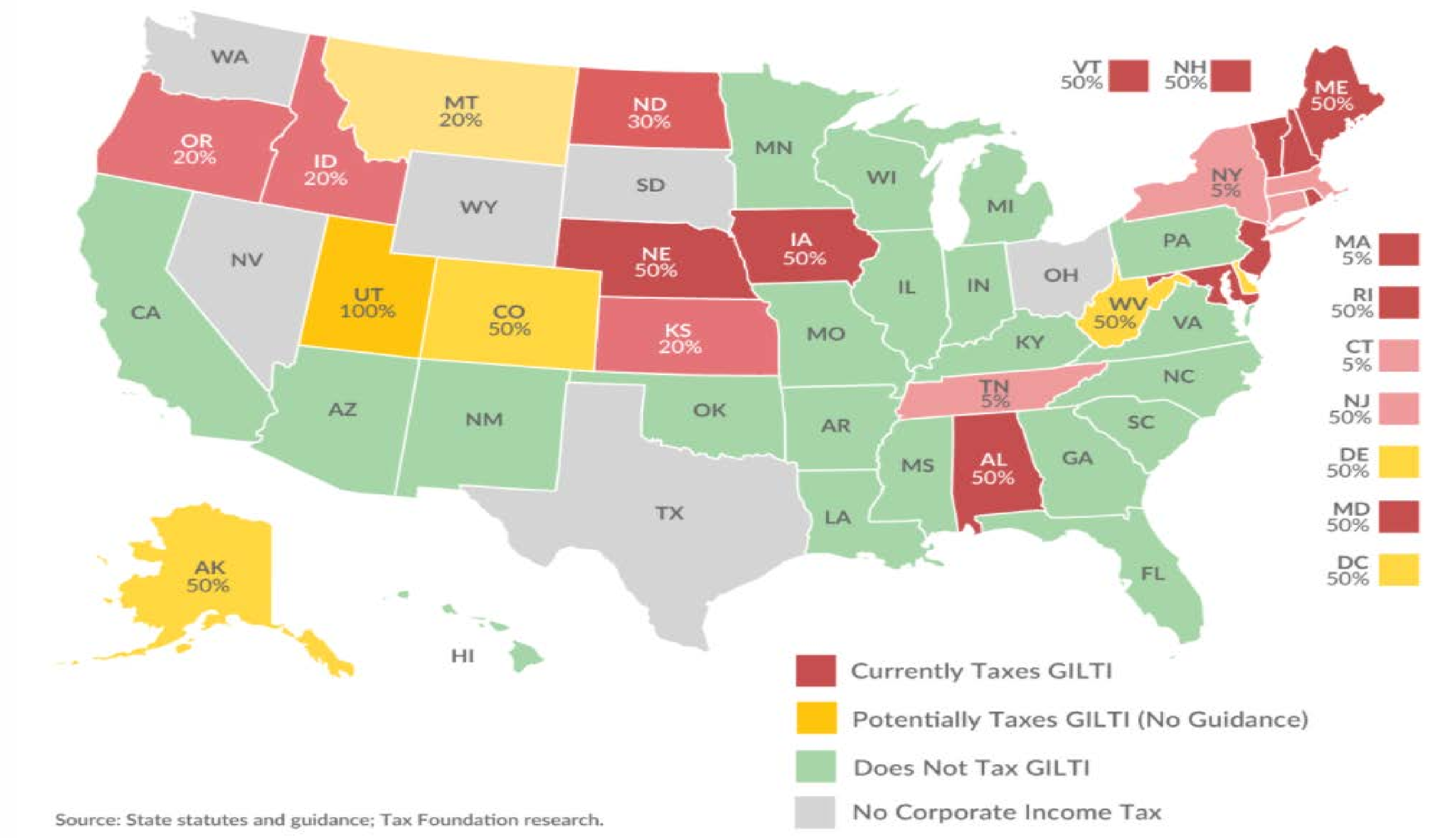
How does GILTI work?

- Applied to net tested income, with a reduction for 10% of the qualified business asset investment in each foreign corporation.
- Net tested income means the combined book incomes and losses of all foreign corporations, after book to tax differences and adjustments to earnings and profits, yields net income.
- If net tested income results, GILTI applies. If net tested loss results, no GILTI but reporting still required.
- Reminder – GILTI taxes foreign earnings now on an annual basis rather than waiting for a future dividend to be paid.
- When a dividend is paid later, it is tax-free (since tax has already been paid on those earnings under GILTI, no double-taxation issue)

US Corporate Shareholder vs. US Individual Shareholder

	CORPORATE SHAREHOLDER	INDIVIDUAL SHAREHOLDER
Foreign Tax Gross Up Inclusion (§78)	YES	NO*
50% Deduction (§250)	YES	NO*
Foreign Tax Credit (§960)	YES	NO*
Tax rate on GILTI	10.5% (1/2 of 21% with 50% deduction assumed allowed)	37% (or lower marginal rate)*

State GILTI Conformity



Other International Components to TCJA

- **Foreign-Derived Intangible Income (FDII),** §250
    - C-corporations with taxable income and foreign sales, 37.5% deduction available
    - Incentive for US Corporations to conduct global business from the US
- **Base Erosion Anti-Abuse Tax (BEAT),** §59A
    - 10% minimum annual tax (in addition to other taxes), functions similar to AMT
    - C corporations with average gross receipts over the prior 3 years of $500M+ and who have a base erosion percentage of 3% or more.

Foreign Bank Account Reports (FBARs)

What Are FBARs and Why They Matter

- Report the interest or authority you have over financial accounts in a foreign country (i.e. bank accounts or securities)
- Due by April 15th or October 15th each calendar year.
- Filed with FinCEN not the IRS
- Required by U.S. persons with a financial account(s) in another country whose aggregate value(s) exceeded $10,000 during the reporting period
- Hefty fines for non-compliance – $10,000 and can go to $100,000 or more
- Form 8938 may also be required, IRS equivalent form of an FBAR with a higher reporting threshold.

Inbound Taxation Considerations

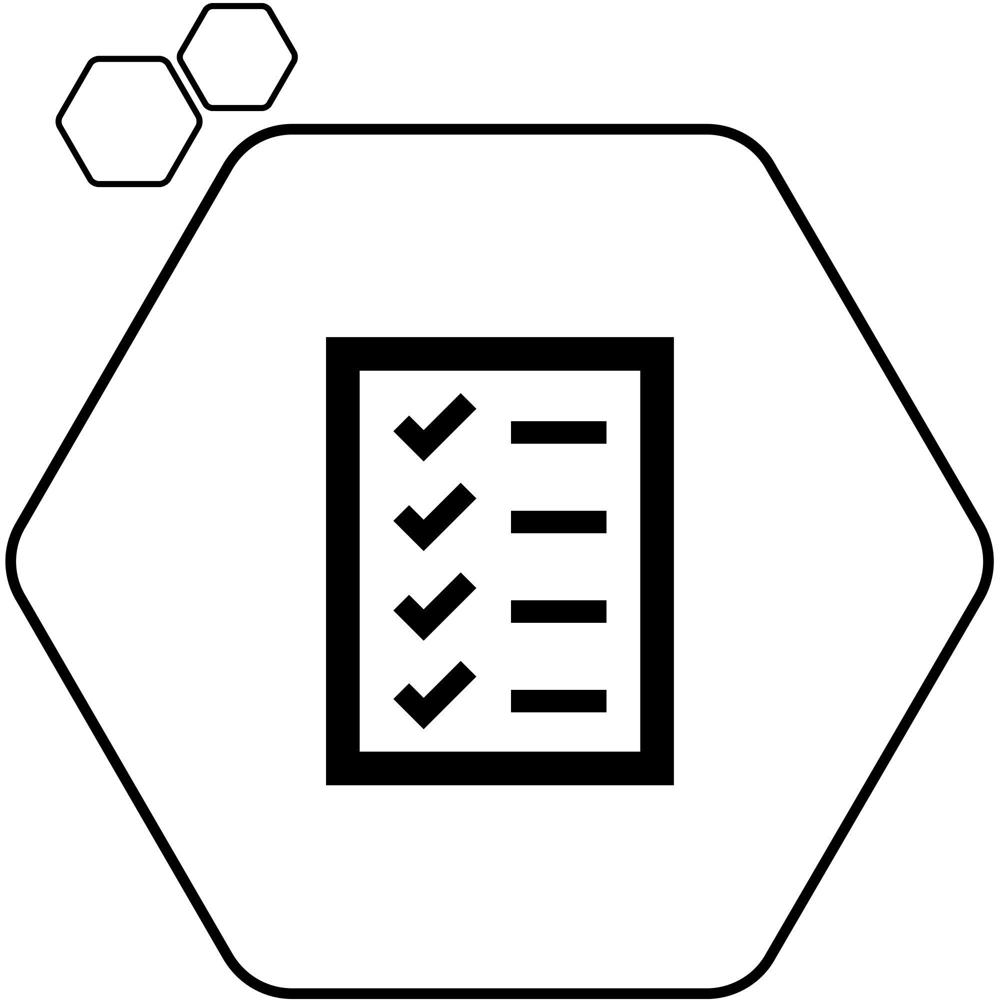
- **Form 1120-F** – U.S. Income Tax Return of a Foreign Corporation
  - Filed when:
    1. Foreign corporation engaged in U.S. trade or business (be mindful of Branch Profits Tax)
    2. Foreign corporation with income/loss effectively connected to U.S. trade or business
    3. No U.S. trade or business but U.S. sourced income whose liability not satisfied
  - Taxed at 21% rate. Protective filings and treaty disclosure crucial!
- **Form 5472** – 25% Foreign Owned U.S. Corporations or a Foreign Corporation Engaged in a U.S. Trade or Business
  - Required if reportable transactions occurred with a related party
  - Informational filing, failure to file penalties starting at automatic $25,000.

Additional Compliance Considerations

- Entity Classification Election/Check-the-Box Elections (Form 8832)
- Transfer Pricing
- Tax Treaties
- Subpart F
- Withholding Tax Return for U.S. Income of Foreign Persons (Form 1042/1042-S)

Compliance Considerations (cont.)

- U.S. Transfer of Property to a Foreign Corporation (Form 926)
- Information Return with Respect to Certain Foreign Corporations (Form 5471)
- Information Return with Respect to Foreign Disregarded Entities & Branches (Form 8858)
- Information Return with Respect to Certain Foreign Partnerships (Form 8865)
- Foreign Tax Credits (Form 1118)
- International Boycott Report (Form 5713)



Poll Question 3

Are you confident your international tax filing requirements are being met?

*CPE Requirement

Questions

AAFCPAs
great minds | great hearts

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