2023 Year-End Tax Planning for Individuals and Businesses

Tax Advisory Group

AN HBK TAX ADVISORY GROUP PUBLICATION

HBK® CPAs & Consultants

2023 Year-End Tax Planning for Individuals and Businesses

IN THIS LETTER

INTRODUCTION

We are coming to the end of another year filled with rising interest rates and continued market volatility, with little action from Congress to fix or extend tax provisions that could benefit individuals and small businesses alike. These factors make year-end tax planning challenging, but more critical than ever, to ensure any and all opportunities for tax reduction and deferral are being considered.

This planning letter contains information and planning strategies based on federal laws, regulations, court cases, and policies that are in effect as of the publication date. The planning strategies and recommendations discussed generally focus on federal tax laws, so if you live in a state that does not typically follow the federal tax rules additional nuances may need to be considered before implementing a strategy. Our state and local tax (SALT) experts provide some insights in this letter and are also available to provide additional planning strategies that may be more beneficial at the state level.

In addition, international tax issues continue to be a focus with the IRS, and compliance costs continue to rise as reporting becomes more complex and penalties increase. Individuals and businesses engaged in foreign activities need to be more vigilant in documenting and reporting all of their foreign activities and ensuring that all income is reported appropriately. Our international tax experts are available to talk you through potential issues and identify planning opportunities that could help minimize your foreign reporting requirements.

We hope you find the information in this letter helpful, and we encourage you to reach out to your HBK tax advisor to discuss these planning opportunities prior to implementing any changes. We look forward to working with you this coming year.

AT A GLANCE

KEY 2023 TAX FIGURES & FILING DEADLINES

IRA **CONTRIBUTION** (Traditional & Roth)
$6,500 with additional $1,000 catchup over age 50

401(k)/403 (b) **CONTRIBUTION**
$22,500 with additional $7,500 catchup over age 50

HSA **CONTRIBUTION** (Employer & Employee)	
Self Only	$3,850
Family	$7,750
55+ Additional	$1,000

STANDARD **DEDUCTION**	
Married Filing Jointly	$27,700
Single	$13,850
Head of Household	$20,800
Married Filing Separately	$13,850

ESTATE & GIFT TAX **LIMITATIONS**	
2023 Annual Exclusion	$17,000
2023 Unified Exemption	$12,920,000
2024 Annual Exclusion	$18,000
2024 Unified Exemption	$13,610,000

TAX YEAR 2023 FILING DEADLINES **INDIVIDUAL & BUSINESS TAX FILINGS**

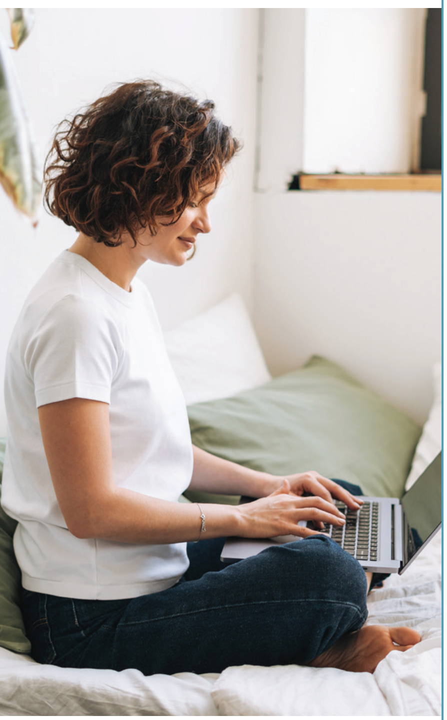
TAX TYPE	DUE DATE (For calendar year entities)
Partnerships (Form 1065) & S Corporations (Form 1120S)	March 15, 2024
Individuals (Form 1040), C Corporations (Form 1120), Foreign Bank and Financial Reporting Form (FBAR) FinCEN Report 114 Trusts and Estates (Form 1041)and Gift Tax Return (Form 709)	April 15, 2024
Tax-Exempt Nonprofit Organizations (Form 990)	May 15, 2024
Filing extensions for Partnerships & S Corporations	September 16, 2024
Filing extensions for Trusts & Estates (Form 1041)	September 30, 2024
Filing extensions for Individuals, Gift Tax Return, Foreign Financial Reporting & C Corporations	October 15, 2024
Filing extensions for Tax-Exempt Nonprofit Organizations	November 15, 2024
Estate Tax (Form 706)	9 months after the date of death, a 6-month extension is available

INDIVIDUAL PLANNING

The following provides an overview of the individual tax provisions that may impact your tax situation as we move into the tax year 2024.

Individual and Trust & Estate Tax Brackets for 2023 & 2024

The following tables provide the tax brackets for 2023 and 2024:



2023 FEDERAL INDIVIDUAL INCOME TAX RATES

TAX RATE	FILING JOINTLY/ SURVIVING SPOUSE	SINGLE	HEAD OF HOUSEHOLD	MARRIED, FILING SEPARATELY	ESTATE & TRUSTS
10%	$0 to $22,000	$0 to $11,000	$0 to $15,700	$0 to $11,000	$0 to $2,900
12%	$22,001 to $89,450	$11,001 to $44,725	$15,701 to $59,850	$11,001 to $44,725	—
22%	$89,451 to $190,750	$44,726 to $95,375	$59,851 to $95,350	$44,726 to $95,375	—
24%	$190,751 to $364,200	$95,376 to $182,100	$95,351 to $182,100	$95,376 to $182,100	$2,901 to $10,550
32%	$364,201 to $462,500	$182,101 to $231,250	$182,101 to $231,250	$182,101 to $231,250	—
35%	$462,501 to $693,750	$231,251 to $578,125	$231,251 to $578,100	$231,251 to $346,875	$10,551 to $14,450
37%	More than $693,750	More than $578,125	More than $578,100	More than $346,875	More than $14,450

2024 FEDERAL INDIVIDUAL INCOME TAX RATES

TAX RATE	FILING JOINTLY/ SURVIVING SPOUSE	SINGLE	HEAD OF HOUSEHOLD	MARRIED, FILING SEPARATELY	ESTATE & TRUSTS
10%	$0 to $23,200	$0 to $11,600	$0 to $16,550	$0 to $11,600	$0 to $3,100
12%	$23,201 to $94,300	$11,601 to $47,150	$16,551 to $63,100	$11,601 to $47,150	—
22%	$94,301 to $201,050	$47,151 to $100,525	$63,101 to $100,500	$47,151 to $100,525	—
24%	$201,051 to $383,900	$100,526 to $191,950	$100,501 to $191,950	$100,526 to $191,950	$3,101 to $11,150
32%	$383,901 to $487,450	$191,951 to $243,725	$191,951 to $243,700	$191,951 to $243,725	—
35%	$487,451 to $731,200	$243,726 to $609,350	$243,701 to $609,350	$243,726 to $609,350	$11,151 to $15,200
37%	More than $731,200	More than $609,350	More than $609,350	More than $609,350	More than $15,200

Capital Gains & Qualified Dividend Tax Rates

The income limits for the long-term capital gain and qualified dividend tax brackets have again been adjusted for the 2024 tax year. The brackets, however, remain unchanged at 0 percent, 15 percent, and 20 percent. Short-term capital gains are still taxed at ordinary income tax rates.

Consider analyzing your portfolio to determine whether there are any investment losses that can be harvested prior to year-end. This may help offset some large capital gains recognized during the year. We recommend that you consult with your tax and investment advisors prior to selling any investments to ensure that the sales are in line with your overall financial goals and investment strategy.

2023 CAPITAL GAINS TAX RATES

FILING STATUS	0%	15% min. income	20% min. income
Single	$0 to $44,625	$44,626 to $492,300	$492,301 or more
Married Filing Jointly	$0 to $89,250	$89,251 to $553,850	$553,851 or more
Head of Household	$0 to $59,750	$59,751 to $523,050	$523,051 or more

2024 CAPITAL GAINS TAX RATES

FILING STATUS	0%	15% min. income	20% min. income
Single	$0 to $47,025	$47,026 to $518,900	$518,901 or more
Married Filing Jointly	$0 to $94,050	$94,051 to $583,750	$583,751 or more
Head of Household	$0 to $63,000	$63,001 to $551,350	$551,351 or more

DEDUCTIONS

The standard deduction increased for the 2023 tax year and has again been increased for 2024 by $1,500 to $29,200. Since the Tax Cuts & Jobs Act of 2017 was passed, many individuals have been claiming the standard deduction instead of itemizing their deductions. However, itemizing deductions still makes sense for individuals with significant interest expenses, large medical bills, or where large charitable contributions were made during the year.

Charitable Contributions

Many of our clients take advantage of charitable giving to help offset large tax bills. For 2023 and 2024, the deduction for cash contributions made to qualifying charitable organizations, including donor-advised funds, is limited to 60 percent of an individual's adjusted gross income. This limitation can be avoided for individuals over age 70 ½ if a cash contribution is made directly to a qualifying charity from their individual retirement account (IRA).

If you are charitably inclined and wish increase your charitable commitment, consider establishing a donor advised fund, private foundation, or a charitable trust. You may also wish to consider donating highly appreciated publicly traded stock to a public charity or donor-advised fund, thus avoiding recognizing the gain on a future sale while still getting the benefit of a deduction equal to the fair market value of the stock donated.

Casualty Losses

The 2023 tax year saw significant natural disasters, including Hurricane Idalia in the South, Hurricane Lee in the North, and severe storms in the West. Where a disaster resulted in a Federal Disaster declaration, taxpayers can claim a casualty loss deduction for losses sustained during the disaster. Personal losses are still subject to a $100 limit per casualty, and losses are only deductible to the extent they exceed 10 percent of a taxpayer's adjusted gross income. Business losses are not subject to these same limitations.

In past years, Congress has passed legislation for certain federally declared disasters to increase the $100 limit to $500 per casualty, and to eliminate the 10 percent adjusted gross income (AGI) limitation applied for personal casualty losses. As of the date of this publication, Congress has yet to do the same for disasters that occurred in 2022 and 2023, though various bills have been introduced in both the House and Senate. If legislation is eventually passed we will provide updated information on claiming the additional allowed losses.

Retirement Plan Contributions

Contributions made to a traditional IRA may qualify for a deduction in the year the contribution is made. The contribution limit for 2023 is $6,500, or $7,500 if an individual is age 50 or older. If an individual is also covered by a workplace retirement plan, the allowable deduction is subject to income limitations. For the 2023 tax year, the income phase-out range for single filers is between $73,000 and $83,000. For married filing jointly, the range is between $116,000 and $136,000.

Consider making a deductible contribution prior to year-end in order to get the benefit of the deduction. Alternatively, if your income tax rate is significantly lower in 2023, consider treating the contribution as nondeductible, thus providing basis in your IRA that can be used in the future to offset taxable distributions. Nondeductible contributions may also be rolled over into a tax-advantaged Roth IRA, resulting in a "backdoor" Roth IRA contribution. Future distributions from a Roth IRA will not be subject to income tax, unlike a traditional IRA.

Direct contributions to a Roth IRA are also possible for some individuals, though direct contributions are not allowed if an individual's income exceeds the phase-out range. For 2023, the income phase-out range for single filers is between $138,000 and $153,000, and between $218,000 and $228,000 for married filing joint. If your income exceeds these ranges, the "backdoor" contribution is generally recommended.

Finally, self-employed individuals may benefit from establishing a retirement plan that will allow for higher contribution and deduction limits. For example, an individual who establishes a Simplified Employee Pension (SEP) IRA may be able to contribute up to $66,000 for the 2023 tax year.

PLANNING FOR FAMILIES WITH CHILDREN

There are a number of tax benefits available for families with dependent children, including the Child Tax Credit and the credit for child and dependent care expenses.

LIFE CHANGES THAT IMPACT YEAR-END TAX PLANNING	
• Change in filing status: marriage, divorce, death or head of household status	• College or other tuition
• Birth/adoption of a child	• Changes to employment
• Child who has outgrown the "kiddie" tax	• Retirement
• Child who has outgrown the child credit	• Personal bankruptcy
• Casualty losses	• Inheritance
• Changes in medical expenses	• Business success or failure
• Moving/relocating	

There are also some important items to be mindful of when shifting income to children or paying for a child's educational costs. The following items are some things to keep in mind and consider for 2023 and going into 2024.

Child Tax Credit

There have been a lot of discussions in Congress regarding the Child Tax Credit and whether or not it will be expanded. During the COVID years the credit was expanded and additional income limitations were created to provide greater benefits for lower-income families struggling to pay increased costs. These benefits expired at the end of 2021, and the Child Tax Credit reverted to its former limits. For 2023, the credit limit is $2,000 per qualifying child, with up to $1,600 refundable. The refundable portion is generally referred to as the "Additional Child Tax Credit."

The availability of the Child Tax Credit phases in when earned income exceeds $2,500 and then phases out when income exceeds $200,000 for single filers or $400,000 for married filing jointly. Note that these limits were put in place as part of the Tax Cuts and Jobs Act of 2017 and will be reduced when it expires in 2026 if Congress does not act.

Credit for Other Dependents

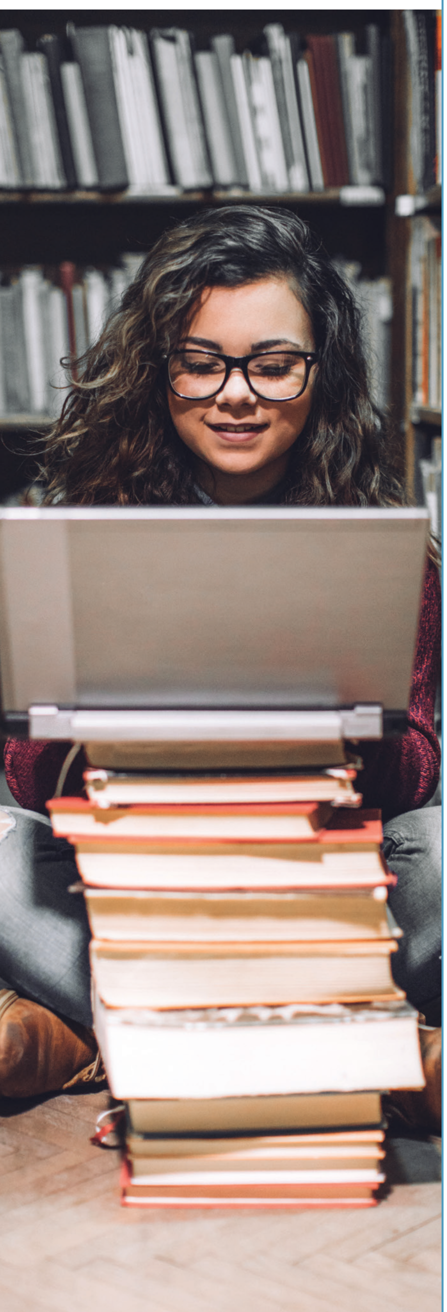
For individuals who can claim adult children or other qualifying relatives as dependents, a credit of up to $500 may be available. This credit may apply when a child has phased out of the Child Tax Credit due to age limitations, or where an individual is taking care of elderly and/or disabled parents.

Credit for Adoption Expenses

Families who choose to adopt a child may be able to claim a credit of up to $15,950 in 2023 for qualifying adoption expenses. If the child adopted has special needs, then the full credit may be available regardless of whether any expenses were paid. To claim the credit the adoption must be finalized in 2023. The credit phases out for taxpayers whose income is between $239,230 and $279,230.

Child and Dependent Care Credit

Individuals who work or who are actively looking for work and pay expenses for the care of a qualifying individual may qualify for the child and dependent care credit. In general, expenses paid for daycare, nursery school, before and after-school care, and summer



camp may qualify if paid for a qualifying child under the age of 13. The allowable credit is a percentage of the work-related expenses paid, subject to an overall limitation of $3,000 for one person or $6,000 for two or more people. The allowable credit percentage is between 20 percent and 35 percent, thus the maximum credit for 2023 is $1,050 (35 percent of $3,000) for one person, or $2,100 (35 percent of $6,000) for two or more people.

The Kiddie Tax

Where a child has unearned income (e.g. investment income and capital gains), the amount realized in excess of $2,500 is taxable at the parent's marginal tax rate. For this rule to apply, the child must be: (1) under the age of 18 and not filing a joint return; (2) age 18 but with earned income that does not exceed one-half of the amount of the child's support and not filing a joint return; or (3) between the ages of 19 and 23 if, in addition to the above, the child is a full-time student. If unearned income of a child is less than $12,500 for 2023, a parent may elect to include the child's gross income in their gross income, assuming other requirements are met. While this would avoid the necessity of filing a separate return for a child, it may also result in an increase to the parent's adjusted gross income, thus potentially resulting in an overall higher tax rate.

TAX BENEFITS FOR EDUCATIONAL EXPENSES

Tax credits or deductions may apply for amounts paid for educational expenses, including interest paid on student loans. The following is a breakdown of some of the planning opportunities that may be available to you or your qualifying dependent:

American Opportunity Tax Credit

The American Opportunity Tax Credit (AOTC) is generally available for qualified tuition and related expenses that are paid on behalf of a student (you, your spouse, or your dependent) who is enrolled at least half-time at an eligible educational institution. The maximum credit available is $2,500 and is only available for the first four years of a student's post-secondary education. The credit is subject to income phase-out limitations. For 2023, the phase-out range, based on modified adjusted gross income, is between $160,000 and $180,000 for married filing joint, or between $80,000 and $90,000 for all other filers. If a taxpayer qualifies for all or a portion of the credit, 40 percent of the allowable credit is refundable.

Lifetime Learning Credit

Where a student does not qualify for the AOTC, the Lifetime Learning Credit (LLC) may apply. The LLC is available for qualified tuition and related expenses that are paid for eligible students enrolled in an eligible educational institution. The credit is generally available for undergraduate, graduate, and professional degree courses, including additional courses needed to acquire or improve job skills. Unlike the AOTC, there is no limit on the number of years that a taxpayer can claim the LLC. The maximum credit for 2023 is $2,000 (20 percent of qualifying expenses up to $10,000) and is phased out when modified adjusted gross income is between $160,000 and $180,000 for married filing joint, or between $80,000 and $90,000 for all other filers. No portion of this credit is refundable.

Student Loan Interest Deduction

Federal student loan payments have been paused since 2020 in response to COVID, so many taxpayers were not required to pay interest on student loans. The payment pause ended in September 2023, so the student loan interest deduction may provide a tax benefit for the 2023 tax year. In general, an above-the-line deduction is allowed for student loan interest paid on a qualifying educational loan. The maximum deduction is $2,500, which phases out when modified adjusted gross income is between $155,000 and $185,000 for married filing jointly, or between $75,000 and $90,000 for all other filers.

ESTATE PLANNING CONSIDERATIONS

For 2023, the unified estate and gift tax exemption is $12,920,000 per individual. This means that an individual can gift up to this amount during life, and any unused amount at death can be used to offset the value of a person's estate that is subject to estate tax. In addition, individuals may gift up to $17,000 per person during tax year 2023 (i.e. the "annual exclusion") without dipping into the unified exemption amount. For 2024, these amounts have increased to $13,610,000 and $18,000 respectively.

The generation-skipping transfer (GST) tax exemption is also $12,920,000 for 2023 and has been increased to $13,610,000 for 2024. The GST tax applies whenever there is a transfer made to a "skip" person, i.e. an individual that is two generations removed, so a grandchild or great-grandchild. If there is no relation to the person receiving the gift, then the recipient will be considered a "skip" person if they are 37.5 years younger than the person giving the gift.

These exemption amounts will be cut in half in 2026 unless Congress passes legislation that would otherwise change them. In order to take advantage of the higher exemption limits now, and receive other potential tax planning benefits, consider some of the following gifting strategies.

Section 529 Qualified Tuition Plans

Establishing a Section 529 plan for children or grandchildren provides a tax-advantaged method for paying for future educational expenses. Contributions to a Section 529 plan qualify for the annual exclusion from gift tax, and an election can be made to treat large contributions as if they were made ratably over a five-year period, thus allowing the application of the annual exclusion for each year covered by the election. Many states also provide for income tax credits or deductions if contributions are made to 529 plans during the year.

Distributions from a Section 529 plan are tax-free as long as they are used to cover qualifying educational expenses. Distributions may also be used to cover up to $10,000 per year per student for elementary and secondary school tuition.

Irrevocable Trusts

There are many different types of irrevocable trusts that individuals can take advantage of in order to plan for the potential reduction to the estate tax exemption. Some irrevocable trusts, like Spousal Lifetime Access Trusts (SLATs), are used to provide a spouse with access to funds if they need them in the future. Other irrevocable trusts, like an Irrevocable Life Insurance Trust (ILIT), are established for a specific purpose, like holding life insurance that can be used to provide an estate with liquidity that may be needed for estate or inheritance taxes. There are also irrevocable trust options that provide significant asset protection for individuals who may have greater exposure to potential future litigation or are concerned that their children may be subject to future litigation or divorce.

Establishing an irrevocable trust may also have an impact on an individual's income taxes and may limit access to funds that may be needed in the event of increased future living expenses. HBK's estate planning experts are available to walk you through the various irrevocable trust planning options and can help you understand how they may impact your overall tax situation.

Charitable Giving

As mentioned above, charitable giving can provide you with a charitable deduction you itemize deductions for income tax purposes. There are also charitable strategies that may provide greater flexibility for charitable giving and provide an overall benefit to your estate plan. Charitable trusts may be used to either spread the recognition of gain on the sale of appreciated assets over multiple years, or to reduce annual income that is not needed while preserving the assets generating the income for future generations.

BUSINESS PLANNING

While Congress did not pass many new provisions impacting 2023 or 2024, there are still many changes from past legislation that have become effective in the current and upcoming tax years. The following sections provide an overview of some of the changes made and other business planning opportunities that may impact your tax situation:

Employee Retention Credit

The Employee Retention Tax Credit (ERTC) was originally enacted as part of the CARES Act in March of 2020. It was introduced to encourage employers to retain employees during the pandemic. While the credit was a legitimate pandemic-era tax credit, as time passed the credit has been increasingly and aggressively marketed to businesses that might not qualify for it.

On September 14, 2023, the IRS announced that the processing of new claims for the ERTC would be immediately halted in an effort to combat fraud. The IRS reminds anyone who improperly claims the ERC that they must pay it back, possibly with penalties and interest.

Section 179 & Depreciation Expense

The Section 179 deduction limitation increased to $1,160,000 for the 2023 tax year. The deduction phase-out begins once the amount of Section 179 property placed in service during the tax year exceeds $2,890,000. Generally, property that can be expensed via the Section 179 deduction includes new or used machinery and equipment. It also includes off-the-shelf software, qualified improvements to building interiors, roofs, HVAC systems, fire protection systems, alarm systems, and security systems.

In addition to Section 179, the first-year bonus depreciation deduction is still in place. For 2023, the bonus depreciation deduction has decreased to 80 percent (compared to 100 percent in 2022). The deduction continues to decrease in increments of 20 percent in subsequent tax years. Without any new legislation, bonus depreciation will be completely phased out starting on January 1, 2027. Qualifying property is tangible property depreciated under the Modified Accelerated Cost Recovery System (MACRS) with a recovery period of 20 years or less most computer software, qualified film, television, and live theatrical productions, and water utility property. Property purchased may be new or used if it is acquired from an unrelated party.

Business Interest Limitation

The business interest limitation applies to businesses with three-year average gross receipts over $29 million for 2023. The deduction for net business interest expense is limited to 30 percent of the adjusted taxable income. Adjusted taxable income does not include additions for depreciation or amortization, which may have a significant impact on the deductibility of business interest for many taxpayers. If the interest deduction is limited, the excess interest expense will carry forward to future years.

The business interest deduction limitation does not apply to interest paid by vehicle dealers on carried inventory. In addition, some real estate businesses are able to opt out of the interest limitation by making an election to forgo accelerated depreciation methods. We encourage you to reach out to your tax advisor to determine whether your business is impacted by the business interest limitation, and whether planning opportunities exist to help minimize the impact.

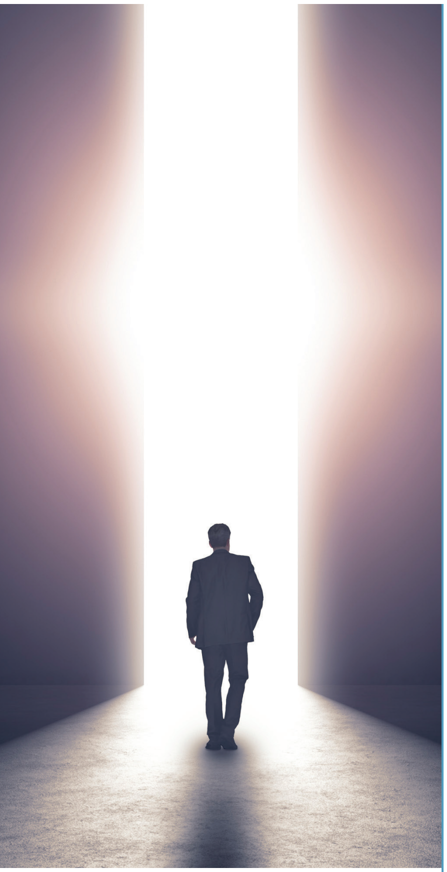
Meals & Entertainment

The Tax Cuts and Jobs Act of 2017 brought major changes to deductions for meals and entertainment. The temporary incentive to deduct 100 percent of food and beverages purchased from a restaurant expired January 1, 2023, and the rules have gone back to a 50 percent deduction for most business meals. The following chart provides a brief overview of some of the current meal and entertainment limitations:

EXPENSE	PRIOR LAW	CURRENT LAW
Business meals with clients, prospects, and referral sources	100%	50%
Events/meals at social or golf clubs	100%	50%
Membership dues for social clubs	No deduction	No deduction
Event tickets (sporting, theater, etc.)	No deduction	No deduction
Business gifts	$25/person	$25/person

Qualified Business Income Deduction

The qualified business income deduction (QBID) is a deduction for individual taxpayers, including trusts and estates, who operate a qualified trade or business as a sole proprietorship, partnership, or S corporation. The amount of the deduction is up to 20 percent of the income and gain, reduced by deductions and losses, of a qualified trade or business that is effectively connected with the conduct of a trade or business in the United States. The deduction is subject to phase-out limitations if the trade or business is considered a specified service business. For 2023, the phase-out begins when taxable income reaches $364,200 for married taxpayers filing jointly, or $182,100 for single taxpayers or heads of households.



Research & Development Expenditures

Pending potential legislation, research and development (R&D) expenditures incurred or paid in the 2023 tax year must be capitalized and amortized over a five-year period (domestic expenditures) or a 15-year period (foreign expenditures).

This mandatory capitalization requirement also applies to internally developed software and website development costs. Amortization will be required even if the R&D projects are abandoned, retired, or disposed of prior to the end of the amortization period.

Qualified Opportunity Zones

Qualified Opportunity Zones (QOZ) allow taxpayers to invest in a Qualified Opportunity Fund (QOF) as a mechanism for capital gain deferral. Gain deferral is permitted until 2026 so long as the gains are invested in a QOF within 180 days of gain recognition and the QOF invests 90 percent of its capital in a QOZ property. If a taxpayer holds the QOZ fund investment for at least 10 years, gain on the growth of the QOZ will not be subject to tax. This gain recognition benefit only applies to the extent that the growth exceeds the original gain deferral.

Section 1031 Like-Kind Exchanges

The like-kind exchange rules provide taxpayers with the benefit of deferring taxes on gains from the disposal of investment or business real property, allowing taxpayers to roll the basis of the real property over into like-kind property. While prior law allowed like-kind exchange benefits for other types of investment or business property, current law has limited like-kind exchange treatment to real property only.

To qualify for like-kind exchange treatment, a taxpayer must identify both the relinquished property that is exchanged as well as the replacement property acquired in the exchange. The rules for like-kind exchanges have specific timing requirements to ensure all aspects of the exchange have been carried out within the prescribed timeline. Additionally, these exchanges must be done properly and with the correct property types to receive tax benefits. If you are interested in taking advantage of the benefits available under the like-kind exchange provisions, please reach out to your HBK tax advisor.

INTERNATIONAL TAX CONSIDERATIONS

The IRS continues to focus on the reporting of foreign assets and the taxation of foreign income earned by U.S. citizens and residents. Although the ability of the IRS to assess penalties for failure to file information returns imposed by Section 6038(b) was potentially limited earlier this year in *Farhy v. Commissioner*, significant penalties may still apply if a taxpayer does not comply with the foreign reporting rules.

The following provides an overview of some of the foreign reporting considerations and changes that apply for the 2023 tax year:

Supreme Court Tax Challenge

Earlier this year the U.S. Supreme Court agreed to hear a court case challenging the constitutionality of the transition tax under IRC § 965. This transition tax was assessed during tax year 2017 on cumulative earnings and profits of Specified Foreign

Corporations. Taxpayers who made the election to pay the tax over an 8-year period may be entitled to a refund of taxes paid for years that are still open under the statute of limitations. To claim a refund prior to the decision, a protective refund claim may be submitted to the IRS. Please reach out to your HBK tax advisor if you believe you may be impacted by this challenge and wish to file a protective refund claim.

Foreign Tax Credit Development

In 2022, the IRS and Treasury Department issued final regulations and proposed regulations relating to the ability to claim certain foreign income taxes for purposes of the Foreign Tax Credit (FTC). In July 2023 the IRS issued additional guidance and temporary relief from the revised rules, allowing taxpayers to utilize pre-2022 foreign tax credit regulations for 2022 and 2023. If you claim the FTC for taxes paid on foreign income, we encourage you to reach out to your HBK tax advisor to determine how these changes may impact the calculation of the credit on your return.

Foreign Earned Income Exclusion & Housing Costs

A qualifying individual may elect to exclude foreign-earned income from their U.S. gross income up to the exclusion amount. For 2023, the exclusion amount is $120,000, up from $112,000 in 2022. A taxpayer cannot claim a foreign tax credit or deduction for foreign taxes paid on any amount excluded from U.S. gross income. In addition, a qualifying individual may also elect to exclude housing costs of up to $19,200 (16 percent of $120,000) for 2023.

Gift Tax Marital Deduction for Non-U.S. Spouses

In general, a marital deduction is not allowed for gifts made to a spouse who is not a U.S. citizen. However, if the gift is of a "present interest" in property, it will qualify for an increased annual exclusion of up to $175,000 for 2023. Alternatively, the U.S. citizen or resident spouse may establish a qualified domestic trust (QDOT) for the benefit of the non-U.S. spouse, which will allow transfers to the trust to qualify for the marital deduction. The U.S. does not allow a foreign gift tax credit for taxes paid to a foreign country on gifts received by a non-U.S. spouse.

STATE AND LOCAL TAX PLANNING

Sales Tax

In the wake of the Supreme Court decision in *South Dakota v. Wayfair, Inc.*, every state that imposes a sales tax has a corresponding economic nexus law in place. Taxpayers with multi-state sales should evaluate their nexus footprint, at least annually, to determine where they are obligated to file sales tax returns. Each state has its own economic nexus thresholds based on receipts and/or transactions in that state. Sales tax economic thresholds vary by state but are never less than $100,000 in receipts and/or 200 transactions.

Taxpayers selling products or services in multiple states may need to periodically review their sales tax processes. Sales tax processes often include sales tax rate calculation and taxability determinations. Are sales tax rates and taxability determinations made manually or through an automated solution? The business should periodically evaluate the taxability of its products and services in each state where it has established nexus.

A comprehensive review of the sales and use tax functions, along with improving or automating processes, will allow businesses to minimize potential liability from state and local sales taxes.

We encourage business taxpayers to reach out to the HBK SALT advisory group to address sales tax issues including the evaluation of compliance obligations and potential sales tax exposure.

Income Tax Economic Nexus

The *South Dakota v. Wayfair, Inc*. decision has also led to many states looking to expand state income tax nexus. With Wayfair erasing the physical presence line for sales tax nexus, some states have expanded, or may expand, their imposition of income tax without a physical presence required. No current state income tax economic nexus thresholds are less than $100,000 of sales annually.

A business should also consider if it qualifies for P.L. 86-272 protection with respect to its activities in a state. On August 4, 2021, the Multistate Tax Commission (MTC) made a unanimous decision to approve a revised edition of its PL 86-272 guidance, with a particular focus on Internet-related operations. This updated guidance essentially stipulates that when a business engages with its customers through its website or mobile applications, such interactions will be considered business activities within the customer's state for the application of PL 86-272. These interactions will be subject to the same level of scrutiny as if they were conducted in-person, potentially exceeding the boundaries of protected activities under PL 86-27. For businesses selling remotely and having claimed PL 86-272 protection from state income taxes in the past, how is the business responding to changing state interpretations of those protections with respect to businesses engaged in Internet-based activities?

If you are concerned about the state income tax nexus and would like additional guidance on specific situations, please reach out to the HBK SALT team.

Remote Workforce Implications

The COVID-19 pandemic had a significant impact on the way employers conduct business with many employers expanding their reach to include a mobile workforce. The presence of remote employees may create sales tax nexus, income tax nexus, or various state and local withholding requirements. It is, therefore, vital that any employer with remote employees consider the state and local tax impacts of those remote employees going forward.

State Considerations for Pass-Through Entities

Since the introduction of the $10,000 SALT deduction limitation imposed on individual taxpayers who itemize their deductions, and on estates and trusts, at least 36 states and one locality have enacted potential workarounds to the deduction limitation. The workarounds allow owners of pass-through entities (PTEs) to make a PTE election to be taxed at the entity level. By imposing the state tax at the entity level instead of at the individual (or trust/estate) level, the entity should generally be able to take a deduction for the full amount of the tax paid. Since each state's laws differ, we encourage you to reach out to your tax advisor to discuss this planning opportunity.

CORPORATE TRANSPARENCY ACT REPORTING REQUIREMENT

The Corporate Transparency Act (CTA) was enacted on January 1, 2021 to provide the Financial Crimes Enforcement Network (FinCEN) with additional information to help fight money laundering. The CTA establishes a database that will provide the beneficial ownership information (BOI) of reporting companies. A "reporting company" generally includes all domestic and foreign entities that have filed either formation or registration documents within a state of the United States, or an Indian tribe, unless an exemption applies. There are currently 23 listed exemptions, including exemptions for SEC registered entities, banks, credit unions, investment companies and advisors, insurance companies, tax-exempt entities, and large operating companies that employ more than 20 full-time employees in the United States and meet other criteria.

Reporting companies that do not fall within an exemption must file a report that provides the full legal name of the reporting company, including any trade or DBA names, the business address, the state of formation or registration, the tax identification number, and the name, birth date, address, and identifying number of all beneficial owners of the entity.

Reporting companies created or registered on or before December 31, 2023 must file this report by January 1, 2025. Reporting companies created or registered after December 31, 2023 must file this report within 30 days of creation/registration. FinCEN has issued a Notice of Proposed Rulemaking that would extend the deadline to 90 days from creation/registration, if passed.

The penalties for failing to file the BOI report are severe, including civil penalties of up to $500 per day, and criminal penalties of a $10,000 fine and/or up to two years of imprisonment. We encourage all businesses to consult with their attorney to determine whether they are required to file a BOI report, and what they need to do to comply with the new CTA reporting requirements.

INDUSTRY PLANNING CONSIDERATIONS

HBK recently introduced Solutions teams focused on industry-specific planning for manufacturing, construction, cannabis, healthcare, dealership, and nonprofit businesses. We encourage you to reach out to your HBK tax advisor if you are involved in these industries and would like to discuss potential planning opportunities. The following section provides specific planning opportunities and considerations for each of these industries:

Manufacturing Industry

The manufacturing industry is poised to continue to benefit from many of the current tax laws in 2023. However, the provision under §174 regarding the required capitalization of R&D expenses will continue to present challenges for taxpayers in the industry.

Manufacturers who currently aren't taking advantage of LIFO (last in, first out) for inventory should seriously consider whether or not they can benefit. Given the inflationary environment that the economy continues to display, many products continue to increase in price and LIFO can contribute to immediate tax savings in the correct circumstances.

Bonus depreciation continues to create incentives for manufacturers with capital expenditure projects. For 2023 bonus depreciation is 80 percent of the asset costs qualifying for immediate deduction.

Manufacturers incurring capital expenditures should explore energy credits and what equipment can qualify for solar, wind, or geothermal credits.

With the required capitalization under §174 of research and development expenses, utilizing R&D credits for federal and state taxes is all the more valuable. The R&D tax credit qualifying expenditures are governed under §41 and are basically a subset of the expenses capitalized under §174. These credits can provide dollar for dollar tax reductions for both federal and state tax liabilities and should be considered by most taxpayers in the manufacturing industry.

Finally, as to globalization, manufacturers should keep in mind provisions under both the Global Intangible Low Taxed Income (GILTI) and the Foreign Derived Intangible Income (FDII) provisions. The GILTI provisions provide for anti-deferral of income while the FDII provisions provide for deductions to potentially offset the anti-deferral. Any foreign activity should be carefully analyzed to determine the application of these rules.

Construction Industry

The construction industry is in a unique position to benefit from the cash method and completed contract methods of accounting that are available in 2023 for those taxpayers that average less than $29 million of gross revenue in the previous three tax years. Utilizing these methods for many construction contractors allows for much better matching of income and tax liability.

Construction contractors also can continue to benefit from bonus depreciation in 2023 that allows for 80 percent of the assets' cost to be immediately deducted. New and used equipment qualifies and incentivizes construction taxpayers to invest in new equipment to compete for the best projects.

In addition to depreciation, code section §179D can provide contractors with cashless tax deductions for the construction of energy efficient qualified buildings. This deduction can create deductions of up the five dollars per square foot of qualified building construction.

Construction taxpayers also should take into consideration general business credits such as the work opportunity credit (WOTC) that is based on certain hiring practices and is based on percentages of wages paid.

Finally, construction contractor taxpayers should pay special attention to sales and use tax compliance as states continue to be aggressive in assessing these taxes and contractors can easily fall into exposure in this area.

Cannabis Industry

The ongoing conflict between federal and state law with respect to the use of cannabis in the United States produces complex and multifaceted tax issues for the regulated cannabis industry. While many states have legalized cannabis for medical or recreational purposes, cannabis remains classified as a Schedule I controlled substance and illegal

under federal law. Section 280E of the Internal Revenue Code prevents cannabis businesses from deducting normal business expenses associated with Schedule I controlled substances. While this results in substantially higher effective tax rates for the cannabis businesses, HBK's team of cannabis professionals has experience structuring businesses and transactions to mitigate the impact of Section 280E while remaining compliance with applicable law.

In addition to the federal tax burden, states and localities often impose special tax compliance and financial reporting requirements on cannabis businesses operating within their jurisdictions. HBK's robust state and local tax practice works closely with the Cannabis Solutions group to help our clients remain compliant with the array of state income, business, sales, and excise taxes imposed on the industry. HBK's cannabis professionals can also help clients apply for tax incentives offered by states and localities to cannabis businesses that engage in activities like social equity programs, research, or environmentally sustainable practices.

Challenges operating within traditional banking ecosystems are of particular concern for many clients in the cannabis industry. Many banks are hesitant to provide financial services to cannabis businesses due to the federal illegality. HBK's relationships with vendors who are friendly to the cannabis industry help our clients use traditional and familiar banking practices and provide employee benefits commensurate with other industries.

It can be complex and challenging to remain compliant and profitable within the cannabis industry. It is essential for businesses in this industry to work closely with tax professionals who are well-versed in the nuances of cannabis taxation. HBK is happy to be that professional for you.

Healthcare Industry

For the healthcare industry, including physician-owned practices and owners of long-term care and assisted living facilities, year-end planning typically involves updating owner tax projections with up-to-date financial data. The tax projections are used to determine owner bonuses, and to optimize retirement plan options. Owners should consult with their tax and financial advisors to ensure they are maximizing the tax benefits of the various options for retirement plan saving.

Taxpayers who own their own facilities can continue to benefit from cost segregation studies to maximize the use of accelerated cost recovery including bonus depreciation and Section 179. A cost segregation study is most advantageous if you have or will be making significant improvements to your facility or constructing a new facility.

Finally, for those considering admitting new physician owners to the practice, year-end can be a great time to complete this ownership change. HBK's Healthcare Industry specialists have significant experience helping physician-owned practices structure the admission of new owners, retirement, and sale of a practice. If you are considering an ownership change or transition HBK Healthcare Solutions can assist you.

Dealership Industry

The dealership industry is affected by several tax provisions that have changed significantly over the past few years. Dealers will continue to benefit from bonus depreciation at a rate of 80 percent for 2023, decreasing to 60 percent starting in 2024. It may be advantageous to have assets placed in service prior to the end of the calendar year to gain greater accelerated cost recovery.

One of the best ways for dealerships to benefit from accelerated cost recovery, including bonus depreciation and Section 179, is through a cost segregation study. Dealerships that have made significant improvements to their real estate facilities or are planning improvements should consider using a cost segregation study to optimize cost recovery for the new or improved facility.

The Tax Cuts and Jobs Act introduced Section 163(j), which limits the deduction for business interest expense to 30 percent of "adjusted taxable income." Dealerships are significantly impacted by this provision, especially those that commonly finance their floor plan. Floor plan financing interest was thankfully excluded from this limitation, however utilizing the exception comes at the cost of losing the use of bonus deprecation for the tax year. HBK can assist you with determining whether utilizing the exception will be beneficial during the tax year.

Finally, dealerships can often benefit from LIFO (last in, first out) for inventory. Any dealership not using LIFO should consider if it can benefit them given the current inflation in the cost of inventory.

Nonprofit Organizations

In the nonprofit industry we continue to see organizations exploring creative methods to generate more revenue so they can continue to carry out their exempt purpose. These creative methods often involve establishing new entities or entering into a joint venture with a taxable entity. While many investment opportunities can be lucrative for nonprofit entities, helping them establish reserves and regular cash flow, care needs to be taken to avoid jeopardizing the nonprofit's exempt status.

While nonprofits typically are not subject to tax, if a nonprofit is engaged in an unrelated business activity, the profits of the activity may be taxable at the highest corporate tax rates. If a nonprofit organization has a significant portion of its revenue coming from unrelated business activities, the IRS could challenge their tax-exempt status.

Other areas of focus by the IRS tend to be on compensation paid or payable to officers, and transactions occurring between the organization and disqualified individuals.

HBK Nonprofit Solutions is skilled at advising nonprofit organizations about the potential risks of these transactions, and can help guide your organization to ensure that its exempt purpose is respected and its tax-exempt status is protected.

ADDITIONAL RESOURCES

HBK provides the comprehensive financial services and support required by small and mid-market businesses and their owners to address the challenges of an increasingly complex financial landscape. Contact your HBK Tax Advisor to learn more about the HBK Family of Firms and how our services may help you achieve your goals.

HBK CPAs & Consultants offer a range of accounting, assurance, and tax services aimed at providing information and advice to give you a clear and comprehensive understanding of your financial condition.

HBKS® Wealth Advisors provide independent and unbiased consulting services to help you develop and execute a comprehensive and cohesive plan for growing, managing, and safeguarding your wealth.

HBKS® Retirement Plan Services provides independent and unbiased financial advice to assist you in establishing or enhancing company and personal retirement plans. These plans aim to build retirement savings, reduce taxes, and fulfill fiduciary responsibilities.

HBK Valuation, Litigation & Forensics specializes in valuating businesses for M&A transactions, as well as providing financial reporting and litigation support for disputes related to valuations in M&A deals.

HBK Client Accounting & Advisory Services offers cloud-based solutions that deliver accurate, timely, and universally accessible accounting records. These services include payroll, virtual CFO, budgeting, cash flow analysis, industry benchmarking, KPI reporting, and other financial management tools.

HBK Transaction Advisory Services assist you in identifying potential acquisitions and mergers and securing the necessary financial resources to make them happen. They also guide you through the entire transaction process.

HBK Risk Advisory Services specializes in assessing and managing risks across various domains, from governance and operations to regulatory compliance. They also offer expertise in handling risks related to cyber-attacks and provide third-party assurance for added security and compliance.

Vertilocity provides a range of services, from managed IT and cloud advisory to implementation, cybersecurity solutions, and ERP consulting. These services are essential for digitally transforming your business processes.

At HBK we take pride in our ability to work closely with our clients to maximize their tax savings and implement planning solutions tailored to their specific needs. We work diligently to keep our clients apprised of new tax law changes that may impact their tax circumstances. Please don't hesitate to contact us with questions, concerns, or ideas you may have about how to plan for your tax situation.

HBK®

ABOUT

Established in 1949, HBK CPAs and Consultants (HBK) offers the collective intelligence of professionals in a wide range of tax, accounting, audit, business advisory, financial planning, and other business operational and support services from offices in four states.

HBK professionals deliver industry-specific expertise in manufacturing; healthcare, including long-term care; real estate and construction; automotive dealerships and not-for-profit organizations.

HBK combines the technical resources and expertise of a large national accounting and professional consulting firm with the personalized attention of a local company.

The firm is ranked in both *Accounting Today* and *Inside Public Accounting* magazines' Top 100, and supports clients globally as a member of BDO Alliance USA. HBK maintains locations in Columbus and Youngstown in Ohio; Erie, Hermitage, King of Prussia, Meadville, and Pittsburgh in Pennsylvania; Cherry Hill and Holmdel in New Jersey; Long Island in New York; and Boca Raton, Fort Myers, Naples, Sarasota, and Stuart in Florida.

To learn more about HBK, call 800.733.8613 or visit us at www.hbkcpa.com

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