Chapter 9: Small Business Issues

Note. Corrections were made to this workbook through January of 2025. No subsequent modifications were made. For clarification about terms used throughout this chapter, see the **Acronyms and Abbreviations** section following the index.

For your convenience, in-text website links are also provided as short URLs. Anywhere you see **uofi.tax/xxx**, the link points to the address immediately following in brackets.

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RETIREMENT UPDATE

The Setting Every Community Up for Retirement Enhancement Act (SECURE) 2.0 Act of 2022 made many significant changes to retirement provisions at the taxpayer, plan, and business levels to incentivize taxpayers to save for retirement and make it easier for employers to offer retirement saving benefits. This section identifies key changes to retirement savings benefits at the **employer** level, highlighting provisions and key considerations that may benefit small businesses in their offerings of retirement plans and policies.

Note. For more information regarding changes resulting from the passing of the SECURE 2.0 Act at the **individual taxpayer** level, please see the 2023 *University of Illinois Federal Tax Workbook*, Chapter 8: Retirement Plan Issues for Individuals.

SMALL BUSINESS CREDITS FOR RETIREMENT PLANS

The SECURE 2.0 Act modified and introduced tax credits for small businesses to further incentivize establishing retirement plans for employees. Practitioners may be able to advise their small business clients to utilize these tax-saving opportunities in creating and implementing their retirement plan offerings.

Credit for Small Employer Pension Plan Startup Costs

Section 102 of the SECURE 2.0 Act makes modifications to the credit allowed under IRC §45E for small employer retirement plan startup costs. These changes are effective for tax years **beginning after December 31, 2022.**[1]

1. *SECURE 2.0 Act of 2022*, PL 117-328, §102; *SECURE 2.0 Act of 2022*. Dec. 19, 2022. United States Senate Committee on Finance. [www.finance.senate.gov/imo/media/doc/Secure 2.0_Section by Section Summary 12-19-22 FINAL.pdf] Accessed on Feb. 22, 2024.

Plan Startup Cost Credit. The first modification of §102 increases the credit from 50% to 100% of qualified startup costs paid or incurred during the tax year. The credit is limited to the greater of $500 or the lesser of $250 for each employee of the eligible employer who is not a highly compensated employee or $5,000.[2] This credit is available for first three years of the plan. This can begin in the tax year the plan becomes effective or, if elected by the taxpayer, the tax year prior to the year the plan becomes effective.

The increased credit is only available for small businesses with up to 50 employees who are paid at least $5,000. Small businesses with up to 100 employees are still eligible for the 50% credit. The retirement plan must have at least one participant and at least one eligible employee who is not considered a highly compensated employee.[3]

> **Caution.** The deduction for startup costs must be reduced by the plan startup cost credit amount on line 5 of Form 8881, *Credit for Small Employer Pension Plan Startup Costs, Auto Enrollment, and Military Spouse Participation*.[4]

Practitioner Planning Tip

Qualifying startup costs are generally higher when setting up IRC §401(k) plans, consequently resulting in a greater benefit from the credit for setting up such plans over simplified employee pension (SEP) and savings incentive match plan for Employees (SIMPLE) plans. However, SEP and SIMPLE plans may incur accounting fees, consulting fees, employee-training costs, and brokerage fees which may qualify for the credit.

Additional Credit for Employer Contributions by Certain Eligible Employers. The second modification of §102 created a credit for employer contributions to eligible retirement plans. The credit is a percentage of an employer's contributions to a plan on behalf of the employee, equaling 100% of contributions in the first and second year of the plan, 75% in the third year, 50% in the fourth year, and ending with 25% in the fifth year, with no credits allowed in any following years.[5] The credit has a cap of $1,000 per employee per tax year and does not allow a credit for employees with wages exceeding $100,000.[6]

The full credit is limited to employers with 50 or fewer employees, phasing out by 2% for every employee over 50. The credit completely phases out for employers with over 100 employees.[7] Taxpayers claim the credit on Form 8881.[8]

> **Note.** Taxpayers can claim both the increased startup cost credit and the credit for employer contributions.[9]

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2. Ibid.
3. IRC §45E.
4. Instructions for Form 8881.
5. An eligible employer plan is treated as being established on the date the plan becomes effective to the employer per IRS Notice 2024-2, 2024-02 IRB 316.
6. *SECURE 2.0 Act of 2022*, PL 117-328, §102; *SECURE 2.0 Act of 2022*. Dec. 19, 2022. United States Senate Committee on Finance. [www.finance.senate.gov/imo/media/doc/Secure 2.0_Section by Section Summary 12-19-22 FINAL.pdf] Accessed on Feb. 22, 2024.
7. Ibid.
8. IRS Pub. 560, *Retirement Plans for Small Business*.
9. IRS Notice 2024-2, 2024-02 IRB 316.

Example 1. Janet Shift owns a small auto repair shop, called Shift Happens Automotive. She employs 30 employees, all of whom are paid at least $5,000 annually. She sets up a retirement plan for her employees starting January 1, 2023. Janet incurs $6,000 in qualifying startup costs for setting up the retirement plan and contributes $1,500 per employee to the retirement plan for all 30 employees.

In 2023, Shift can claim a startup cost credit of $5,000 and a small employer contribution credit of $30,000 (30 employees × $1,000 per employee credit cap) as shown on the following Form 8881.

> **Note.** Janet must reduce the deduction for startup costs by the $5,000 startup cost credit. She must also reduce the deductions for the retirement plan contribution by $30,000 credit.

Form **8881** (Rev. December 2023) Department of the Treasury Internal Revenue Service

Credit for Small Employer Pension Plan Startup Costs, Auto-Enrollment, and Military Spouse Participation

Attach to your tax return.
Go to *www.irs.gov/Form8881* for instructions and the latest information.

OMB No. 1545-1810
Attachment Sequence No. **130**

Name(s) shown on return: **Janet Shift**
Identifying number: *****-**-6240**

Part I — Credit for Small Employer Pension Plan Startup Costs (Including Employer Contributions)

A	Enter the number of qualifying employees. See instructions		30
1	Qualified startup costs incurred during the tax year	1	6,000
2	Employers with 1-50 employees enter the amount from line 1. Employers with 51-100 employees enter 50% (0.50) of line 1	2	6,000
3	Enter the number of employees eligible to participate in the pension plan. See instructions. 30 X $250	3	7,500
4	Enter the greater of $500 or the amount from line 3 (Do not enter more than $5,000)	4	5,000
5	Enter the smaller of line 2 or line 4	5	5,000
6a	Enter the number of employees from the preceding tax year. See instructions	6a	30
b	Enter employer contributions made to the plan, but don't include (i) elective deferrals, (ii) contributions made to employees whose wages paid to the employee were in excess of $100,000 and (iii) any amount of contributions to an employee to whom you made contributions of more than $1,000	6b	0
c	For employees for whom you made matching and nonelective contributions of more than $1,000, (and who are not disqualified because they meet 6b(ii) above), see the instructions for information on how to determine the amount to enter on line 6c. If you did not make this type of contributions, enter -0-	6c	30,000
d	Add lines 6b and 6c	6d	30,000
	If the number of employees entered on line 6a is 50 or less, enter the amount from line 6d on line 6f. If the number of employees entered on line 6a is 51-100, continue to line 6e(1).		
e	**(1)** Subtract 50 (50.0) from the number of employees entered on line 6a	6e(1)	
	(2) Multiply line 6e(1) by 2% (0.02)	6e(2)	
	(3) Multiply line 6e(2) by line 6d	6e(3)	
	(4) Subtract line 6e(3) from line 6d	6e(4)	
f	If you did NOT complete line 6e, enter the amount from line 6d. If you completed line 6e, enter the amount from line 6e(4)	6f	30,000
g	Applicable percentages. See instructions	6g	30,000
	• If this is treated as the first or second year of the plan, enter the amount from line 6f. • If this is treated as the third year of the plan, multiply line 6f by 75% (0.75). • If this is treated as the fourth year of the plan, multiply line 6f by 50% (0.50). • If this is treated as the fifth year of the plan, multiply the amount on line 6f by 25% (0.25).		
7	Credit for small employer pension plan startup costs from partnerships and S corporations	7	0
8	Add lines 5, 6g, and 7. Partnerships and S corporations, report this amount on Schedule K. All others, report this amount on Form 3800, Part III, line 1j	8	35,000

Small Employer Auto-Enrollment Credit

EACA and QACA Tax Credits

A tax credit is available for employers who include an eligible automatic contribution arrangement (EACA) under their retirement plan. If automatic enrollment is either added to an existing plan or included in a new plan, the employer can receive a credit of up to $500 per year for the first three years.[10]

The automatic enrollment feature must meet EACA requirements. An EACA applies a default contribution percentage uniformly to all employees and allows employees to withdraw automatic enrollment contributions.[11]

A qualified automatic contribution arrangement (QACA) also meets EACA requirements and will qualify for this credit. A QACA is an arrangement with safe harbor provisions that allow the qualified plan[12] to automatically pass annual nondiscrimination testing. The safe harbor is a schedule of uniform minimum automatic contribution percentages starting at 3% with increases each year an employee participates.[13]

Qualified plans under a QACA must meet the following requirements.[14]

- Participants may elect to have their employer make contributions to the plan on their behalf or pay the contributions in cash to the participants.
- Participants are treated as having elected to have their employer make contributions of a uniform percentage of compensation to their plan until participants specifically elect not to have such contributions made.
- Plan administrators must provide plan participants notice of employees' rights and obligations.

Only **qualified employers** can use EACA and QACA tax credits. IRC §45T defines a **qualified employer** as having no more than 100 employees paid at least $5,000 in compensation in the preceding year.[15] Qualified employers claim the credits on Form 8881.[16]

> **Note.** This credit is allowed in addition to any startup costs plan tax credits and any deductions for employer contributions.[17]

CHANGES TO SIMPLE AND SEP IRAS[18]

The SECURE 2.0 Act made few but significant changes to SIMPLE and SEP plans, allowing for more options and flexibility than before the Act's adoption.

Prior to the SECURE 2.0 Act, a SIMPLE individual retirement arrangement (IRA) was not permitted to accept Roth employee contributions. Section 601 now allows an employee to designate a Roth IRA as the plan for the employee's SIMPLE IRA contributions. This change is effective for tax years beginning after December 31, 2022.

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10. IRC §45T.
11. *FAQs — Auto Enrollment - Are there different types of automatic contribution arrangements for retirement plans?* May 5, 2023. IRS. [www.irs.gov/retirement-plans/faqs-auto-enrollment-are-there-different-types-of-automatic-contribution-arrangements-for-retirement-plans] Accessed on Feb. 22, 2024.
12. IRC §414(w)(3).
13. *FAQs — Auto Enrollment - Are there different types of automatic contribution arrangements for retirement plans?* May 5, 2023. IRS. [www.irs.gov/retirement-plans/faqs-auto-enrollment-are-there-different-types-of-automatic-contribution-arrangements-for-retirement-plans] Accessed on Feb. 22, 2024.
14. IRC §§414(w)(3) and (4).
15. IRC §408(p)(2)(C)(i).
16. IRS Pub. 560, *Retirement Plans for Small Business*.
17. Instructions to Form 8881.
18. *SECURE 2.0 Act of 2022*, PL 117-328, §601; *SECURE 2.0 Act of 2022*. Dec. 19, 2022. United States Senate Committee on Finance. [www.finance.senate.gov/imo/media/doc/Secure 2.0_Section by Section Summary 12-19-22 FINAL.pdf] Accessed on Feb. 22, 2024; IRS Notice 2024-2, 2024-02 IRB 316.

Section 601 also allows SEP plans to accept employer and employee Roth contributions. However, an employer is not required to offer an employee a Roth contribution election. Unless a salary reduction SEP (SARSEP) plan is in place, SEP contributions are employer contributions — not elective contributions. Previously, the contributions could not be Roth.

Any elective contribution under a SARSEP or SIMPLE plan which is made to a Roth IRA must be included in the employee's gross income. These amounts are withheld from the employee's paycheck but included in their wages because the amounts are going into a Roth IRA.

The employer reports employer contributions made to a Roth SEP or a Roth SIMPLE plan on Form 1099-R, *Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.*, as code 2 or 7 in box 7. A Form 1099-R is issued for the year in which the employer makes the contribution, not the year to which the contribution relates.

The election to have a contribution made to a Roth IRA must be made by the employee before any contribution is made to the plan.

These changes are effective for tax years beginning after December 31, 2022.

Example 2. Mark owns a small landscaping business, GreenThumb Landscapes, LLC, which employs 15 people. He elects to be taxed as an S corporation. Mark sets up a retirement plan to provide savings opportunities for himself and his employees effective January 1, 2024. Mark contributes matching contributions to a SIMPLE plan of 3% of each employee's compensation. One of Mark's employees, Jane (age 40) has earnings of $60,000 and elects to contribute $13,500 in 2024 to her Roth SIMPLE IRA. Jane also requests Mark contribute his matching contributions to her Roth SIMPLE IRA.

Mark deducts the matching contribution of $1,800 as a retirement plan deduction on his Form 1120-S, *U.S. Income Tax Return for an S Corporation*. Jane's compensation of $60,000 is deducted as a wage expense on Form 1120-S. Jane's Form W-2 is as follows.

a Employee's social security number ***-**-0000	OMB No. 1545-0008	Safe, accurate, FAST! Use IRS e-file	Visit the IRS website at *www.irs.gov/efile*.
b Employer identification number (EIN) 99-9999999		**1** Wages, tips, other compensation 60000.00	**2** Federal income tax withheld 8000.00
c Employer's name, address, and ZIP code GreenThumb Landscapes, LLC 24 Grass Road Anywhere, USA 12345		**3** Social security wages 60000.00	**4** Social security tax withheld 3720.00
		5 Medicare wages and tips 60000.00	**6** Medicare tax withheld 870.00
		7 Social security tips	**8** Allocated tips
d Control number		**9**	**10** Dependent care benefits
e Employee's first name and initial / Last name / Suff. Jane Doe 123 Broadway Anywhere, USA 12345 **f** Employee's address and ZIP code		**11** Nonqualified plans	**12a** See instructions for box 12 Code S 13500.00
		13 Statutory employee / Retirement plan / Third-party sick pay	**12b** Code
		14 Other	**12c** Code
			12d Code

15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name
IL		60000.00	1500.00			

Form **W-2** **Wage and Tax Statement** 2024 Department of the Treasury—Internal Revenue Service

Copy B—To Be Filed With Employee's FEDERAL Tax Return.
This information is being furnished to the Internal Revenue Service.

Mark makes his matching contribution of $1,800 in December 2024, and issues the following 2024 Form 1099-R to Jane in addition to her Form W-2.

☐ CORRECTED (if checked)

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no. **GreenThumb Landscapes, LLC** **24 Grass Road** **Anywhere, USA 12345**		1 Gross distribution $ **1800.00** 2a Taxable amount $ **1800.00**	OMB No. 1545-0119 2024 Form **1099-R**	**Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.**
		2b Taxable amount not determined ☐	Total distribution ☐	**Copy B**
PAYER'S TIN **99-9999999**	RECIPIENT'S TIN *****-**-0000**	3 Capital gain (included in box 2a) $	4 Federal income tax withheld $	**Report this income on your federal tax return. If this form shows federal income tax withheld in box 4, attach this copy to your return.**
RECIPIENT'S name **Jane Doe**		5 Employee contributions/ Designated Roth contributions or insurance premiums $	6 Net unrealized appreciation in employer's securities $	
Street address (including apt. no.) **123 Broadway**		7 Distribution code(s) **2** — IRA/ SEP/ SIMPLE ☒	8 Other $ %	This information is being furnished to the IRS.
City or town, state or province, country, and ZIP or foreign postal code **Anywhere, USA 12345**		9a Your percentage of total distribution %	9b Total employee contributions $	
10 Amount allocable to IRR within 5 years $	11 1st year of desig. Roth contrib. / 12 FATCA filing requirement ☐	14 State tax withheld $ $	15 State/Payer's state no.	16 State distribution $ $
Account number (see instructions)	13 Date of payment	17 Local tax withheld $ $	18 Name of locality	19 Local distribution $ $

Form **1099-R** www.irs.gov/Form1099R Department of the Treasury - Internal Revenue Service

Note. If Mark instead makes his matching contribution of $1,800 in January 2025, he will then issue a 2025 Form 1099-R to Jane.

CHANGES TO §401(K) EMPLOYER CONTRIBUTIONS[19]

The SECURE 2.0 Act made significant changes to employer contributions to Roth §401(k) plans and certain sole proprietor's first-year §401(k) plans that may be of interest to small businesses.

Employer Roth Contributions

Section 604 of the SECURE 2.0 Act allows employers to make matching contributions to an employee's Roth §401(k). To qualify, the employee must be 100% vested in their matching and nonelective contributions, and the Roth contributions are not considered compensation for the employee.[20]

19. *Issue Snapshot — Deductibility of employer contributions to a 401(k) plan made after the end of the tax year.* Jul. 27, 2023. IRS. [www.irs.gov/retirement-plans/issue-snapshot-deductibility-of-employer-contributions-to-a-401k-plan-made-after-the-end-of-the-tax-year] Accessed on Feb. 22, 2024.

20. IRS Notice 2024-2, 2024-02 IRB 316.

Deductible on Employer's Tax Return Subject to Limits

Prior to the original SECURE Act of 2019, employers were required to adopt a written retirement plan by the close of the plan's initial year. Section 201 of the SECURE Act of 2019 amends §401(b)(2), allowing employers to establish plans retroactively after the close of the plan year and fund the plans with contributions provided the funding occurs before the due date of the employer's tax return, including extensions.

Employers who make profit-sharing or matching contributions after the close of a tax year but prior to the due date of their tax return, including extensions, are allowed a deduction of the contributions subject to the limits of IRC §404. IRC §404 allows retroactive contributions if, for allocation purposes, the employer treats the contribution as having been made in the applicable tax year and pays the contribution on or before the due date of the employer's tax return, including extensions.

> **Example 3.** Illuminating Solutions Corp., a C corporation, timely files an extension for its 2023 Form 1120, *U.S. Corporation Income Tax Return,* extending the due date to October 15, 2024. The corporation filed the return on July 16, 2024, with a $50,000 deduction for 2023 profit-sharing contributions which was less than the §404(a)(3) limit of 25% of eligible participant compensation. The $50,000 was then contributed to the plan on September 20, 2024. Because both the payment of the contribution and the deduction occurred prior to the October 15, 2024 due date, the deduction is allowed.

Retroactive First-Year Elective Deferrals Under §401(k) for Sole Proprietors

For plan years beginning after December 31, 2022, §317 of the SECURE 2.0 Act allows an individual who owns the entire interest of an unincorporated business **and** is the sole employee to **establish and make the elective deferral** portion of the contributions to a **new** §401(k) plan after the close of the tax year but before the due date of the individuals tax return, **without extensions.** Such contributions will be treated as having been made for the plan's first tax year.[21]

> **Note.** This exception is only applicable for the first year of establishing the plan.

Contributions for self-employed individuals are reported on Schedule 1 (Form 1040), *Additional Income and Adjustments to Income*.[22]

> **Example 4.** Gerald McCracken, a sole proprietor with no employees, wants to retroactively set up a new solo §401(k) plan for 2023 in March 2024. To accomplish this, he must open the plan by April 15, 2024, the due date of his 2023 tax return, without extensions, and fund the elective deferral portion of the §401(k) contribution. Gerald has until the extended due date of his individual return to make the employer portion of the contribution.

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21. *SECURE 2.0 Act of 2022*, PL 117-328, §317.

22. IRS Pub. 560, *Retirement Plans for Small Business*.

BUSINESS PLAN PROVISIONS IN SECURE 2.0 ACT

Among the provisions in the SECURE 2.0 Act, Congress included additional incentive provisions, changes to plan procedures, and implementation of new retirement plans. Developing an understanding of these provisions is valuable in correctly applying retirement plan offerings.

Student Loan Matching[23]

Section 110 of the SECURE 2.0 Act allows employers to make contributions to a qualified retirement plan on behalf of employees who are making qualified student loan payments. Qualified student loan payments are payments made toward a qualified education loan the individual incurred to cover higher education expenses.

Employers sponsoring IRC §§401(k), 403(b), and SIMPLE IRA plans, as well as government employers offering IRC §457(b) or other plans, may make matching contributions to an individual's plan on account of qualified student loan payments. Student loan payments made after **December 31, 2023,** are eligible for matching contributions, and employers may rely on employee certification of payment of the student loan. In effect, this allows an employer to offer the benefit of retirement savings to an employee that is not actually making elective deferrals.

The amount of an individual employee's contribution and deemed contribution, comprised of both elective deferrals and student loan repayments, is limited to the lesser of the employee's compensation for the year or the applicable limitation on exclusion for elective deferrals under IRC §402(g). The applicable limitation is $15,000, adjusted for cost-of-living in multiples of $500.[24] For 2024, the applicable limitation is $23,000.[25] This limitation prevents an employer from making larger matching contributions associated with student loan repayments than would otherwise be allowed on elective deferrals.

Section 110 also addresses nondiscrimination testing rules, allowing plans to test separately for employees who receive matching contributions related to student loan repayments. Matching contributions will not fail to be treated as being available to an employee solely because the employee does not have student loan debt.

Practitioner Planning Tip

Practitioners may advise their business clients to utilize this student loan matching provision as an employee recruitment or retention incentive. The competitive landscape for hiring qualified employees requires attractive compensation and benefits packages, and the student loan matching program may be an alluring benefit to job candidates, particularly those who recently graduated from college with student loan debt.[26]

23. *SECURE 2.0 Act of 2022,* PL 117-328, §110.

24. IRC §§402(g)(1)(B) and (4).

25. *Consequences to a Participant Who Makes Excess Annual Salary Deferrals*. Feb. 29, 2024. IRS. [www.irs.gov/retirement-plans/consequences-to-a-participant-who-makes-excess-annual-salary-deferrals] Accessed on Mar. 12, 2024.

26. *What Are the Rules for Making 401(k) Plan Matching Contributions on Student Loan Repayments?* Nov. 15, 2023. Thomson Reuters. [tax.thomsonreuters.com/news/what-are-the-rules-for-making-401k-plan-matching-contributions-on-student-loan-repayments] Accessed on Mar. 12, 2024.

Changes to Auto-Enrollment Requirements[27]

Section 101 of the SECURE 2.0 Act requires automatic enrollment in the employer's retirement plan to increase participation and employee retirement savings. **Beginning January 1, 2025,** employers must enroll employees into their retirement plan when they meet plan eligibility requirements by contributing a portion of their wages into the plan on the employee's behalf. Initial enrollment contribution percentages into the plan can range from 3 to 10% with an automatic 1% increase each year until the contribution rate reaches 10%, but no more than 15%.

Employees can choose either to opt out of automatic enrollment or choose a contribution percentage and percent increase each year different from the default automatic enrollment rates. Wage deductions for retirement contributions are typically pre-tax, but employees may decide to make Roth contributions if their plan allows. Employees are always 100% vested in their automatic enrollment contributions.

> **Note.** Exceptions to automatic enrollment are allowed for plans established prior to December 29, 2022, small businesses with 10 or fewer employees, new businesses with less than three years of existence, church plans, and government plans.

Starter §401(k) Plans[28]

A starter §401(k) plan is a retirement plan option allowed under §121 of the SECURE 2.0 Act for eligible employers to offer employees beginning in plan years beginning after December 31, 2023. These plans are a lower-cost retirement plan option for employers to offer to their employees.[29] Eligible employers are those who do not already maintain a qualified retirement plan in the year of determination with limited exceptions. Such exceptions include employees covered by a collective bargaining agreement between employee representatives and one or more employers.[30]

The starter §401(k) plan, also referred to as safe harbor §403(b) plan, has the following compliance requirements.

- Enrollment into the plan must be automatic at a rate between 3 and 15% of compensation.
- **No employer contributions are permitted.**

> **Note.** Employers may set age and service requirements for employees to be eligible to contribute to the plan.[31]

Employee contributions are limited to $6,000 for calendar year 2024, with an additional $1,000 catch-up contribution for employees over the age of 50, resulting in a maximum of $7,000 an individual can contribute. These deferrals are significantly lower than a standard §401(k) plan. Cost of living adjustments may change the contribution limits starting after the close of the year ending December 31, 2024.

> **Note.** In addition to being a lower-cost option resulting from no employer matching contributions, starter §401(k) plans may be appealing to employers because there are fewer legal requirements (e.g., §401(k) plan compliance standards involving participation and nondiscrimination[32]) compared to other retirement plans. However, starter §401(k) plans may not be as appealing to employees because there are no employer matching contributions and lower employee contribution limits compared to other retirement plans. Small businesses should weigh these considerations when implementing retirement plan offerings, as lower financial and administrative costs could come at the price of a business being less desirable from an employee recruitment and retention perspective.

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27. *SECURE 2.0 Act of 2022,* PL 117-328, §101.

28. *SECURE 2.0 Act of 2022*, PL 117-328, §121; *SECURE 2.0 Act of 2022*. Dec. 19, 2022. United States Senate Committee on Finance. [www.finance.senate.gov/imo/media/doc/Secure 2.0_Section by Section Summary 12-19-22 FINAL.pdf] Accessed on Feb. 22, 2024.

29. *What Are Starter 401(k) Plans?* Fontinelle, Amy. Jun. 20, 2023. Forbes Media LLC. [www.forbes.com/advisor/investing/what-are-starter-401k-plans/] Accessed on Feb. 22, 2024.

30. IRC §410(b)(3)(A).

31. Ibid.

32. Ibid.

Additional Nonelective Employer Contributions to SIMPLE IRAs[33]

Employers are required to make **either** matching or nonelective contributions to an employee's SIMPLE IRAs each year. Qualified employees must be notified of the employer's intent **prior** to the 60-day period during which employees may make or modify their contribution elections.

Matching contributions apply only to employees who participate in the plan. The employer may match employee deferrals up to 3% of the employee's compensation.

Nonelective contributions apply to every employee who qualifies to participate in the plan, even those who do not elect to contribute. The default nonelective employer contribution rate is 2% of the employee's compensation. Effective for tax years beginning after December 31, 2023, employers may voluntarily make additional nonelective contributions.

Similar to the matching and 2% nonelective contributions, the **additional nonelective** contributions must be made by the due date of the employer's tax return, including extensions. This contribution is capped at 10% of the employee's compensation or $5,000 (indexed for inflation), whichever is less. Compensation for these purposes is subject to the same annual limit that applies to the 2% nonelective contribution, as adjusted for inflation each year (for 2024, the compensation limit is $345,000).[34]

Example 5. Bulgy Bros, Inc., has a SIMPLE plan that was established in 2019. In September 2023, the company notified its employees that it intended to make a 2% nonelective contribution to each qualified employee's SIMPLE IRA for 2024 instead of making matching contributions. As shown in the following table, the company **must** contribute $11,700 to its employees' SIMPLE IRAs for 2024 by the due date of its return.

When preparing the 2024 income tax return, Bulgy's accountant determined that its taxable income was higher than anticipated for the year. Accordingly, they recommended that the company make an additional nonelective contribution for 2024. They prepared the following table to show the maximum amount that could be contributed for each employee under the SIMPLE plan's provisions.

Qualified Employee	Compensation	Lesser of Compensation and Compensation Limit	Nonelective 2% Contribution	Additional Nonelective Contribution
Anthony	$400,000	$345,000	$ 6,900	$ 5,000
Amy	4,000	4,000	0	0
Rita	200,000	200,000	4,000	5,000
Paris	40,000	40,000	800	4,000
Total contributions			$11,700	$14,000

Higher Maximum Deferrals[35]

The maximum amount that an employee may elect to contribute to their SIMPLE IRA each year is capped by an amount specified in the Code as indexed for inflation. For 2024, the applicable limit is $16,000, plus $3,500 if the employee is age 50 or older.[36] However, if the **employer** meets certain requirements, these 2024 limits are increased by 10%[37] to $17,600 and $3,850, respectively.

33. IRC §408(p).

34. IRS Pub. 560 (2023), *Retirement Plans for Small Business.*

35. IRC §§408(p)(2)(E) and 414(v)(2).

36. IRS Pub. 560 (2023), *Retirement Plans for Small Business.*

37. IRC §408(p)(2)(E), as amended by PL 117-328 (SECURE Act of 2022), Act, §117(a). See also IRC §414(v)(2), as amended by SECURE 2.0 Act, §117(b).

Generally, an employer may qualify its employees for these higher limits by being:[38]

- A small employer with no more than 25 employees who received at least $5,000 in compensation in the preceding year, **or**
- A large employer having between 26-100 employers **and** either providing
  - A 4% matching contribution, or
  - A 3% nonelective employer contribution.

> **Note.** For small employers, the higher limit is effective automatically. However, large employers must take proactive measures for their employees to qualify. In addition to the increased percentages for matching and nonelective contributions, additional rules apply to larger employers that are beyond the scope of this material.[39]

BENEFICIAL OWNERSHIP INFORMATION REPORTING[40]

Congress was concerned that malign actors may use small corporations, limited liability companies (LLC), and other organized businesses to funnel money into criminal endeavors, such as drug trafficking, counterfeiting, securities fraud, and even the financing of terrorism. However, federal authorities had no access to beneficial ownership information (BOI) that could assist in their fight against these crimes.

Generally, taxpayers organize business organizations at the **state** level. Federal regulators have little insight into the ownership of organizations as states do not routinely collect information about the organizations' beneficial owners.[41] Congress acted on this significant security issue because taxpayers organize more than 2 million businesses annually. This high volume of newly registered businesses potentially makes it easier to hide criminal activity fronting as legitimate and registered businesses. The Corporate Transparency Act (CTA)[42] imposes a reporting requirement on large numbers of small businesses that they must satisfy by December 31, 2024.

> **Caution.** Unlike the reporting requirements for foreign bank and financial accounts (FBAR), the CTA does not charge the IRS with responsibility for enforcement.[43] Thus, tax practitioners who prepare BOI forms on behalf of clients may be engaged in the practice of law, depending on how state statutes governing the practice of law are written. Practitioners should avoid such activities if they are not licensed to practice law in the governing state.

> **Note.** For more information on the BOI reporting, see the 2023 *University of Illinois Federal Tax Workbook*, Chapter 10: Small Business Issues.

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38. IRC §§408(p)(2)(C)(2)(iv) and 408(p)(2)(B)(iii).
39. IRC §408(p)(2)(E).
40. IRC §5336; *Beneficial Ownership Information*. Apr. 18, 2024. FinCEN. [www.fincen.gov/boi-faqs] Accessed on Aug. 1, 2024.
41. *Corporate Transparency Act,* §6402(2).
42. *Corporate Transparency Act*, §6402.
43. IRS Pub. 5569, *Report of Foreign Bank & Financial Accounts (FBAR) Accounts Reference Guide*, p.3 (2022).

REPORTING COMPANIES AND INDIVIDUALS

The CTA imposes a filing requirement on **both** the small businesses that constitute the bulk of the reporting companies and on the individuals who must disclose their identities to the Financial Crimes Enforcement Network (FinCEN).

Companies

A reporting company is a corporation, LLC, or other entity created by **filing a document** with a secretary of state or similar office. The secretary of state may be one within any state, the District of Columbia, any Indian Tribe, or any commonwealth, territory, or possession of the United States.[44]

Organizations Exempt from Filing. The CTA exempts the following organizations from filing.

Exemption No.	Exemption Short Title
1	Securities reporting issuer
2	Governmental authority
3	Bank
4	Credit union
5	Depository institution holding company
6	Money services business
7	Broker or dealer in securities
8	Securities exchange or clearing agency
9	Other Exchange Act registered entity
10	Investment company or investment adviser
11	Venture capital fund adviser
12	Insurance company
13	State-licensed insurance producer
14	Commodity Exchange Act registered entity
15	Public accounting firm registered under the Sarbanes-Oxley Act of 2002 (15 USC §7212), §102[44])
16	Public utility
17	Financial market utility
18	Pooled investment vehicle
19	Tax-exempt entity if described in IRC §501(c) and exempt from tax under §501(a)[45]
20	Entity assisting a tax-exempt entity
21	Large operating company (having more than 20 employees)
22	Subsidiary of certain exempt entities
23	Inactive entity

A sole proprietorship does not need to file a BOI report unless it was **organized by filing a document** with their secretary of state.[47] Only filing a document for licensure or registering a fictitious "doing business as" (DBA) name does not require a sole proprietor to file a BOI report. However, the owner of a **single-member LLC** is required to file even if the LLC is a disregarded entity on their tax returns because the owner filed a document with their secretary of state to form the LLC.

44. 31 USC §5336(a)(12). See the *Federally Recognized Indian Tribe List Act of 1994*, PL 103-454, §102.

45. 31 USC §5336(a)(11)(B)(xv).

46. 31 USC §5336(a)(11)(B)(xix)(I).

47. *Is a sole proprietorship a reporting company?* Dec. 12, 2023. FinCEN. [www.fincen.gov/boi-faqs#C_6] Accessed on Jun. 25, 2024.

Example 6. Lois owns and operates a tax practice that she organized as an S corporation by filing the necessary documents with her state's secretary of state and then the IRS. She is an enrolled agent who prepares tax returns for individuals and small businesses. Lois employs two individuals only during tax season. She must register with FinCEN to comply with the CTA.

Example 7. Marge operates a tax practice as a sole practitioner. Although she uses the DBA "Marge's Tax Service," she was not required to file any documents with her secretary of state. She employs 40 individuals throughout the year and another three during tax season. Marge does not have a requirement to file a BOI report because she never filed documents with her state's secretary of state, despite the fact that she has more than 20 employees.

> **Note.** Entities employing **over 20 full-time employees** and more than **$5 million in gross receipts** for the previous year (including receipts for entities for which it owns or is owned by), and that have an operating presence at a **physical office located in the United States** fall under the large operating company exemption (exemption number 21 in the FinCEN list).[48]

Individuals

BOI reports must disclose the names and certain information about their beneficial owners. A beneficial owner meets either of the following criteria.[49]

1. Owns or controls 25% or more of the company's ownership interests
2. Exercises substantial control

The CTA broadly defines ownership interests and they can include forms of debt, equity options, or convertible securities.[50] Thus, an individual who has loaned money to a company but retains the right to exchange the debt for the company's equity may satisfy the second criterion in some cases.

Ownership is not required to exercise substantial control. Therefore, senior officers may be included among beneficial owners, regardless of whether they own company stock. Furthermore, BOI reports may disclose individuals who can appoint or remove senior officers, as this is an indication of substantial control.[51]

Company Applicants. Certain individuals may be required to report that they exercise substantial control of the business because they are involved in filing the business's documents. The guidelines specifically state that **individuals** must be listed, not legal entities. Company applicants fall into two categories.[52]

1. **Direct filers** who filed the document that created the corporation, LLC, or other business entity. BOI reports should identify these individuals within the corporation.
2. **Filers who direct or control the filing action** (i.e., primarily responsible for directing or controlling the filing of the creation or first registration document).

> **Observation.** This requirement can put professionals who directly filed documents for a **former** client in a difficult situation. They are part of the business entity's filing requirement, yet they no longer have the client's consent to file documents.

48. *Are some companies exempt from the reporting requirement?* Apr. 18, 2024. FinCEN. [www.fincen.gov/boi-faqs#C_2] Accessed on Aug. 2, 2024.

49. 31 USC §5336(a)(3)(A).

50. *Small Entity Compliance Guide*, p. 25. Dec. 2023. FinCEN. [www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf] Accessed on Jun. 25, 2024; *Reporting Deadline Looms — You May Not Be Prepared for The Corporate Transparency Act*. Polak, Andrew. Jun. 22, 2023. Rooney Law. [rooney.law/blog/reporting-deadline-looms-you-are-not-prepared-for-the-corporate-transparency-act/] Accessed on Jun. 25, 2024.

51. *Small Entity Compliance Guide*, p. 17. Dec. 2023. FinCEN. [www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf] Accessed on Jun. 25, 2024.

52. Ibid., pp. 34–35.

INFORMATION USAGE AND REPORTING

The CTA contains extensive requirements on the information that the reporting company must disclose.

Information Disclosure[53]

Federal agencies may retrieve BOI if they are responsible for national security or intelligence. The CTA also provides state and local law enforcement agencies access to the information. Financial institutions may also retrieve and use this information to fulfill their customer due diligence responsibilities.[54] Individuals who improperly disclose this information face potential civil and criminal penalties.[55]

Required Information

Reporting companies must include the following information in their BOI filings.[56]

- Full legal name
- Trade name or assumed name
- Complete address for its principal place of business in the United States
- State, tribal, or foreign jurisdiction under whose laws it was formed
- If formed originally under foreign jurisdiction, it must also list the state or tribal jurisdiction in which they first registered the entity in the United States
- Employer identification number (EIN)

An individual that is filing a BOI report must include the following information about any beneficial owner or company applicant.[57]

- Full legal name
- Date of birth
- Complete address information
  - Residential street address for beneficial owners
  - Business street address for company applicants
- Unique identifying number and issuing agency for one of the following:
  - U.S. passport
  - State driver's license
  - Identification document issued by a state or local government
  - Non-U.S. passport, but only if none of the previous documents exist

53. 31 USC §5336(c)(2).

54. *William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021*, PL 116-283, §6402(6)(B).

55. 31 USC §§5336(h)(2) and (3).

56. *Small Entity Compliance Guide*, p. 38. Dec. 2023. FinCEN. [www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf] Accessed on Jun. 25, 2024.

57. Ibid.

DEADLINES AND THE PENALTIES FOR NONCOMPLIANCE

BOI reports for entities formed on or after January 1, 2024, are due within 90 days of the entity's formation or a change in beneficial ownership of an existing company. As of January 1, 2025, these reports are required within 30 days. Reports for entities formed before January 1, 2024, are due by January 1, 2025.

Caution. Practitioners should be aware that the above deadlines could change, as cases on the matter make their way through the courts. The American Institute of Certified Public Accountants and other state CPA societies have requested that enforcement of BOI reporting requirements be suspended in the meantime.

Individuals who willfully do not report BOI are subject to a $500 penalty for each **day** the required reports have not been filed. A maximum fine of $10,000 is possible. This individual is also subject to two years of imprisonment. The same penalties apply to individuals providing false or fraudulent information. For example, a fake identification card may constitute fraudulent information.

Practitioner Planning Tip

Tax practitioners should decide whether they plan to assist clients with BOI reporting. They may want to consult with their attorney and their errors and omissions (E&O) insurance company before deciding.

FORM 7206

The IRS introduced Form 7206, *Self-Employed Health Insurance Deduction*, for taxpayers to calculate their self-employed health insurance deduction, starting with 2023 tax returns. Self-employed taxpayers can deduct health insurance premiums they paid up to their net earned income from self-employment.[58]

They claim the deduction as an adjustment to income on Form 1040, Schedule 1. The deduction does not appear on the originating schedule that reports the self-employment (SE) income, such as Schedule C, *Profit or Loss From Business*, Schedule F, *Profit or Loss From Farming*, or Schedule E, *Supplemental Income and Loss (From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)*. The deduction includes the costs incurred for accident and health insurance covering themselves, their spouse, dependents, and any child under the age of 27.[59]

The following self-employed taxpayers can claim the SE health insurance deduction.[60]

- Self-employed taxpayers reporting income on Schedules C or F
- Partners receiving SE earnings from a partnership
- Actively participating members in an LLC that elected partnership tax treatment
- Employees of an S corporation who own 2% or more of the corporation's stock

Historically, taxpayers have calculated the SE health insurance deduction using Worksheet 6-A, *Self-Employed Health Insurance Deduction Worksheet*, in IRS Pub. 535, *Business Expenses*.[61] The IRS clarified that beginning with tax year 2023, Worksheet 6A is replaced by Form 7206, and that IRS Pub. 535 is no longer being revised for years following tax year 2022.[62]

FILING REQUIREMENTS

Taxpayers claiming the SE health insurance deduction must prepare and file Form 7206 if any of the following apply.[63]

- The taxpayer has more than one source of SE income
- The taxpayer files Form 2555, *Foreign Earned Income*
- The taxpayer's insurance expenses for the deduction include long-term care insurance

9

Taxpayers who are not required to file Form 7206 use the SE health insurance deduction worksheet in the Form 1040 instructions to calculate their deduction.[64] However, taxpayers who acquired health insurance through the Marketplace and claim the premium tax credit must use Worksheet P, *Self-Employed Health Insurance Deduction for Nonspecified Premiums*, in IRS Pub. 974, *Premium Tax Credit (PTC)*, to calculate their SE health insurance deduction.[65]

The deduction is reported on line 17 of Form 1040, Schedule 1.

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58. See Form 7206.
59. IRC §162(l).
60. Instructions for Form 7206.
61. IRS Pub. 535, *Business Expenses* (2022).
62. *Publication 535 is no longer being revised.* Jan. 22, 2024. IRS. [www.irs.gov/forms-pubs/publication-535-is-no-longer-being-revised] Accessed on Jul. 12, 2024.
63. Instructions for Form 7206.
64. Instructions for Form 1040.
65. Instructions for Form 7206.

Example 8. David Miller is a 35-year-old, single taxpayer in 2023. He earns $40,000 of net income from his Schedule C business and $10,000 of net income from farming activities, which he reports on Schedule F. Additionally, David is a 15% shareholder in Gurdlinger Industries, Inc. He receives a Schedule K-1 (Form 1120-S), *Shareholder's Share of Income, Deductions, Credits, etc.*, from Gurdlinger reporting $35,000 of ordinary business income, as well as a Form W-2*,* reporting $15,000 in wages (boxes 1, 3, and 5).

In 2023, David pays $18,000 in health insurance premiums and $2,500 in long-term care insurance premiums. David did not obtain insurance through the Marketplace. His insurance plan is established under his Schedule C business. David's Forms W-2 and 7206 follow.

a Employee's social security number ***-**-6372	OMB No. 1545-0008	Safe, accurate, FAST! Use IRS e-file	Visit the IRS website at *www.irs.gov/efile*
b Employer identification number (EIN) 37-9182736		**1** Wages, tips, other compensation 15000.00	**2** Federal income tax withheld 1000.00
c Employer's name, address, and ZIP code Gurdlinger Industries, Inc. 123 Main St. Denver, CO 80014		**3** Social security wages 15000.00	**4** Social security tax withheld 930.00
		5 Medicare wages and tips 15000.00	**6** Medicare tax withheld 217.50
		7 Social security tips	**8** Allocated tips
d Control number		**9**	**10** Dependent care benefits
e Employee's first name and initial: David	Last name: Miller	Suff.	
201 N Front St. Cheyenne, WY 82001		**11** Nonqualified plans	**12a** See instructions for box 12 (Code)
		13 Statutory employee ☐ Retirement plan ☐ Third-party sick pay ☐	**12b** Code
		14 Other	**12c** Code
f Employee's address and ZIP code			**12d** Code

15 State	Employer's state ID number	**16** State wages, tips, etc.	**17** State income tax	**18** Local wages, tips, etc.	**19** Local income tax	**20** Locality name

Form **W-2** **Wage and Tax Statement** 2023

Department of the Treasury—Internal Revenue Service

Copy B—To Be Filed With Employee's FEDERAL Tax Return.
This information is being furnished to the Internal Revenue Service.

For Example 8

Form **7206** | **Self-Employed Health Insurance Deduction** | OMB No. 1545-0074

Department of the Treasury
Internal Revenue Service

Attach to Form 1040, 1040-SR, or 1040-NR.
Go to *www.irs.gov/Form7206* for instructions and the latest information.

2023
Attachment Sequence No. **206**

Name(s) shown on return	Your taxpayer identification number
David Miller	**xxx-xx-6372**

Note: Use a separate Form 7206 for each trade or business under which an insurance plan is established.

1	Enter the total amount paid in 2023 for health insurance coverage established under your business (or the S corporation in which you were a more-than-2% shareholder) for 2023 for you, your spouse, and your dependents. But **don't** include the following. See instructions	1	**18,000**
	• Amounts for any month you were eligible to participate in a health plan subsidized by your employer or your spouse's employer or the employer of either your dependent or your child who was under the age of 27 at the end of 2023. • Any amounts paid, not to exceed $3,000, from retirement plan distributions that were **nontaxable** because you are a retired public safety officer. See instructions. • Any payments for qualified long-term care insurance (see line 2).		
2	For coverage under a qualified long-term care insurance contract, enter for each person covered the **smaller** of (a) or (b). **(a)** Total payments made for that person during the year. **(b)** The amount shown below. Use the person's age at the end of the tax year. $480— if that person is age 40 or younger $890— if age 41 to 50 $1,790— if age 51 to 60 $4,770— if age 61 to 70 $5,960— if age 71 or older **Note:** The amount of long-term care premiums that can be included as a medical expense is limited by the person's age. **Don't** include payments for any month you were eligible to participate in a long-term care insurance plan subsidized by your employer or your spouse's employer, or the employer of either your dependent or your child who was under the age of 27 at the end of 2023. If more than one person is covered, figure separately the amount to enter for each person. Then enter the total of those amounts	2	**480**
3	Add lines 1 and 2	3	**18,480**
4	Enter your net profit* and any other earned income** from the trade or business under which the insurance plan is established. Don't include Conservation Reserve Program payments exempt from self-employment tax. If the business is an S corporation, skip to line 11	4	**40,000**
5	Enter the total of all net profits* from Schedule C (Form 1040), line 31; Schedule F (Form 1040), line 34; or Schedule K-1 (Form 1065), box 14, code A, plus any other income allocable to the profitable businesses. Don't include Conservation Reserve Program payments exempt from self-employment tax. See the Instructions for Schedule SE (Form 1040). **Don't** include any net losses shown on these schedules	5	**50,000**
6	Divide line 4 by line 5	6	**0.80**
7	Multiply Schedule 1 (Form 1040), line 15, deductible part of self-employment tax, by the percentage on line 6	7	**2,826**
8	Subtract line 7 from line 4	8	**37,174**
9	Enter the amount, if any, from Schedule 1 (Form 1040), line 16, self-employed SEP, SIMPLE, and qualified plans, attributable to the same trade or business in which the insurance plan is established	9	**0**
10	Subtract line 9 from line 8	10	**37,174**
11	Enter your Medicare wages (box 5 of Form W-2) from an S corporation in which you are a more-than-2% shareholder and in which the insurance plan is established	11	
12	Enter any amount from Form 2555, line 45, attributable to the amount entered on line 4 or 11 above	12	
13	Subtract line 12 from line 10 or 11, whichever applies	13	**37,174**
14	**Self-employed health insurance deduction.** Enter the **smaller** of line 3 or line 13 here and on Schedule 1 (Form 1040), line 17. **Don't** include this amount when figuring any medical expense deduction on Schedule A (Form 1040)	14	**18,480**

* If you used either optional method to figure your net earnings from self-employment from any business, don't enter your net profit from the business. Instead, enter the amount attributable to that business from Schedule SE (Form 1040), Part I, line 4b.

** **Earned income** includes net earnings and gains from the sale, transfer, or licensing of property you created. However, it doesn't include capital gain income.

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 56399C Form **7206** (2023)

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Because David is under 40 years of age, he can potentially deduct only $480 of his $2,500 long-term care insurance premiums in 2023 under the long-term care premium limitations of IRC §213(d)(10). Therefore, the total premiums David may potentially deduct before any SE income limitations is $18,480 ($18,000 health insurance premiums + $480 allowed long-term care insurance premium deductions).

Next, David calculates the SE income limitation to determine the maximum amount of premiums he can deduct. David's non-S corporation SE income is $50,000 ($40,000 Schedule C income + $10,000 Schedule F income). Therefore, 80% of David's non-S corporation SE income is derived from his Schedule C business ($40,000 Schedule C income ÷ $50,000 total non-S corporation SE income).

David's deduction for half of the SE tax is $3,533, as calculated on his prepared Schedule SE, *Self-Employment Tax* (not shown). Of this amount, $2,826 is allocable to his Schedule C business ($3,533 SE tax deduction × 80% allocation to Schedule C). With no SEP, SIMPLE, or qualified contributions in 2023, nor any foreign income earned from his Schedule C business, David calculates his SE income limitation as $37,174 ($40,000 Schedule C income − $2,826 SE deduction attributed to Schedule C). Therefore, David can deduct $18,480 of the premiums he paid in 2023 on his Form 1040 for the year.

Example 9. Use the same facts as **Example 8,** except David's health insurance plan and long-term care plan are established under Gurdlinger Industries. Long-term care coverage is paid through Gurdlinger's flexible spending arrangement. Pursuant to IRS Notice 2008-1, these premiums are added to only Form W-2 box 1, not subject to withholding. David's Forms W-2 and 7206 follow.

a Employee's social security number ***-**-6372	OMB No. 1545-0008	Safe, accurate, FAST! Use IRS e-file Visit the IRS website at *www.irs.gov/efile*

b Employer identification number (EIN) 37-9182736	**1** Wages, tips, other compensation 35500.00	**2** Federal income tax withheld 1000.00
c Employer's name, address, and ZIP code Gurdlinger Industries, Inc. 123 Main St. Denver, CO 80014	**3** Social security wages 15000.00	**4** Social security tax withheld 930.00
	5 Medicare wages and tips 15000.00	**6** Medicare tax withheld 217.50
	7 Social security tips	**8** Allocated tips
d Control number	**9**	**10** Dependent care benefits
e Employee's first name and initial: David — Last name: Miller — Suff. 201 N Front St. Cheyenne, WY 82001 **f** Employee's address and ZIP code	**11** Nonqualified plans	**12a** See instructions for box 12
	13 Statutory employee ☐ Retirement plan ☐ Third-party sick pay ☐	**12b**
	14 Other SCorp MP 20500.00	**12c**
		12d

15 State	Employer's state ID number	**16** State wages, tips, etc.	**17** State income tax	**18** Local wages, tips, etc.	**19** Local income tax	**20** Locality name

Form **W-2** Wage and Tax Statement **2023** Department of the Treasury—Internal Revenue Service

Copy B—To Be Filed With Employee's FEDERAL Tax Return.
This information is being furnished to the Internal Revenue Service.

For Example 9

Form **7206**

Department of the Treasury
Internal Revenue Service

Self-Employed Health Insurance Deduction

Attach to Form 1040, 1040-SR, or 1040-NR.
Go to *www.irs.gov/Form7206* for instructions and the latest information.

OMB No. 1545-0074
2023
Attachment Sequence No. **206**

Name(s) shown on return	Your taxpayer identification number
David Miller	***-**-6372

Note: Use a separate Form 7206 for each trade or business under which an insurance plan is established.

1	Enter the total amount paid in 2023 for health insurance coverage established under your business (or the S corporation in which you were a more-than-2% shareholder) for 2023 for you, your spouse, and your dependents. But **don't** include the following. See instructions	1	18,000
	• Amounts for any month you were eligible to participate in a health plan subsidized by your employer or your spouse's employer or the employer of either your dependent or your child who was under the age of 27 at the end of 2023. • Any amounts paid, not to exceed \$3,000, from retirement plan distributions that were **nontaxable** because you are a retired public safety officer. See instructions. • Any payments for qualified long-term care insurance (see line 2).		
2	For coverage under a qualified long-term care insurance contract, enter for each person covered the **smaller** of (a) or (b). **(a)** Total payments made for that person during the year. **(b)** The amount shown below. Use the person's age at the end of the tax year. \$480— if that person is age 40 or younger \$890— if age 41 to 50 \$1,790— if age 51 to 60 \$4,770— if age 61 to 70 \$5,960— if age 71 or older **Note:** The amount of long-term care premiums that can be included as a medical expense is limited by the person's age. **Don't** include payments for any month you were eligible to participate in a long-term care insurance plan subsidized by your employer or your spouse's employer, or the employer of either your dependent or your child who was under the age of 27 at the end of 2023. If more than one person is covered, figure separately the amount to enter for each person. Then enter the total of those amounts	2	480
3	Add lines 1 and 2	3	18,480
4	Enter your net profit* and any other earned income** from the trade or business under which the insurance plan is established. Don't include Conservation Reserve Program payments exempt from self-employment tax. If the business is an S corporation, skip to line 11	4	
5	Enter the total of all net profits* from Schedule C (Form 1040), line 31; Schedule F (Form 1040), line 34; or Schedule K-1 (Form 1065), box 14, code A, plus any other income allocable to the profitable businesses. Don't include Conservation Reserve Program payments exempt from self-employment tax. See the Instructions for Schedule SE (Form 1040). **Don't** include any net losses shown on these schedules	5	
6	Divide line 4 by line 5	6	
7	Multiply Schedule 1 (Form 1040), line 15, deductible part of self-employment tax, by the percentage on line 6	7	
8	Subtract line 7 from line 4	8	
9	Enter the amount, if any, from Schedule 1 (Form 1040), line 16, self-employed SEP, SIMPLE, and qualified plans, attributable to the same trade or business in which the insurance plan is established	9	
10	Subtract line 9 from line 8	10	
11	Enter your Medicare wages (box 5 of Form W-2) from an S corporation in which you are a more-than-2% shareholder and in which the insurance plan is established	11	15,000
12	Enter any amount from Form 2555, line 45, attributable to the amount entered on line 4 or 11 above	12	0
13	Subtract line 12 from line 10 or 11, whichever applies	13	15,000
14	**Self-employed health insurance deduction.** Enter the **smaller** of line 3 or line 13 here and on Schedule 1 (Form 1040), line 17. **Don't** include this amount when figuring any medical expense deduction on Schedule A (Form 1040)	14	15,000

* If you used either optional method to figure your net earnings from self-employment from any business, don't enter your net profit from the business. Instead, enter the amount attributable to that business from Schedule SE (Form 1040), Part I, line 4b.

** **Earned income** includes net earnings and gains from the sale, transfer, or licensing of property you created. However, it doesn't include capital gain income.

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 56399C Form **7206** (2023)

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Because the business for which the health insurance plan is established is an S corporation, David's SE income limitation is his Medicare wages reported on the Form W-2 he received from Gurdlinger, less any foreign earned income allocable to income earned from the S corporation. Therefore, David's SE income limitation is $15,000 ($15,000 Medicare wages from − $0 foreign earned income). David may deduct only $15,000 as a SE health insurance deduction on his Form 1040 for 2023. The remaining $3,480 may be deductible on Schedule A (Form 1040), *Itemized Deductions,* subject to limitations.

If David had established the long-term care plan through his Schedule C business, then he would have prepared a second Form 7206 and the entire $480 would have been deductible.

Practitioner Planning Tip

As the prior example illustrates, taxpayers with multiple sources of SE income should try to establish health insurance plans under the business with the higher expected annual income or Medicare wages. By doing this, taxpayers may be able to increase the limit on their SE health insurance deduction.

VARIOUS ENERGY CREDITS

CLEAN VEHICLE TAX CREDITS[66]

There are two tax credits available for **new clean energy** vehicles purchased or leased for business use primarily in the United States. **Used vehicles do not qualify** for these credits.

- The **clean vehicle credit** under IRC §30D (sole proprietorships and other business entities)
- The **commercial clean vehicle credit** under IRC §45W (businesses and tax-exempt organizations)

Basis in the assets are reduced by the credits allowed under these provisions.[67] To the extent the vehicle is used for business, the credits are subject to general business credits provisions calculated on Form 3800, *General Business Credit*. The taxpayer must file Form 8936, *Clean Vehicle Credits,* with their tax return for the year they place the vehicle in service to claim these credits.

Note. Schedule A (Form 8936), *Clean Vehicle Credit Amount*, is used to report specific vehicle information for each qualified vehicle purchased during the year. Consolidated information from each Schedule A is carried to Form 8936. Practitioners are advised to review the instructions carefully to ensure that credit limitations are applied properly.

66. *Clean vehicle tax credits.* May 29, 2024. IRS. [www.irs.gov/clean-vehicle-tax-credits] Accessed on Aug. 6, 2024.

67. IRC §§30D(f)(1) and 45W(d)(1).

IRC §30D Clean Vehicle Credit

At the time of sale, the seller must give the purchaser information about the vehicle's qualifications, including the maximum amount of credit applicable to the vehicle.[68] Sellers must also report the same information to the IRS. If the seller fails to do so, the vehicle will not be eligible for the credit. Accordingly, the seller is also required to provide a copy of the confirmation the IRS provides when it accepts the time-of-sale report.[69] Although the IRS permits taxpayers to file Form 8936 without having a copy of the time-of-sale report, the IRS will reject the return if the vehicle identification number (VIN) on Form 8936 does not match its database.

> **Note.** For information on specific vehicle requirements, see IRS Pub. 5866, *New Clean Vehicle Tax Credit Checklist*. For more information on seller reporting requirements, see IRS Pub. 5905, *Information for Consumers Purchasing a New or Used Clean Vehicle*.

To qualify for the credit, the taxpayer's modified adjusted gross income (AGI) may not exceed:

- $300,000 for married couples filing jointly or a surviving spouse
- $225,000 for heads of households
- $150,000 for all other filers

Taxpayers may use their modified AGI from the year they take delivery of the vehicle **or the year before,** whichever is less, even if their modified AGI exceeds the threshold in one of those years. The credit is nonrefundable and does not carry forward.

For vehicles placed in service after April 17, 2023, the amount of the credit has two components based upon certain energy standards. The seller is responsible for determining whether the vehicle qualifies for a maximum credit of $3,750 or $7,500. This information must be included with the time-of-sale report.

Vehicles placed in service by S corporations and partnerships are reported on Form 8936 by the passthrough entity. The credit is allocated among the shareholders or partners on the applicable Schedule K-1.[70] For partnerships, the amount of the credit is reported on Schedule K-1 (Form 1065), *Partner's Share of Income, Deductions, Credits, etc.,* box 15 with the code AY.[71] For S corporations, the amount of the credit is reported on Schedule K-1 (Form 1120-S), box 13 with the code AY.[72] The partner or shareholder then claims their portion of the credit on their individual tax return, subject to the modified AGI thresholds.[73]

> **Note.** For more information on Form 8936, see the 2024 *University of Illinois Federal Tax Workbook,* Chapter 13: New Developments.

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68. *Credits for new clean vehicles purchased in 2023 or after.* Aug. 5, 2024. IRS. [www.irs.gov/credits-deductions/credits-for-new-clean-vehicles-purchased-in-2023-or-after] Accessed on Aug. 6, 2024.

69. *How to claim a clean vehicle tax credit.* Jun. 6, 2024. IRS. [www.irs.gov/credits-deductions/how-to-claim-a-clean-vehicle-tax-credit] Accessed on Aug. 6, 2024.

70. Treas. Reg. §1.30D-4(c)(2).

71. Instructions for Form 8936.

72. Ibid.

73. *Topic B — Frequently asked questions about income and price limitations for the New Clean Vehicle Credit — Q2. How do the income thresholds apply to my partnership's purchase and use of a new clean vehicle?* Mar. 31, 2023. IRS. [www.irs.gov/newsroom/topic-b-frequently-asked-questions-about-income-and-price-limitations-for-the-new-clean-vehicle-credit] Accessed on Aug. 20, 2024.

IRC §45W Commercial Clean Vehicle Credit[74]

Businesses that buy a qualified commercial clean vehicle may qualify for a clean vehicle tax credit of up to $40,000 under §45W. The vehicle must qualify as a depreciable business asset and meet certain battery capacities. The credit is nonrefundable, but it can be carried forward as a general business credit. Form 8936 is used to calculate the applicable credit.

The credit is limited to the **smallest** of the following three amounts.

1. An amount based on the gross vehicle weight rating (GVWR) of the vehicle.
   a. **$7,500** for vehicles with a GVWR of less than 14,000 pounds (typically cars, vans, trucks, and similar passenger-sized vehicles)
   b. **$40,000** for vehicles with a GVWR of 14,000 pounds or more (typically larger vehicles like school buses and semi-trucks)
2. The applicable percentage of the taxpayer's basis in the vehicle based on engine type:
   a. **30% of basis** for a vehicle that **is not powered** by a gasoline or diesel internal combustion engine, such as an electric vehicle (EV) or fuel cell electric vehicle (FCEV).
   b. **15% of basis** for a vehicle that **is powered** (even partially) by a gasoline or diesel internal combustion engine, such as a plug-in-hybrid electric vehicles (PHEV).
3. The incremental cost of the vehicle as determined by the Department of Energy for the appropriate class of vehicle. For 2024, these costs are:
   a. **$7,000** for compact PHEVs with a GVWR of less than 14,000 pounds
   b. **$7,500** for all street electric vehicles, **other** than compact car PHEVs, with a GVWR of less than 14,000 pounds
   c. **$40,000** for all other vehicles with a GVWR of **14,000 pounds or more**

PHEVs with GVWR under 14,000 pounds must have a battery capacity of at least 7 kilowatt hours (kWh) to qualify for the credit. Those over 14,000 pounds GVWR must have a battery capacity of at least 15 kWh. EVs and FCEVs are not subject to battery capacity limitations.

IRC §179D COMMERCIAL BUILDINGS ENERGY-EFFICIENCY TAX DEDUCTION

IRC §179D allows a tax deduction for energy-efficient commercial building property (EECBP) or energy-efficient commercial building retrofit property (EEBRP) placed in service during the year. The deduction is available to both business owners and designers and incentivizes businesses to focus on environmental sustainability and energy efficiency efforts. The deduction was first available as of January 1, 2006, enacted by the Energy Policy Act of 2005, and was later amended and made permanent for tax years beginning after December 31, 2020, with the Consolidated Appropriations Act of 2021.[75] It was expanded in August 2022 with the Inflation Reduction Act of 2022 for which changes apply to qualifying property placed in service after December 31, 2022.[76]

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74. *Commercial Clean Vehicle Credit.* Aug. 5, 2024. [www.irs.gov/credits-deductions/commercial-clean-vehicle-credit] Accessed on Aug. 6, 2024.

75. *Energy Policy Act of 2005,* PL 109-58; *Consolidated Appropriations Act of 2021,* PL 116-260, §102(c)(2).

76. *Inflation Reduction Act of 2022*, PL 117-169, §13303.

Practitioner Planning Tip

Prior to 2020, §179D was only temporarily extended for a few periods of time, making it more difficult for businesses to plan to utilize the deduction. However, since §179D was made permanent in 2020,[77] it is easier for businesses to plan ahead to qualify for the deduction, which can be a discussion point for clients with commercial buildings.

Additionally, some localities are starting to require commercial buildings meet certain emission standards or face potential penalties.[78] This presents a good planning opportunity for clients in these jurisdictions to ensure they qualify for the §179D deduction.

Although this appears to be a significant tax savings opportunity, there may be adverse tax consequences upon future disposition. The election under §179D converts IRC §1250 property to IRC §1245 (a)(3)(C) property.[79]

Eligibility[80]

Prior to the new rules enacted in 2022, the §179D deduction was available to owners of qualified commercial buildings as well as designers of energy property that were installed in government-owned buildings. Under §179D(d)(3), tax-exempt entities may have been allowed to allocate their deduction to the property designer. With the changes to the deduction, the list of tax-exempt entities that can allocate their deduction to designers expanded. Beginning January 1, 2023, the deduction is now available to the following.[81]

- Owners of qualified commercial buildings.
- Designers of EECBP/EEBRP installed in buildings owned by specified tax-exempt entities, including certain government entities, Indian tribal governments, Alaska Native Corporations, and other tax-exempt organizations. The deduction for designers is allocated from the entity.

Qualified Commercial Buildings[82]

To qualify for the deduction, EECBP must be depreciable or amortizable property installed on or in a building located in the United States and meet the standards of the specified Reference Standard 90.1 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) and the Illuminating Engineering Society of North America. In addition, the property must also be installed as part of any of the following.

- Interior lighting systems
- Heating, cooling, ventilation, and hot water systems
- Building envelope

77. *Consolidated Appropriations Act of 2021,* PL 116-260, §102(c)(2).

78. New York City Local Law 97.

79. IRC §1245(a)(2)(C).

80. IRC §179D.

81. *Inflation Reduction Act of 2022*, PL 117-169, §13303; *Energy efficient commercial buildings deduction.* Jun. 6, 2024. IRS. [www.irs.gov/credits-deductions/energy-efficient-commercial-buildings-deduction#building] Accessed on Jun. 27, 2024.

82. IRC §179D(c).

The property must be certified as installed as part of a plan to reduce the total annual energy and power costs for the requisite system by 25% or more when compared to a referential building that meets the minimal criteria of Reference Standard 90.1.

EEBRP must be installed in a qualified building located in the United States and originally placed in service for at least five years prior to establishing a qualified retrofit plan for the building. It must also be depreciable or amortizable property and certified as meeting certain energy-saving criteria. EEBRP must be installed on or in a qualified building as part of any of the following.[83]

- Interior lighting systems
- Heating, cooling, ventilation, and hot water systems
- Building envelope

Calculating the Deduction[84]

With the changes to the deduction made with the Inflation Reduction Act of 2022, the maximum deduction limit is different for property placed in service before January 1, 2023, and property placed in service after this date.

Deduction for 2023 and After. For property placed in service on or after January 1, 2023, the deduction for EECBP is the lesser of the following.

- The cost of the installed property or
- The savings per square foot, calculated as:
  - $0.50 per square foot for a building with 25% energy saving, indexed for inflation ($0.57 for 2024)[85]
  - Plus $0.02 per square foot for each percentage point of energy savings above 25%
  - Up to a maximum of $1.00 per square foot for a building with 50% energy savings, indexed for inflation ($1.13 for 2024)[86]

The maximum deduction **must be reduced by expenses under §179D** deducted in the prior three years (or four years for an allocated deduction) before the deduction for the current year is calculated.

83. IRC §179D(f).

84. IRC §179D(b).

85. Rev. Proc. 2023-34, 2023-48 IRB 1287.

86. Ibid.

Additionally, starting in 2023, if local prevailing wages are paid and apprenticeship criteria are met, the maximum deduction amount increases to five times the savings per square foot. The maximum deductions amounts are shown next from the instructions for Form 7205, *Energy Efficient Commercial Buildings Deduction*.

Tax Year	Maximum Full Amount Allowed	Maximum Partial Amount Allowed
All years beginning before January 1, 2021	$1.80	$0.60
For tax years beginning on or after January 1, 2021	$1.82	$0.61
For tax years beginning on or after January 1, 2022	$1.88	$0.63
	Maximum Amount Allowed—Line 1(d) checked	**Maximum Amount Allowed—Line 1(d) not checked**
For tax years beginning on or after January 1, 2023	$5.36	$1.07
For tax years beginning on or after January 1, 2024	$5.65	$1.13

> **Note.** Taxpayers are exempt from the local prevailing wage and apprenticeship requirements if construction began before January 30, 2023.[87]

Deduction for 2022 and Before. For properties placed in service before January 1, 2023, the maximum deduction is $1.80 per square foot (indexed for inflation) for buildings with 50% energy savings. A partial deduction is available for certain property. Additionally, all expenses deducted in previous years reduce the maximum deduction before calculating the current year's deduction.

Basis Reduction.[88] If a deduction is allowed for any energy efficient commercial building property, the basis of such property must be reduced by the allowed deduction.

ASHRAE Standards

The benchmark by which energy savings are measured are the latest ASHRAE standards affirmed at least four years before the property is placed in service. Accordingly, buildings beginning construction on or after January 1, 2023, with energy property placed in service on or after January 1, 2027, will be measured against ASHRAE Standard 90.1-2019, and buildings that began construction before January 1, 2023, or are placed in service before January 1, 2027, will use ASHRAE Standard 90.1-2007.[89] The IRS announced ASHRAE Standard 90.1-2022 will serve as the applicable reference standard for EECBP that began construction after December 31, 2022, and is placed in service after December 31, 2028.[90]

87. IRS Notice 2022-61, 2022-52 IRB 560.

88. IRC §179D(e).

89. Ibid.

90. IRS Ann. 2024-24, 2024-24 IRB 1675.

Reporting

The deduction is reported on Form 7205, which was revised in December 2023 to account for the changes made by the Inflation Reduction Act of 2022 for property placed in service after December 31, 2022. For properties placed in service prior to December 31, 2022, the previous version of Form 7205 (the December 2022 version) should be used to report the deduction.[91]

The deduction is then reported on the taxpayer's appropriate business return as follows.

- Form 1040, *U.S. Individual Income Tax Return,* Schedule C, line 27b
- Form 1065, *U.S. Return of Partnership Income*, line 20
- Form 1120, line 25
- Form 1120-S, line 19

Practitioner Planning Tip

Taxpayers eligible to claim the §179D deduction must acquire a certification from a qualified licensed engineer or contractor. Information from the certification is included on Form 7205, part III, *Certification Information for Each Property Listed in Part I*. The certification should be retained for audit purposes.[92]

91. 2023 Instructions for Form 7205.

92. Ibid.

Example 10. Sun Corporation constructed and placed in service an 80,000-square-foot office building with EECBP on July 15, 2023. The cost of the energy-efficient systems totaled $400,000 and resulted in 35% energy cost savings when compared to a reference building that meets the minimum requirements of ASHRAE 90.1. The prevailing wage and apprenticeship requirements for this project were met.

Using the following worksheet for Form 7205, Sun calculates a $3.78 deduction per square foot. The square foot rate ($3.78) is multiplied by the total square **footage** of the building (80,000) to calculate the potential §179D deduction of $302,400.

Worksheet for Form 7205, Line 1, Column (f) ***(Complete for each building)***

Keep for Your Records

1.	Enter the percentage from Part I, line 1(c)		1. **35%**
2a.	If the % is less than 25%, STOP; you cannot claim the deduction for this building. If the % is 25% or greater, enter the percentage as a decimal, rounded to two decimal places (e.g. 26.22% enter as "0.26")	2a. **.35**	
2b.	Subtract 0.25 from line 2a and enter the result here	2b. **.10**	
2c.	Multiply line 2b by 2	2c. **.20**	
2d.	Add 0.54 to line 2c and enter the result as a dollar amount (e.g. 1.04, enter as $1.04)	2d. **.74**	
3.	If the amount on line 2d is greater than $1.07, enter $1.07. Otherwise, enter the amount from line 2d		3. **.74**
4a.	If the box on Form 7205, line 1, column (d), is **checked**, enter the amount from line 2b of this worksheet here. If the box on Form 7205, line 1, column (d), is **not checked**, skip to line 5 and enter the amount from line 3 of this worksheet on line 5	4a. **.10**	
4b.	Multiply line 4a by 11	4b. **1.10**	
4c.	Add 2.68 to line 4b and enter the result as a dollar amount (e.g. 5.36, enter as $5.36)	4c. **3.78**	
4d.	If the amount on line 4c is greater than $5.36, enter $5.36. Otherwise, enter the amount from line 4c	4d. **3.78**	
5.	If the box on Form 7205, line 1, column (d), is **checked**, enter the amount from line 4d of this worksheet here. If the box on Form 7205, line 1, column (d), is **not checked**, enter the amount from line 3 of this worksheet here. Also enter the amount from line 5 on Form 7205, line 1, column (f)		5. **3.78**

Sun did not claim a deduction in a prior year and the deduction per square foot is less than the maximum amount per square foot allowed for 2023 ($5.36). Therefore, Sun does not need to make any adjustments to the current potential deduction.

The total cost of placing the EECBP in service ($400,000) is then compared to the potential deduction amount ($302,400). The balance of $97,600 ($400,000 – $302,400) is subject to depreciation as 39-year property. The lesser of the total cost and potential deduction amount ($302,400) is the total 2023 §179D deduction for the building owner. Sun's Form 7205 follows.

For Example 10

Form **7205** (Rev. December 2023) Department of the Treasury Internal Revenue Service

Energy Efficient Commercial Buildings Deduction

Attach to your tax return.
Go to *www.irs.gov/Form7205* for instructions and the latest information.

OMB No. 1545-2004

Name(s) shown on return	Identifying number
Sun Corporation	**21-5436789**

Claiming deduction as (check one): ☒ Building owner ☐ Designer of energy efficient property (EEP)

Part I Building and EEP Information (see instructions)

1	**(a)** Address of building	**(b)** Date EEP placed in service (see instructions)	**(c)** Energy efficient commercial building property (EECBP) system computed energy savings percentage, or energy efficient building retrofit property (EEBRP) energy use intensity reduction	**(d)** Check if Increased Deduction Amount criteria are met (see instructions)	**(e)** Check if EEBRP was installed under a Qualified Retrofit Plan	**(f)** Potential amount per square foot	**(g)** Building square footage	**(h)** Potential section 179D deduction amount (multiply column 1(f) by column 1(g))
A	**123 Main Street New York, NY 10022**	**7/15/23**	**35%**	☒	☐	**3.78**	**90,000**	**302,400**
B				☐	☐			
C				☐	☐			
D				☐	☐			

Part II Computation of Energy Efficient Commercial Buildings Deduction Amount (see instructions)

2	**(a)** Total per square foot amount claimed in prior years (see instructions)	**(b)** Subtract column 2(a) from the maximum amount allowed (see instructions)	**(c)** Check if the amount in column 2(b) is greater than or equal to column 1(f)	**(d)** If column 2(c) is checked, enter amount from column 1(h), skip column 2(e) and column 2(f) and go to column 2(g)	**(e)** Check if the amount from column 2(b) is less than the amount in column 1(f)	**(f)** If column 2(e) is checked, multiply column 2(b) by column 1(g)
A	**0**	**5.36**	☒	**302,400**	☐	
B			☐		☐	
C			☐		☐	
D			☐		☐	

	(g) Cost of EEP placed in service during the tax year (see instructions if building ownership percentage is less than 100%)	**(h)** Enter the greater of column 2(d) or column 2(f) (see instructions if building ownership percentage is less than 100%)	**(i)** Enter the lesser of column 2(g) or column 2(h)	**(j)** Designers enter the amount of the section 179D deduction allocated to you as the designer (see instructions)	**(k)** Section 179D deduction for the building (designers, enter the lesser of column 2(i) or column 2(j); building owners, enter the amount from column 2(i))
A	**400,000**	**302,400**	**302,400**		**302,400**
B					
C					
D					

3	**Total section 179D deduction.** Add amounts from column 2(k). Enter here and on the appropriate line of your return. See instructions	3	**302,400**

Part III Certification Information for Each Property Listed in Part I (see instructions)

4	**(a)** Name of Qualified Individual completing certification	**(b)** Date of certification	**(c)** Employer of Qualified Individual	**(d)** Address of Qualified Individual
A				
B				
C				
D				

Part IV Designer Allocation Information for Each Property Listed in Part I (to be completed by Designer only)

5	**(a)** Identified owner of building	**(b)** Date of allocation	**(c)** Name of building owner's authorized representative completing allocation	**(d)** Address of building owner's authorized representative
A				
B				
C				
D				

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 56398R Form **7205** (Rev.12-2023)

IRC §§48 ENERGY CREDIT AND 48E CLEAN ELECTRICITY INVESTMENT CREDIT

The IRC §48 energy credit provides a tax incentive for businesses to invest in renewable eligible energy properties, including solar, wind, geothermal, and other renewable technologies. Businesses investing in eligible projects can receive a tax credit for a percentage of the project's eligible costs. The energy credit was originally enacted as a part of the Energy Tax Act of 1978 and was modified and expanded since then, including by the Energy Policy Act of 2005 and, most recently, as a part of the Inflation Reduction Act of 2022.[93]

The §48 energy credit will end December 31, 2024.[94] However, the §48 energy credit will be replaced with the IRC §48E tax credit.

IRC §48 Tax Credit

The §48 tax credit is a **business tax credit** available to taxpayers that install qualifying new energy property during the tax year.

To claim the credit, the energy property must be placed in service during the tax year and meet the performance and quality standards in place when the property was acquired. It must also be property for which depreciation or amortization is allowed and be either constructed or reconstructed by the taxpayer or acquired by the taxpayer for original use. Qualified energy property for purposes of this credit includes the following.

- Solar energy property which generates electricity or illuminates a structure
- Geothermal energy property
- Qualified fuel cell property or qualified microturbine property
- Combined heat and power system property
- Qualified small wind energy property
- Waste energy recovery property
- Geothermal heat pump system property
- Energy storage technology property
- Qualified biogas property
- Microgrid controller property
- Qualified investment credit facility treated as energy property under §48(a)(5)
- Clean hydrogen production facility treated as energy property under §48(a)(15)

> **Note.** Property that is part of a production credit allowed under IRC §45 for the taxable year or a prior taxable year is **not eligible** for the §48 tax credit.[95]

93. *Energy Tax Act of 1978,* PL 95-618; *Energy Policy Act of 2005*, PL 109-58; *Inflation Reduction Act of 2022,* PL 117-169, §13102.

94. Per the definitions of applicable energy property disclosed in IRC §§48(c)(6)(D), (c)(7)(C), and (c)(8)(C).

95. IRC §48(a)(3).

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Calculating the Credit. The §48 credit is somewhat complicated to calculate, so a 4-step synopsis is provided first, followed by additional context.

To receive the **increased credit** amount for each component of the calculation, the project must meet **any** of the following three conditions.

- Project meets the prevailing wage and apprenticeship requirements in §§48(a)(10)(A) and (11)[96]
- Project began construction after January 29, 2023
- Project has a maximum net output less than one megawatt of electrical or thermal energy

The credit calculation steps are as follows.

Step 1. Does the project meet any of the previous three conditions?

If **Yes,** the base credit is **30%**

If **No,** the base credit is **6%**

Step 2. Is the project placed in service in an energy community?

If **Yes,** and the project meets any of the three conditions, add **10%**

If **Yes,** and the project does **not** meet any of the three conditions, add **2%**

Step 3. Is the project a qualified solar and wind facility located in a low-income community or on Indian land?

If **Yes,** is the project also part of a qualified low-income residential building project **or** qualified low-income economic benefit project **and** have a maximum net output of less than five megawatts?

If **Yes,** and the project meets any of the three conditions, add **20%**

If **Yes,** and the project does **not** meet any of the three conditions, add **4%**

If **No,** and the project meets any of the three conditions, add **10%**

If **No,** and the project does **not** meet any of the three conditions, add **2%**

Step 4. Does the project meet domestic content requirements?

If **Yes,** and the project meets any of the three conditions, add **10%**

If **Yes,** and the project does **not** meet any of the three conditions, add **2%**

The maximum credit is **70%** if the project meets any of the three conditions, and **14%** if it does not meet any of the three conditions.

96. See IRS Notice 2022-61, 2022-52 IRB 560.

The credit is generally calculated as 6% (base rate) of the basis for the qualified energy property. The Inflation Reduction Act of 2022 introduced an increased credit amount, multiplying the base credit for each energy property placed in service during the year by five if **any** of the following three conditions are met.[97]

1. Project meets the prevailing wage and apprenticeship requirements in §§48(a)(10)(A) and (11)[98]
2. Project began construction after January 29, 2023
3. Project has a maximum net output less than one megawatt of electrical or thermal energy

The credit can be increased by a bonus credit rate of 10% (2% if only qualifies for base rate) if the project is placed in service during the year in an energy community.[99] **An energy community** is defined as:[100]

- A brownfield site,
- A metropolitan statistical area or non-metropolitan statistical area which has (or had at any time after December 31, 2009) a 0.17% or greater direct employment or 25% or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas and has an unemployment rate at or above the national average rate for the previous year, or
- A census tract in which, after December 31, 1999, a coal mine closed, or after December 31, 2009, a coal-fired electric generating unit has been retired.

The credit can also be increased by another 10% (2% if only qualifying for the base rate) bonus credit rate for **qualified solar and wind facilities** located in a **low-income community or on Indian land.** Additionally, the credit can be increased to 20% (4% if only qualifying for the base rate) if the qualified solar and wind facilities are part of a **qualified low-income residential building project** or a qualified low-income economic benefit project and have a maximum net output of less than five megawatts.[101]

Practitioner Planning Tip

There are energy capacity limits based on categories and tax year.[102] Businesses looking to claim this bonus credit must apply online on the Department of Energy (DOE)'s website. Applicants are reviewed by the DOE and then approved or rejected by the IRS. Only individuals who can legally bind the organization are allowed to apply. Practitioners are not allowed to apply on behalf of their clients but should be aware of the submission windows for applications for clients applying for the bonus credit and remind clients to apply.

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97. IRC §48(a)(9)(B).
98. See IRS Notice 2022-61, 2022-52 IRB 560.
99. IRC §48(a)(14).
100. IRC §45(b)(11)(B).
101. IRC §48(e)(2).
102. *Low-Income Communities Bonus Credit Program*. Office of Energy Justice and Equity. [www.energy.gov/justice/low-income-communities-bonus-credit-program] Accessed on May 20, 2024.

IRC §48 also provides for another 10% (2% if only qualifying for the base rate) bonus credit if **domestic content requirements** are met. This bonus credit requires taxpayers to certify that any steel, iron, or manufactured product a part of the facility was produced in the United States.[103]

> **Note.** For a summary of the values of the investment tax credit and the production tax credit (discussed next), see the U.S. DOE's chart at **uofi.tax/24x9x1** [www.energy.gov/sites/default/files/2023-05/Summary-ITC-and-PTC-Values-Chart-2023.png].

Domestic Content Certification.[104] Taxpayers must submit a domestic content certification statement to the IRS for each applicable project for which they are claiming a §48 credit asserting that any steel or iron items or manufactured products that are subject to the Steel or Iron Requirement or Manufactured Product[105] were produced in the United States. The statement must be attached to Form 8835, *Renewable Electricity Production Credit,* or other applicable form along with the taxpayer's annual return for the first tax year in which the taxpayer reports the credit for the applicable project. Each subsequent tax year, the taxpayer must attach a copy of the original statement with their annual return.

The domestic content certificate statement must include the following information for each project.

- Whether the project is a qualified facility, energy project, or energy storage technology
- The specific type of project
- The geographic coordinates (and address if applicable) of the project
- The date the project was placed in service
- The credit amount in the first tax year for the project
- Any additional required information
- Signature by a person with legal authority to bind the taxpayer
- The statement, "Under penalties of perjury I declare that I have examined the information contained in this Domestic Content Certification Statement and to the best of my knowledge and belief, it is true, correct, and complete."

A taxpayer must certify that an applicable project meets the domestic content requirement as of the date the project is **placed in service** (i.e., placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business or in the production of income).

Reporting.[106] The credit is claimed on Form 3468, *Investment Credit,* which was revised to incorporate the changes to the credit included in the Inflation Reduction Act of 2022. This amount is then carried to Form 3800, part III, line 4a, and is eligible for a 3-year carryback.[107]

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103. IRC §45(b)(9)(B).
104. IRS Notice 2023-38, 2023-22 IRB 872.
105. See IRC §45(b)(9)(B).
106. 2023 Instructions for Form 3468.
107. IRC §39(a)(4).

Example 11. A qualified solar facility with a basis of $50,000 is placed in service on May 12, 2023. The project does not meet the prevailing wage and apprenticeship requirements in §§48(a)(10)(A) and (11) and has a net output of more than one megawatt. It also is not located in an energy community, a low-income community, Indian land, or part of a low-income building project.

Because the project does not meet the requirements for any of the increased credit amounts, the credit is limited to the base rate of 6% of the basis of the property ($50,000). The §48 credit amount for this facility for tax year 2023 equals $3,000 ($50,000 basis × 6% base rate).

Example 12. Use the same facts as **Example 11,** except the project **does** meet the prevailing wage and apprenticeship requirements in §§48(a)(10)(A) and (11). Because the project meets the prevailing wage and apprenticeship requirements, the rate for the credit is 30%, making the §48 credit amount for this facility for tax year 2023 equal to $15,000 ($50,000 basis × 30% rate).

Example 13. ProzEnergy Corp. began construction of a qualified solar facility on March 1, 2023, with a basis of $50,000, and placed it in service on May 12, 2023. The project has a net output of 10 kWh (less than one megawatt) of energy which is equal to the nameplate capacity allocated to it. The project meets the prevailing wage and apprenticeship requirements in §§48(a)(10)(A) and (11) and domestic content requirements. It is located in an energy community as part of a low-income economic benefit project. ProzEnergy Corp. received certification from a qualified licensed engineer for the facility.

Because the project meets prevailing wage and apprenticeship requirements, it qualifies for the increased credit rate of 30%. The project also qualifies for the 20% bonus credit rate because it was part of a low-income economic benefit project and has a net output of energy equal to the nameplate capacity allocated to it. It also qualifies for both the domestic content requirement bonus and energy community bonus credits of 10% each. The total 2023 §48 credit amount for this $50,000 facility is equal to $35,000, as shown on the following Form 3468.

For Example 13

Form **3468** — Department of the Treasury, Internal Revenue Service

Investment Credit

Attach to your tax return.
Go to *www.irs.gov/Form3468* for instructions and the latest information.

OMB No. 1545-0155 | **2023** | Attachment Sequence No. **174**

Name(s) shown on return: **ProzEnergy Corp.**
Identifying number: **44-3216789**

Part I — Facility Information (see instructions)

A ☐ Check this box if you have petitioned for provisional emission rates and have also received written approval from a certified third-party verifier or a letter from the IRS . . . . ☐

1 Description of the facility: **Solar facility**

2a IRS-issued registration number for the facility: **CM2YB12K2211**

b Type of facility (solar, geothermal, etc.): **Solar**

3 Location of facility, including coordinates (latitude and longitude).

a Address of the facility (if applicable): **127 Main Street, New York, NY 10022**

b Coordinates (if applicable). Latitude: **+ 40.714273** Longitude: **- 074.005970**

Enter a "+" (plus) or "-" (minus) sign in the first box. Enter a "+" (plus) or "-" (minus) sign in the first box.

4 Date construction began (MM/DD/YYYY): **3/1/2023**

5 Date placed in service (MM/DD/YYYY): **5/12/2023**

6 Is the facility part of an expansion of an existing closed-loop biomass or open-loop biomass facility? ☐ Yes ☒ No

7 Does the project produce a net output of less than 1 megawatt (MW) alternating current (ac), or equivalent thermal energy?

a ☒ Yes.
b ☐ No.
c ☐ Not applicable, the facility doesn't produce electricity.

8 Does the project satisfy the prevailing wage and apprenticeship requirements?

a ☒ Yes, and sections 48C(e)(5) and (6) apply, and it was declared as provided per Notice 2023-18.
b ☐ Yes, and either (i) section 48(a)(9)(B)(ii) applies if construction began before January 29, 2023; or (ii) sections 48(a)(10) and (11) apply.
c ☐ No.
d ☐ Not applicable.

9 Does the property qualify for a domestic content bonus credit per section 45(b)(9)(B)?

a ☒ Yes, and section 48(a)(9)(B) is satisfied (10% bonus). Attach the required information.
b ☐ Yes, and section 48(a)(9)(B) is **not** satisfied (2% bonus). Attach the required information.
c ☐ No.

10 Does the project qualify for an energy community bonus credit per section 48(a)(14)?

a ☒ Yes, and section 48(a)(9)(B) is satisfied (10% bonus).
b ☐ Yes, and section 48(a)(9)(B) is **not** satisfied (2% bonus).
c ☐ No.

11 Does the project qualify as a solar or wind facility in connection with low-income communities bonus credit per section 48(e)(2)?

a ☐ Yes, and the facility is located in a low-income community per section 45D(e) (10% bonus).
b ☐ Yes, and the facility is located on Indian land per section 2601(2) of P.L. 102-486 (10% bonus).
c ☐ Yes, and the facility is part of a qualified low-income residential building project facility per section 48(e)(2)(B) (20% bonus).
d ☒ Yes, and the facility is part of a qualified low-income economic benefit project facility per section 48(e)(2)(C) (20% bonus).
e If "Yes" to 11a, 11b, 11c, or 11d, enter your 48(e) Control Number: **5478421**
f ☐ No.

12 Enter the nameplate capacity or storage capacity.

a ☒ Solar energy property or facility nameplate capacity: **10** kilowatt (kW) direct current (dc)
b ☐ Small wind energy property or facility nameplate capacity: ________ kW
c ☐ Wind energy property or facility nameplate capacity: ________ kW
d ☐ Energy storage power capacity rating ________ kW, and energy storage capacity, if applicable, associated with the energy property or facility: ________ kWh (hour)
e ☐ Solar or wind nameplate capacity is 5MW ac or more
f ☐ Not applicable.

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 12276E Form **3468** (2023)

For Example 13

Part I Facility Information (see instructions) *(continued)*

13 Enter the nameplate capacity, alternating current (ac) for all electricity generating energy properties or facilities in kW.

a ☒ Solar energy property: 10
b ☐ Wind energy property: ______
c ☐ Other: ______ ______
d ☐ Not applicable.

14 Are you claiming the investment credit as a lessee based on a section 48(d) (as in effect on November 4, 1990) election? ☐ Yes ☒ No
If "Yes," complete lines 14a through 14e. If you acquired more than one property as a lessee, attach a statement showing the information below separately reported for each property.

a Name of lessor: ______
b Address of lessor: ______
c Description of property: ______
d Amount for which you were treated as having acquired the property . . . . $ ______
e Income inclusion amount reported for tax year under Regulations section 1.50-1 . . . . $ ______

Part II Qualifying Advanced Coal Project Credit and Qualifying Gasification Project Credit

Section A—Qualifying Advanced Coal Project Credit Under Section 48A (see instructions)

...alified investment in integrated gasificatio...

g ...

2 Add lines 1c, 1e, and 1g 2

Section B—Solar Energy Credit (see instructions)

3a	Enter the basis of property using solar illumination (including electrochromic glass) or either solar energy property or solar facility placed in service during the tax year	3a	50,000		
b	If you checked the box in Part I, line 7a or 8b, enter 30%. If you checked the box in Part I, line 7b or 8c, enter 6%	3b	30 %		
c	Multiply line 3a by line 3b			3c	15,000

Caution: Property described under section 48(a)(3)(ii) does not qualify for the solar facility in connection with low-income community bonus credit under section 48(e). If completing Section B for a section 48(a)(3)(ii) property, skip lines 3d through 3j, and go to line 3k.

d	If you checked the box in Part I, line 11a or 11b, enter 10%. If you checked the box in Part I, line 11c or 11d, enter 20%. However, if you checked the box in Part I, line 11f; or Part I, line 12e (in relation to lines 11a, 11b, 11c, or 11d), you don't qualify for the bonus credit. In that situation, enter 0% here, go to line 3j and enter -0- (zero), and then go to line 3k	3d	20 %
e	Enter the nameplate capacity you were allocated in the allocation letter	3e	10
f	If the entry on Part I, line 12a, equals the entry on line 3e, multiply line 3a by line 3d and go to line 3j. Otherwise, continue to line 3g	3f	10,000
g	If the entry on Part I, line 12a, is more than the entry on line 3e, divide line 3e by Part I, line 12a	3g	
h	Multiply line 3d by line 3g	3h	

Form **3468** (2023)

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For Example 13

Form 3468 (2023) Page **4**

Part VI **Energy Credit Under Section 48** *(continued)*

Section B—Solar Energy Credit (see instructions) *(continued)*

i	Multiply line 3a by line 3h	**3i**					
j	If Part I, line 12a, is more than the entry on line 3e, enter the amount from line 3i. Otherwise, enter the amount from line 3f			**3j**	10,000		
k	If you checked the box in Part I, line 9a, enter 10%. If you checked the box in Part I, line 9b, enter 2%. Otherwise, go to line 3m	**3k**	10 %				
l	Multiply line 3a by line 3k			**3l**	5,000		
m	If you checked the box in Part I, line 10a, enter 10%. If you checked the box in Part I, line 10b, enter 2%. Otherwise, go to line 4.	**3m**	10 %				
n	Multiply line 3a by line 3m			**3n**	5,000		
4	Add lines 3c, 3j, 3l, and 3n					**4**	35,000

Section C—Qualified Fuel Cell Property (see instructions)

asis of property using qualified fuel

IRC §48E

Replacing the §48 tax credit is the §48E tax credit, a new technology-neutral tax credit available to projects placed in service **after December 31, 2024.** The §48E investment tax credit is available to commercial taxpayers who place qualified energy property in service after December 31, 2024.

The new §48E eliminates the multiple categories of energy property outlined in the §48 credit requirements. The §48E credit will apply for the following.

- Any qualified facility which is defined as any facility which is used for the generation of electricity for which the greenhouse gas emissions rate is not greater than zero
- Any energy storage technology

Calculating the Credit. The new credit will have the same 6% base rate that can be increased to five times the amount (30%) if the project meets the prevailing wage and apprenticeship requirements.[108]

Similar to the §48 bonus credit, the §48E credit can be increased by 10% (2% if only qualifies for base rate) if the project is located in an energy community and if it meets domestic content requirements.[109]

The credit can also be increased by 10% (2% if only qualify for base rate) if the qualified facility is located in a low-income community or on Indian land. Additionally, it can be increased by 20% (4% if only qualify for base rate) if the facility is part of a qualified low-income residential building project or a qualified low-income economic benefit project.[110]

> **Note.** These 10% bonus credits are for **commercial property** only, and not for residential homes.[111] For more information on the energy efficient home improvement credit and other individual energy credits, see the 2023 *University of Illinois Federal Tax Workbook,* Chapter 11: New Developments.

Taxpayers claiming credits under §48E generally must reduce the basis in the underlying property by 50% of the claimed credit.[112]

108. IRC §48E(a)(2).
109. IRC §48E(a)(3).
110. IRC §48E(h).
111. IRC §48E(b)(3).
112. IRC §50(c)(3).

TRANSFERABILITY[113]

The Inflation Reduction Act of 2022 provides two ways for a taxpayer to monetize tax credits with the addition of IRC §§6417 and 6418. IRC §6417 offers a "direct pay" election whereby qualifying entities could receive a cash payment from the government in lieu of tax credits. IRC §6418 allows qualifying entities to sell the tax credits to unrelated third parties. In April of 2024, the IRS released final regulations under §6418.

The IRS uses elective pay as a means for making certain clean energy tax credits refundable and treats the elective payment amount as a tax payment. It is then counted as an overpayment and refunded to the entity filing the return. Certain entities that cannot use elective pay can transfer all or a portion of credits to an unrelated party in exchange for cash.

A taxpayer eligible for elective payments of energy credits is defined under §6417(d)(1)(A) and is generally tax-exempt organizations and government entities. For most other taxpayers, §6418 allows for transferability more like a sale of the credits.

If the applicable investment credit property is disposed of or no longer is investment credit property to the eligible taxpayer during the 5-year recapture period, the eligible taxpayer must provide notice of the credit recapture to the transferee taxpayer. The transferee taxpayer in turn must provide notice of the recapture amount to the eligible taxpayer.[114]

Eligible Credits

Eligible credits that can be transferred include the following.

- Energy credit[115]
- Clean electricity investment credit[116]
- Renewable electricity production credit[117]
- Clean electricity production credit[118]
- Zero-emission nuclear power production credit[119]
- Advanced manufacturing production credit[120]
- Clean hydrogen production credit[121]
- Clean fuel production credit[122]
- Carbon oxide sequestration credit[123]
- Credit for alternative fuel vehicle refueling/recharging property[124]
- Qualified advanced energy project credit[125]

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113. IRC §6418.
114. IRC §6418(g)(3)(B).
115. See IRC §48.
116. See IRC §48E.
117. See IRC §45.
118. See IRC §45Y.
119. See IRC §45U.
120. See IRC §45X.
121. See IRC §45V.
122. See IRC §45Z.
123. See IRC §45Q.
124. See IRC §30C.
125. See IRC §45C.

Transfer Election Statement[126]

Both the eligible taxpayer and the transferee should attach a transfer election statement to their tax return for the tax year the entity is eligible for the credit. The statement should include a description of the type and amount of tax credit transferred, when the credit was transferred, the amount paid for the tax credit, and the registration number for the property qualifying for the credit.

PRODUCTION TAX CREDIT

The §45 renewable electricity production tax credit (PTC) is a tax credit available to taxpayers that generate electricity from qualified energy resources and sell the energy during the tax year.[127] The Inflation Reduction Act of 2022 broadened the credit as one way to incentivize taxpayers to build-out renewable energy. The §45 credit will end on December 31, 2024, and replacing it is the §45Y credit, the clean energy production tax credit.[128]

> **Note.** Taxpayers are not allowed to claim the PTC and an energy credit under §48 on the same facility. Project-specific factors can vary in determining whether claiming the PTC is more or less advantageous than claiming an energy credit under §48.[129]

IRC §45 Tax Credit

As mentioned previously, the §45 tax credit is a business tax credit available to taxpayers who produce electricity from qualified energy resources at a qualified facility and sell the energy generated to an unrelated person during the tax year.[130] The credit is available during the first 10 years the facility was originally placed in service. The facility owner is allowed to claim the credit, but in certain cases, the lessee or operator of the facility may claim the credit if the owner is not the producer of the electricity.[131]

The electricity must be generated by a qualified energy resource at a qualified facility located in the United States or U.S. territories.[132] The facility must be placed in service after December 31, 1993, and construction must have begun before January 1, 2025. For the changes made by the Inflation Reduction Act of 2022 to apply, the qualified facility must be placed in service after 2021. It must be owned by the taxpayer and used to produce electricity. Qualified facilities include any of the following.[133]

- Wind
- Closed-loop biomass
- Open-loop biomass
- Geothermal energy
- Solar energy
- Small irrigation power
- Municipal solid waste
- Qualified hydropower production
- Marine and hydrokinetic renewable energy

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126. *Elective pay and transferability frequently asked questions: Transferability*. May 7, 2024. IRS. [www.irs.gov/credits-deductions/elective-pay-and-transferability-frequently-asked-questions-transferability] Accessed on Jun. 25, 2024.

127. IRC §45(a).

128. *Inflation Reduction Act of 2022*, PL 117-169, §13101.

129. *Federal Solar Tax Credits for Businesses.* Aug. 2024. Office of Energy Efficiency & Renewable Energy. [www.energy.gov/eere/solar/federal-solar-tax-credits-businesses] Accessed on Aug. 20, 2024.

130. IRC §45(a).

131. IRC §45(d).

132. IRC §45(e).

133. IRC §45(d).

Calculating the Credit. The credit for a qualified facility placed in service after December 31, 2021, is equal to 0.3 cents multiplied by the kWh of electricity produced by the qualified facility. For qualified facilities placed in service before January 1, 2022, the credit is 1.5 cents per kWh. These rates are adjusted for inflation.[134]

The 2023 credit rates for qualified facilities placed in service before January 1, 2022, are:

- 2.8 cents per kWh for qualified energy resources of wind, closed-loop biomass, and geothermal energy, and
- 1.4 cents per kWh for qualified energy resources of open-loop biomass, landfill gas, trash, qualified hydropower, and marine and hydrokinetic renewable energy.

The 2023 credit rates for qualified facilities placed in service after December 31, 2021, are:

- 0.55 cents per kWh for qualified energy resources of wind, closed-loop biomass, geothermal energy, and solar energy, and
- 0.3 cents per kWh for qualified energy resources of open-loop biomass, landfill gas, trash, qualified hydropower, and marine and hydrokinetic renewable energy.

The 2023 credit rate for qualified hydropower, marine, and hydrokinetic renewable energy resources placed in service after December 31, 2022, is 0.55 cents per kWh.

An increased credit of five times the credit rate is allowed if any of the following apply.[135]

- A facility with a maximum net output of less than one megawatt
- A facility for which the construction began before January 29, 2023
- A facility that meets the prevailing wage and apprenticeship requirements

A 10% bonus credit is allowed for qualified facilities placed in service after December 31, 2022, if the project meets domestic content requirements, as described previously.

An additional increased credit is allowed for qualified facilities located in an energy community (as described previously) and placed in service after December 31, 2022. When the reference price exceeds the 8-cent threshold price, the credit is phased out over a 3-cent range. If the reference price is equal to or less than the threshold price (adjusted for inflation), the credit is not reduced. The reference price is published each year in the Federal Register.[136]

Reporting.[137] The credit is reported on Form 8835.

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134. 88 Fed. Reg. 40,400 (Jun. 21, 2023).

135. IRC §45(b)(6).

136. 2023 Instructions for Form 8835.

137. Ibid.

Example 14. A qualified geothermal facility owned by GeoRockz Corporation, a calendar year taxpayer, was placed in service on May 15, 2023. The facility produced and sold 12,000,000 kWh of electricity per day. Construction on the project began on March 10, 2021, and meets the prevailing wage and apprenticeship, and domestic content requirements. The facility is not located in an energy community.

The amount of kWh for the geothermal facility for the year is reported on line 1c, column (a). The kWh are then multiplied by the applicable rate of $0.0055 for geothermal facilities to calculate the potential credit of $15,246,000. There is no phaseout adjustment because GeoRockz is a calendar-year filer. Because the prevailing wage and apprenticeship requirements are met for this project, the increased credit amount applies, equaling $76,230,000 for this project. Additionally, the domestic bonus credit applies which amounts to an additional $7,623,000. The energy community bonus credit does not apply for this example. Accordingly, the total 2023 credit for the corporation is $83,853,000, as calculated on the following Form 8835.

Form **8835**

Department of the Treasury
Internal Revenue Service

Renewable Electricity Production Credit

Attach to your tax return.
Go to *www.irs.gov/Form8835* for instructions and the latest information.

OMB No. 1545-1362
2023
Attachment Sequence No. **835**

Name(s) shown on return	Identifying number
GeoRockz Corporation	**12-3457742**

Part I Facility Information

1 IRS-issued registration number for the facility: **PL2YB34K2233**

2 Type of facility you are claiming (see instructions):

a Description of facility: **Geothermal field with 8 geothermal power plants**

b Type of facility (wind, closed-loop biomass, geothermal, solar, open-loop biomass, landfill gas, etc.): **Geothermal**

3 Location of facility, including coordinates (latitude and longitude).

a Address of the facility (if applicable):

b Coordinates (if applicable). Latitude: **+ 38.7749** Longitude: **- 122.7553**

Enter a "+" (plus) or "-" (minus) sign in the first box. Enter a "+" (plus) or "-" (minus) sign in the first box.

4 Date construction began (MM/DD/YYYY): **03/10/2021**

5 Date placed in service (MM/DD/YYYY): **05/15/2023**

6 Is this facility part of an expansion of an existing closed-loop biomass or open-loop biomass facility? ☐ Yes ☒ No

7 Reserved for future use.

☐ Yes.

☐ No.

8 Does the project satisfy one of the qualified facility requirements? See instructions.

a ☐ Yes, the facility's maximum net output is less than 1 megawatt (as measured in alternating current).

b ☐ Yes, the facility's construction began before January 29, 2023.

c ☒ Yes, the facility meets the prevailing wage requirements of section 45(b)(7)(A) and the apprenticeship requirements of section 45(b)(8).

d ☐ No, the facility does not meet the qualified facility requirements.

9 Does the property qualify for the domestic bonus credit?

a ☒ Yes, and section 45(b)(9)(B) is satisfied (10% bonus). Attach the required information. See instructions.

b ☐ No.

10 Does the project qualify for an energy community bonus credit?

a ☐ Yes, and section 45(b)(11)(B) is satisfied (10% bonus). See instructions.

b ☒ No.

c ☐ Not applicable.

11 Enter the nameplate capacity direct current (dc) in kW for:

a ☐ Solar energy property facility: ______

b ☒ Not applicable.

12 Enter the nameplate capacity, alternating current (ac) for all electricity generating energy properties or facilities in kW:

a ☐ Solar energy property or facility: ______

b ☐ Wind energy property or facility: ______

c ☐ Other: ______

d ☒ Not applicable.

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 14954R Form **8835** (2023)

For Example 14

Form 8835 (2023) Page **2**

Part II **Renewable Electricity Production**

Complete line 1 with respect to electricity produced at qualified facilities using:		(a) Kilowatt-hours produced and sold (see instructions)	(b) Rate (see inst.)*	(c) Column (a) × Column (b)
1a Wind	**1a**		$0.0055	
b Closed-loop biomass	**1b**		$0.0055	
c Geothermal	**1c**	**2,772,000,000**	$0.0055	**15,246,000**
d Solar	**1d**		$0.0055	
e Offshore wind facility	**1e**		$0.0055	
f Open-loop biomass	**1f**		$0.003	
g Landfill gas	**1g**		$0.003	
h Trash	**1h**		$0.003	
i Hydropower	**1i**		$0.003**	
j Marine and hydrokinetic renewables	**1j**		$0.003**	

2	Add column (c) of lines 1a through 1j and enter here	**2**	**15,246,000**
3	Phaseout adjustment (see instructions) $________ × ________	**3**	**0**
4	Credit before reduction. Subtract line 3 from line 2	**4**	**15,246,000**

Credit reduction for tax-exempt bonds

If you used proceeds of tax-exempt bonds to finance your facility, continue to line 5a; otherwise, enter the amount from line 4 on line 6.

5a	**Divide.** Sum, for the tax year and all prior tax years, of all proceeds of tax-exempt bonds (within the meaning of section 103), used to finance the qualified facility ÷ Aggregate amount of additions to the capital account for the qualified facility, for the tax year and all prior tax years, as of the close of the tax year =	**5a**	
b	Multiply line 4 by line 5a	**5b**	
c	Multiply line 4 by 15% (0.15)	**5c**	
d	Enter the smaller of line 5b or line 5c	**5d**	
6	Subtract line 5d from line 4	**6**	**15,246,000**
7a	Enter the amount from line 6 applicable to wind facilities, the construction of which began during 2017 **7a**		
b	For facilities placed in service after 2021, enter -0-; otherwise, multiply line 7a by 20% (0.20)	**7b**	**0**
c	Enter the amount from line 6 applicable to wind facilities, the construction of which began during 2018, 2020, or 2021 **7c**		
d	For facilities placed in service after 2021, enter -0-; otherwise, multiply line 7c by 40% (0.40)	**7d**	**0**
e	Enter the amount from line 6 applicable to wind facilities, the construction of which began during 2019 **7e**		
f	For facilities placed in service after 2021, enter -0-; otherwise, multiply line 7e by 60% (0.60)	**7f**	**0**
g	Add lines 7b, 7d, and 7f	**7g**	**0**
8	Subtract line 7g from line 6	**8**	**15,246,000**
9	Increased credit amount for qualified facilities. Did you check a "Yes" box in Part I, question 8? If so, multiply the amount in Part II, line 8, by 5.0. If not, enter the amount from Part II, line 8	**9**	**76,230,000**
10	Domestic content bonus credit. See instructions. If you qualify, multiply the amount on line 9 by 10% (0.10). Otherwise, enter -0-	**10**	**7,623,000**
11	Energy community bonus credit. See instructions. If you qualify, multiply the amount on line 9 by 10% (0.10). Otherwise, enter -0-	**11**	**0**
12	Add lines 9, 10, and 11	**12**	**83,853,000**
13	If you are making an elective payment election for a facility whose construction began in calendar year 2024, and the facility does not conform to section 45(b)(10)(B), or meet an exception under section 45(b)(10)(D), multiply line 12 by 90% (0.90). All others, enter the amount from line 12	**13**	**83,853,000**

* See instructions for rates to use for facilities placed in service before 2022.

** $0.0055 for qualified facilities related to hydropower and marine and hydrokinetic renewables placed in service after 2022. See instructions.

Form **8835** (2023)

9

IRC §45Y

The IRC §45Y clean electricity production tax credit will replace the §45 tax credit for facilities placed in service on or after January 1, 2025. Just like the §45 tax credit, the §45Y tax credit is a business tax credit available to taxpayers who produce electricity at a qualified facility and sell the energy generated to an unrelated person during the tax year. The credit is available during the first 10 years the facility is originally placed in service. A qualified facility is one that is:

- Used for the generation of electricity,
- Placed in service after December 31, 2024, and
- For which the greenhouse gas emissions rate is not greater than zero.

For facilities placed in service before January 1, 2025, §45Y may apply to the extent the increased amount of electricity is produced at the facility due to a new unit placed in service after December 31, 2024, or any additions of capacity placed in service after December 31, 2024.

Calculating the Credit. The §45Y credit is calculated similarly to the §45 credit. The kWh are multiplied by the base rate of 0.3 cents per kWh. An increased credit amount of 1.5 cents per kWh is available for facilities with a maximum net output of less than one megawatt that meet certain construction deadlines and the prevailing wage and apprenticeship requirements.[138]

The 10% bonus credit for projects that meet certain domestic content requirements and the 10% bonus credit if the project is located in an energy community also apply for §45Y.[139]

The credit starts to phase out the later of 2032 or when U.S. greenhouse gas emissions from electricity reach 25% of 2022 emissions or less.[140]

EMPLOYER-PROVIDED CHILDCARE CREDIT[141]

The credit for employer-provided childcare has existed for over 20 years,[142] and although originally scheduled to expire, it was made permanent in 2012.[143] The employer-provided childcare credit is provided by IRC §45F and incentivizes employers to provide childcare services for their employees.

Employers can claim this credit for providing childcare facilities[144] or for providing resources[145] and referrals for childcare. These provisions allow a credit of up to $150,000 per year based on **25% of qualified childcare expenditures for childcare facilities and 10% of spending for qualified resource and referral expenditures.**[146]

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138. IRC §45(a)(2).

139. IRC §45Y(g); For additional guidance regarding the energy community bonus credit, see IRS Notice 2023-29, 2023-29 IRB 1, IRS Notice 2023-45, 2023-29 IRB 317, and IRS Notice 2023-47, 2023-29 IRB 318.

140. IRC §45Y(d).

141. *Employer-provided childcare credit*. Nov. 30, 2023. IRS. [www.irs.gov/businesses/small-businesses-self-employed/employer-provided-childcare-credit] Accessed on Apr. 23, 2024; IRS News Rel. IR 2024-34 (Feb. 7, 2024).

142. *Economic Growth and Tax Relief Reconciliation Act of 2001*, PL 107-16, §205; *The 45F Tax Credit for Employer-Provided Child Care.* Crandall-Hollick, Margot and Boyle, Conor. Apr. 12, 2023. Congressional Research Service. [crsreports.congress.gov/product/pdf/IF/IF12379] Accessed on Apr. 23, 2024.

143. *American Taxpayer Relief Act of 2012*, PL 112-240, as indicated in *The 45F Tax Credit for Employer-Provided Child Care*, p.2. Crandall-Hollick, Margot and Boyle, Conor. Apr. 12, 2023. Congressional Research Service. [crsreports.congress.gov/product/pdf/IF/IF12379] Accessed on Apr. 25, 2024.

144. IRC §45F(c)(2)(A).

145. IRC §45F(c)(3)(A).

146. IRC §§45F(a) and (b).

The taxpayer can claim the credit in any year it makes **qualified expenditures.**[147] Qualified childcare expenditures include the following.

- Costs associated with acquiring, constructing, rehabilitating, or expanding property used as the taxpayer's **qualified childcare facility**
- Qualified childcare facility expenditures are operating expenses made by the taxpayer, including amounts paid to support childcare workers through training, scholarship programs, and providing increased compensation to employees with higher levels of childcare training
- Qualified resource and referral expenditures which include amounts paid or incurred under a contract with a qualified childcare facility to provide childcare services to employees of the taxpayer

Taxpayers may **deduct** any eligible expenditures that exceed the maximum credit.[148]

QUALIFIED CHILDCARE FACILITIES[149]

The employer-provided childcare credit provides small businesses with a nonrefundable credit for expenditures incurred for qualified childcare facilities. A **qualified childcare facility** must meet the following requirements.

1. The primary purpose of the facility must be childcare, and the facility must meet all local and state rules and regulations, including licensing as a childcare facility. The facility cannot be a part of the residence of the employer or any employee.[150] One exception is if the childcare facility is part of the contracted operator's home, provided it is not also the home of the employer or any employee.[151]
2. The employer-provided childcare facility must be open to employees throughout the taxable year. In addition, at least 30% of those attending must be employees' dependents. Childcare facilities must be available to the children of all company employees, not just those of highly compensated employees under IRC §414(g).

QUALIFIED CHILDCARE RESOURCE AND REFERRAL SERVICES[152]

The credit also provides employers with incentives to offer referrals and resources to employees who are seeking childcare. The credit for these services is a maximum of 10% of the qualifying expenditures. Like the childcare facility credit, this service must be available to all employees' dependents and not just to dependents of highly paid employees.

9

SPECIAL RULES[153]

In addition to the $150,000 annual limitation, the employer-provided childcare credit is constrained by the following rules and limitations.

Aggregation Rules

The $150,000 annual limit is applied at the entity level, and stretches across organizations that are part of the same controlled group or share common ownership. The controlled group limitation is applied by reference to IRC §§52(a) and (b). As a result, the $150,000 annual limit applies to multiple corporations and subsidiaries that share 50% ownership, as measured by the voting power of all classes of stock.

147. IRC §45F(b).

148. IRC §45F(f)(2); *Employer-provided childcare credit*. Nov. 30, 2023. IRS. [www.irs.gov/businesses/small-businesses-self-employed/employer-provided-childcare-credit] Accessed on Apr. 25, 2024.

149. IRC §45F(c).

150. IRC §45F(c)(1)(A)(i)(iii).

151. IRC §45F(c)(3).

152. IRC §45F(c)(3).

153. IRC §45F(e).

Limitations for Estates and Trusts

Estates and trusts that operate businesses may claim the credit. The credit is apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust.

Allocations for Partnerships

For partnerships, the credit is allocated among partners under regulations prescribed by the IRS.

Passive Activity Limits[154]

Businesses may have activities that are passive to some of its owners. Such an entity may have net active income that is less than the employer-provided childcare credit available to passive owners. In this case, the credit is suspended and carried over to the next year.

Basis Limits[155]

The depreciable basis of the property acquired, constructed, rehabilitated, or otherwise used for providing the childcare must be reduced by the amount of the credit.

CLAIMING THE CREDIT[156]

Employers organized as partnerships, S corporations, estates, and trusts claim the credit using Form 8882, *Credit for Employer-Provided Childcare Facilities and Services.* Partnerships report the credit on Schedule K, line 15f, *Other Credits*, of Form 1065. In turn, the credit is allocated among partners and reported on their Schedules K-1 (Form 1065), *Partner's Share of Income, Deductions, Credits, etc.*, box 15, *Credits*, with code AH.[157] S corporations report the credit on Schedule K, line 13g, *Other credits*, and it is then reported on shareholders' Schedules K-1 (Form 1120-S), in box 13, *Credits*, with code AH.[158]

An estate or trust must allocate the credit between the trust or estate and the beneficiaries in the same manner as income. Individual taxpayers, sole proprietors, C corporations, and other entity types (that are not partnerships, S corporations, trusts, or estates) claim the credit directly on Form 3800, if they:

- Received a Schedule K-1 from a pass-through entity that reported the income, and
- Have no other sources of employer-provided childcare credit.

Taxpayers may claim the credit any time within three years of the due date for their return on either an original or an amended return.

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154. IRC §§469(b) and (e)(2).

155. IRC §§45F(f)(1) and 1016(a).

156. Instructions for Form 8882.

157. Instructions for Form 1065.

158. Instructions for Form 1120-S.

Example 15. GEX CO, an S corporation, provides childcare services for its employees. In 2024, GEX CO incurred $20,000 in childcare facility expenses and $4,000 in childcare resource expenses. GEX CO completed the following Form 8882 to calculate its 2024 credit for employer-provided childcare facilities and services.

Form **8882** (Rev. December 2017) Department of the Treasury Internal Revenue Service

Credit for Employer-Provided Childcare Facilities and Services

► Attach to your tax return.
► Go to *www.irs.gov/Form8882* for the latest information.

OMB No. 1545-1809
Attachment Sequence No. **131**

Name(s) shown on return: **GEX CO**
Identifying number: **33-7654321**

1	Qualified childcare facility expenditures paid or incurred	1	20,000		
2	Enter 25% (0.25) of line 1			2	5,000
3	Qualified childcare resource and referral expenditures paid or incurred	3	4,000		
4	Enter 10% (0.10) of line 3			4	400
5	Credit for employer-provided childcare facilities and services from partnerships, S corporations, estates, and trusts			5	0
6	Add lines 2, 4, and 5			6	5,400
7	Enter the **smaller** of line 6 or **$150,000.** Estates and trusts, go to line 8. Partnerships and S corporations, stop here and report this amount on Schedule K. All others, stop here and report this amount on Form 3800, Part III, line 1k			7	5,400
8	Amount allocated to beneficiaries of the estate or trust (see instructions)			8	
9	Estates and trusts. Subtract line 8 from line 7. Report this amount on Form 3800, Part III, line 1k			9	

No Double Benefit

Taxpayers claiming the employer-provided childcare credit are prevented from taking both a credit and a deduction for the same expenses. Consequently, the taxpayer must reduce the following.

- The basis of any qualified childcare facility by the amount of the credit that was generated by capital expenses of the facility
- Any otherwise allowable deduction for expenses used to calculate the credit by the amount of the credit allocable to those deductions

Reporting the Passive Activity Limitation on Credits[159]

Trusts or estates may be limited by the passive activity limitation on credits, as discussed previously. Form 8582-CR, *Passive Activity Credit Limitations*, is used to calculate any passive activity credit for the current year, including any prior year disallowed credits, and the allowed credit for the current year.[160] If the trust or estate is subject to the passive activity rules, it must include any credit for employer-provided childcare facilities and services from passive activities disallowed for prior years and carried forward to the current year. Form 8582-CR reports the allowed credit that must be allocated between the trust or estate and its beneficiaries.

159. Instructions for Form 8882.

160. Instructions for Form 8582-CR.

CREDIT RECAPTURE[161]

If an employer ceases to operate a childcare facility within the first 10 years in which the qualified childcare facility is placed in service, they may have to recapture all or a portion of the credit. Additionally, a change in ownership may trigger recapture if the new owner does not agree in writing to accept the recapture liabilities of the seller.

The recapture is a declining percentage of the credit depending on the year the facility ceases to be a childcare facility. The following table shows the applicable recapture percentage of the employer-provided childcare credit.

Facility Stops Being Used for Qualified Childcare Activities in	Applicable Recapture Percentage
Years 1–3	100
Year 4	85
Year 5	70
Year 6	55
Year 7	40
Year 8	25
Years 9 and 10	10
Years 11 and thereafter	0

Year 1 starts on the day the qualified childcare facility is placed in service, rather than the calendar year in which it is opened. If the employer must pay back credits because the facility ceases to be a childcare facility, the recapture amount increases the basis of the property.

However, if the facility changes ownership, the new owners may continue the childcare facilities and avoid the recapture provisions. The new owner must assume the recapture liability from the employer who is disposing of the property.

Any recaptured tax is reported on the taxpayer's tax return where other recaptured taxes are reported (or, if the return does not have a line for recaptured taxes, reported on the "total tax" line). For example, individuals claim recapture taxes as income on their Form 1040, Schedule 2, *Additional Taxes*, line 17a, *Recapture of Other Credits*, with code **ECCFR** (stands for "Employer Childcare Facility Recapture").[162]

ERC FALLOUT

The employee retention credit (ERC) is a refundable tax credit for eligible businesses and tax-exempt organizations that paid qualified wages to employees after March 12, 2020, and before January 1, 2022. The credit was originally enacted as part of the 2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act to help businesses impacted by the COVID-19 pandemic retain their employees during the period of economic uncertainty.[163] However, controversy has surrounded the credit, stemming from many businesses erroneously claiming it after being misled by aggressive marketing efforts by third-party credit promoters.[164]

> **Note.** As a result of these unscrupulous promoters, the IRS listed ERC scams as one of the Dirty Dozen tax schemes for 2024. For more information on this and the other Dirty Dozen, see the 2024 *University of Illinois Federal Tax Workbook,* Chapter 13: New Developments.

161. IRC §45F(d); Instructions for Form 8882.

162. Instructions for Form 1040.

163. *Consolidated Appropriations Act of 2021,* PL 116-260, §206.

164. IRS Ann. 2024-3, 2024-2 IRB 364.

Additional legislation, including the American Rescue Plan Act of 2021 (ARP), modified the credit and relaxed eligibility guidelines.[165] This led to opportunistic promoters taking advantage of the loosened guidelines and running deceitful ads encouraging businesses to apply for the credit despite not meeting the eligibility requirements. Aware of these ERC marketing campaigns, the IRS is stepping up compliance efforts, warning of scam promotions, encouraging businesses to confirm eligibility before claiming the credit, and providing options for businesses that mistakenly claimed the credit.[166]

The IRS encourages businesses to carefully review the requirements for the ERC prior to filing a claim and to consult with a tax professional rather than a tax promoter or marketing firm for guidance on eligibility. Tax professionals should review each employer's eligibility and ensure there is a reasonable basis for filing a claim to avoid complications with the IRS.[167]

In response to the heightened concerns regarding improper claims for the credit, the IRS implemented a **processing moratorium on new claims for the ERC** submitted after September 14, 2023.[168] The moratorium has continued through June 2024 and is likely to continue for the foreseeable future. In those nine months, the IRS processed 28,000 claims worth $2.2 billion received prior to September 2023. Additionally, it disallowed more than 14,000 claims worth more than $1 billion.[169]

The IRS has analyzed a group of more than 1 million ERC claims representing more than $86 billion and found the following information.[170]

- 10-20% of claims are highest risk, showing clear signs of being erroneous claims
- 60-70% of claims have an unacceptable level of risk, causing the IRS to conduct additional analysis to gather more information
- 10-20% of claims are low risk

Despite the moratorium, business may have an option to amend or withdraw an ERC claim or participate in the voluntary disclosure program.

AMENDING ERC CLAIMS[171]

The ERC is a refundable credit that businesses could claim for certain quarters on their original 2020 or 2021 payroll tax returns. For employers that file on a quarterly basis, this form is Form 941, *Employer's Quarterly Federal Tax Return*. Businesses that are eligible for the ERC but did not claim it when they filed their original employment tax return could file an amended employment tax return to claim the credit. Employers filing on a quarterly basis use Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*, to amend their payroll tax return.

Businesses that need to adjust their employment tax return for the credit should utilize the return and applicable instructions for the tax period they need to adjust. If employers qualify for the credit for more than one quarter in 2020 or 2021, an amended payroll tax return must be filed for each applicable period.

165. *American Rescue Plan Act of 2021,* PL 117-2, §9651.

166. IRS Ann. 2024-3, 2024-2 IRB 364.

167. IRS News Rel. IR-2023-169 (Sep. 14, 2023).

168. Ibid.

169. IRS News Rel. IR-2024-169 (Jun. 20, 2024).

170. Ibid.

171. Instructions for Form 941-X.

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Filing Deadline

The period of limitations for filing Form 941-X for overreported taxes is generally within three years of the date the Form 941 was filed or two years from the date the taxpayer paid the tax reported on Form 941, whichever is later. For purposes of determining the period of limitations, for Forms 941 due within a calendar year, the filing date is considered April 15 of the following year if the return was filed before that date. Accordingly, Forms 941-X for periods within tax year 2020 generally needed to be filed by April 15, 2024. For 2021, taxpayers have until April 15, 2025.[172]

> **Example 16.** Shady Tree Lawn Maintenance filed its 2021 fourth quarter Form 941 on January 25, 2022, claiming the ERC based on the advice from an ERC mill. The business made its liability payments for the quarter on time. On January 25, 2025, after discussing the matter with their accountant, Shady Tree decides to amend its 2021 fourth quarter Form 941 upon discovering the business did not originally qualify for the ERC. Shady Tree has until April 15, 2025, to prepare and file Form 941-X to correct the error.

Determine Eligibility

Prior to filing an amended return for an ERC claim, employers should determine if they meet the eligibility requirements. To claim the ERC employers must have either: [173]

- Sustained a full or partial suspension of operations due to an order from an appropriate governmental authority which limited commerce, travel, or group meetings because of COVID-19 during 2020 or the first three quarters of 2021, or
- Experienced a significant decline in gross receipts during 2020 or a decline in gross receipts during the first three quarters of 2021, or
- Qualified as a recovery startup business for the third or fourth quarters of 2021.

> **Note.** For more information on the eligibility and calculation of the ERC, see the 2023 *University of Illinois Federal Tax Workbook,* Chapter 11: New Developments.

In Notice 2021-20, the IRS published documents employers should retain to substantiate they qualify for the credit.[174] Prior to filing a claim, employers and preparers should review this list to ensure they have the proper documents.

Income Tax Considerations. If a business files a Form 941-X to claim the ERC, they must also reduce their wage deduction or salary expense on the income tax return for the total ERC credit claim.[175] Accordingly, an amended **income tax return** will need to be filed for the same tax year an amended Form 941 is filed. Depending on the entity's structure, this may mean a corporate and/or individual income tax return. Because the IRS issued a moratorium on processing new ERC claims, an employer may want to amend an income tax return prior to receiving the refund for the credit.

> **Note.** For more information on statute of limitations considerations when amending tax returns for an ERC credit claim, see the 2023 *University of Illinois Federal Tax Workbook*, Chapter 11: New Developments.

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172. Ibid.

173. *Consolidated Appropriations Act of 2021,* PL 116-260, §206.

174. IRS Notice 2021-20, 2021-11 IRB 922.

175. *Consolidated Appropriations Act of 2021,* PL 116-260, §206.

Tax Practitioner Responsibilities.[176] The IRS Office of Professional Responsibility communicated that practitioners must follow Circular 230's standards when engaging with a client who claimed the ERC, wants to claim the ERC, or inquires about the possibility of claiming the ERC. Tax preparers need to exercise due diligence to ascertain if the client meets the eligibility criteria for claiming the ERC. While preparers can rely on the information provided by a taxpayer without verification, the preparer should make reasonable inquiries to confirm eligibility. Preparers cannot sign returns for positions that lack a reasonable basis for claiming the ERC. If the practitioner feels the claim for the ERC lacks a reasonable basis, the practitioner should discuss this with the client.

WITHDRAWING AN ERC CLAIM

With more than 1.4 million unprocessed ERC claims, the claim withdrawal process remains an important option for businesses who may have submitted an improper claim.[177] The IRS has a withdrawal process for employers who claim a refund for the ERC and would like to subsequently withdraw the claim. The IRS will consider withdrawal claims as if the ERC claim was never made and not charge employers interest or penalties. Businesses can withdraw their ERC claim if all of the following apply.[178]

- The claim was made on an adjusted employment tax return.
- The amended return was filed only to claim the ERC and made no other adjustments.
- The entire ERC claim is being withdrawn.
- The IRS has not paid the ERC claim or the claim has been paid but the check has not been cashed or deposited.

The IRS will notify employers if their withdrawal request is accepted or rejected by sending a letter. **An approved request is not effective until the IRS sends this letter.**[179]

Employers that made other changes on the amended employment tax return filed or only need to reduce the ERC claimed and not withdraw it entirely are instructed to file an amended employment tax return instead of using the withdrawal process.

The method of requesting an ERC withdrawal depends on whether the taxpayer has received and taken ownership of the ERC disbursal funds **and** whether the IRS has flagged the claim for an audit.

9

No Receipt of ERC Claim Funds nor Subject to an Audit

Taxpayers who have not received a refund or notification that their ERC claim is under audit must complete the following steps to withdraw from an ERC claim.

1. Make a copy of the adjusted return with the claim the taxpayer wishes to withdraw.
2. Write "Withdrawn" in the left margin of the first page of the adjusted return copy.
3. Have an **authorized person** sign and date the form in the right margin of the first page of the adjusted return copy.
4. Write the authorized person's name and title next to their signature in the right margin.
5. Fax the signed copy to 855-738-7609.

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176. *Professional Responsibility and the Employee Retention Credit*. Mar. 7, 2023. IRS. [www.irs.gov/pub/opr-taxpros/2023-02-professional-responsibility-and-the-employee-retention-credit-R2-508-compliant.pdf] Accessed on Jun. 24, 2024.

177. IRS News Rel. IR-2024-169 (Jun. 20, 2024).

178. IRS News Rel. IR-2023-193 (Oct. 19, 2023).

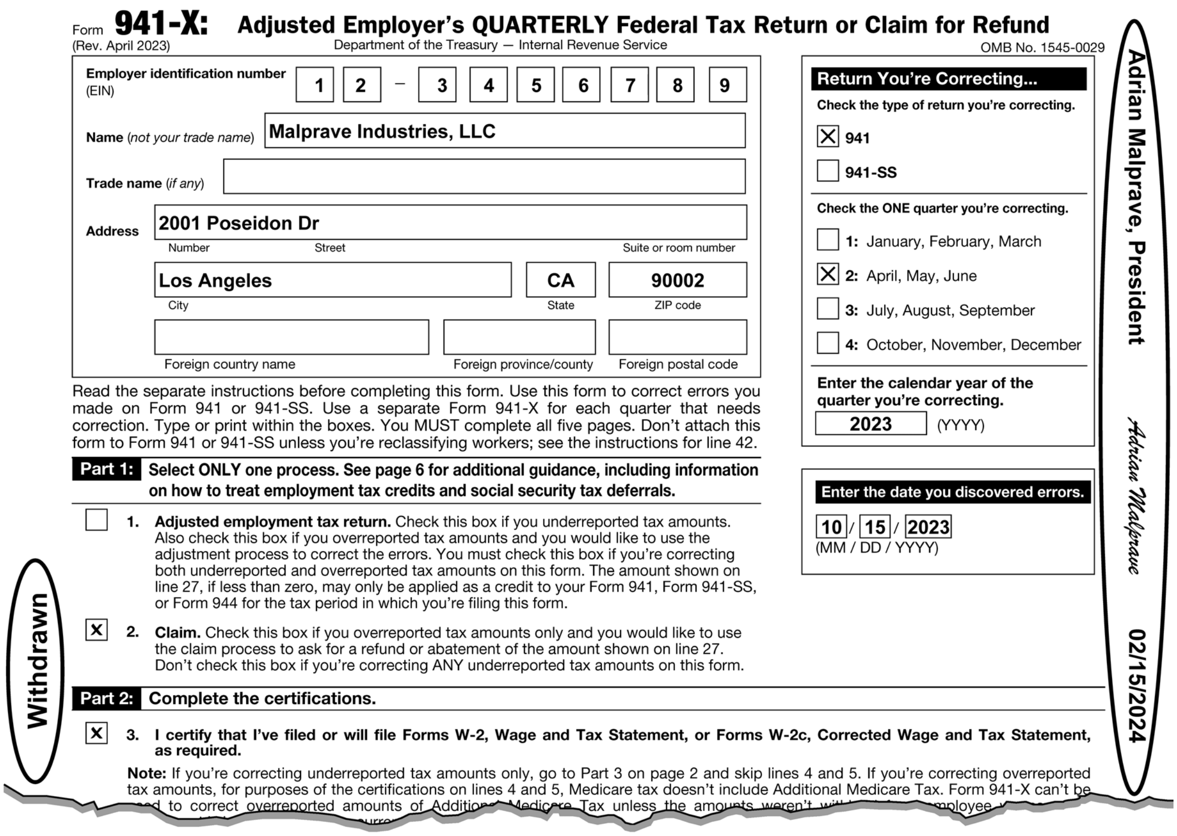
179. *Withdraw an Employee Retention Credit (ERC) claim.* Dec. 21, 2023. IRS. [www.irs.gov/newsroom/withdraw-an-employee-retention-credit-erc-claim] Accessed on May 14, 2024.

An authorized person for the purpose of withdrawing from an ERC claim depends on the taxpayer's entity type.[180]

- For sole proprietorships, an authorized person is the owner of the business.
- For corporations, including LLCs, an authorized person is the president, vice president, or other principal officer duly authorized to sign.
- For partnerships, including LLCs, an authorized person is a responsible and duly authorized member, partner, or officer having knowledge of the partnership's affairs.
- For single-member LLCs, an authorized person is the owner of the LLC or a principal officer duly authorized to sign.
- For trusts or estates, an authorized person is the fiduciary.

An authorized person may also be a duly authorized agent of the taxpayer, such as an individual with a valid power of attorney with Form 2848, *Power of Attorney and Declaration of Representative*, filed with the IRS. Additionally, an authorized agent of the taxpayer may include a reporting agent with Form 8655, *Reporting Agent Authorization*, filed with the IRS.[181]

Example 17. Malprave Industries, LLC, an S corporation, claimed an ERC for the second quarter of 2023 by filing Form 941-X. Due to the increased exposure of news articles and IRS announcements regarding the prevalence of non-qualifying and fraudulent ERC claims, the company reviewed their claim of the ERC. After considerable scrutiny, Malprave Industries finds that it did not qualify for the ERC and wishes to withdraw its ERC claim. **Because it has not received the funds from the ERC claim, Malprave Industries faxes a copy of the filed Form 941-X for the second quarter of 2023, writes "Withdrawn" in the left margin of the first page of the form, and has the company's president, Adrian Malprave, sign and date the form in the right margin.**



Form **941-X:** Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund
(Rev. April 2023) Department of the Treasury — Internal Revenue Service OMB No. 1545-0029

Employer identification number (EIN) 1 2 – 3 4 5 6 7 8 9
Name (*not your trade name*) Malprave Industries, LLC
Trade name (*if any*)
Address 2001 Poseidon Dr
Number Street Suite or room number
Los Angeles CA 90002
City State ZIP code
Foreign country name Foreign province/county Foreign postal code

Return You're Correcting...
Check the type of return you're correcting.
[X] 941
[ ] 941-SS
Check the ONE quarter you're correcting.
[ ] 1: January, February, March
[X] 2: April, May, June
[ ] 3: July, August, September
[ ] 4: October, November, December
Enter the calendar year of the quarter you're correcting.
2023 (YYYY)

Enter the date you discovered errors.
10 / 15 / 2023
(MM / DD / YYYY)

Read the separate instructions before completing this form. Use this form to correct errors you made on Form 941 or 941-SS. Use a separate Form 941-X for each quarter that needs correction. Type or print within the boxes. You MUST complete all five pages. Don't attach this form to Form 941 or 941-SS unless you're reclassifying workers; see the instructions for line 42.

Part 1: Select ONLY one process. See page 6 for additional guidance, including information on how to treat employment tax credits and social security tax deferrals.

[ ] 1. **Adjusted employment tax return.** Check this box if you underreported tax amounts. Also check this box if you overreported tax amounts and you would like to use the adjustment process to correct the errors. You must check this box if you're correcting both underreported and overreported tax amounts on this form. The amount shown on line 27, if less than zero, may only be applied as a credit to your Form 941, Form 941-SS, or Form 944 for the tax period in which you're filing this form.

[X] 2. **Claim.** Check this box if you overreported tax amounts only and you would like to use the claim process to ask for a refund or abatement of the amount shown on line 27. Don't check this box if you're correcting ANY underreported tax amounts on this form.

Part 2: Complete the certifications.

[X] 3. **I certify that I've filed or will file Forms W-2, Wage and Tax Statement, or Forms W-2c, Corrected Wage and Tax Statement, as required.**

Note: If you're correcting underreported tax amounts only, go to Part 3 on page 2 and skip lines 4 and 5. If you're correcting overreported tax amounts, for purposes of the certifications on lines 4 and 5, Medicare tax doesn't include Additional Medicare Tax. Form 941-X can't be used to correct overreported amounts of Additional Medicare Tax unless the amounts weren't withheld from employee ...

Withdrawn

Adrian Malprave, President

Adrian Malprave

02/15/2024

180. *Frequently asked questions about the Employee Retention Credit*. Mar. 25, 2024. IRS. [www.irs.gov/coronavirus/frequently-asked-questions-about-the-employee-retention-credit] Accessed on Apr. 29, 2024.

181. Ibid.

ERC Claim Funds Received but Not Cashed or Deposited

Taxpayers who **received an ERC refund check but neither cashed nor deposited it** must complete the following steps to withdraw from an ERC claim.

1. Make a copy of the adjusted return with the claim the taxpayer wishes to withdraw.
2. Write "Withdrawn" in the left margin of the first page of the adjusted return copy.
3. Have an authorized person sign and date the form in the right margin of the first page of the adjusted return copy.
4. Write the authorized person's name and title next to their signature in the right margin.
5. Write "Void" in the endorsement section on the back of the refund check.
6. Include a note titled "ERC Withdrawal" containing a brief explanation of the reason for returning the refund check.
7. Include the voided check (without stapling, paper clipping, or bending the check) with the claim withdrawal request and mail it to the IRS at the following address.

   Cincinnati Refund Inquiry Unit
   PO Box 145500
   Mail Stop 536G
   Cincinnati, OH 45250

Practitioner Planning Tip

Taxpayers should make a copy of the front and back of the voided check, the withdrawal request, and their explanation note for their records. Taxpayers should also track the mailing of their documents to confirm delivery and receipt by the IRS.

9

No Receipt of ERC Claim Funds but Subject to an Audit

If a taxpayer has been notified that the IRS is auditing the adjusted return including an ERC claim that the taxpayer wishes to withdraw from, the taxpayer should inquire of the IRS whether they have been assigned an examiner. If the taxpayer has been assigned an examiner, the taxpayer should communicate with the examiner about how to submit the withdrawal request directly to the examiner and what specific steps to take regarding documentation. If the taxpayer has not been assigned an examiner, the taxpayer should respond to the audit notice with their withdrawal request, using the instructions in the notice for responding.

Finalization of Claim[182]

The IRS will send a letter notifying a taxpayer of the acceptance or rejection of their ERC claim withdrawal request. The approved request is not effective until the taxpayer has received the acceptance letter from the IRS. If the withdrawal is accepted, the taxpayer may need to amend an affected income tax return accordingly.

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182. *Withdraw an Employee Retention Credit (ERC) claim*. Dec. 21, 2023. IRS. [www.irs.gov/newsroom/withdraw-an-employee-retention-credit-erc-claim] Accessed on Apr. 29, 2024.

Income Tax Considerations[183]

If an employer's withdrawal of their ERC claim is accepted by the IRS, they may need to amend their income tax return if the employer adjusted the wage deduction for the ERC claim.

> **Caution.** Practitioners who are working with their clients on amending their income tax returns due to withdrawing from an ERC claim should consider the time limitation for claiming a credit or refund, which is the later of three years from the date the tax return was filed or two years from the date the tax was paid.[184] If a client's amended return will not be able to be prepared and filed within this time period, practitioners may consider filing a protective refund claim.
>
> For more information on filing protective refund claims, see the 2021 *University of Illinois Federal Tax Workbook,* Volume B, Chapter 2: Individual Taxpayer Issues. This can be found at **uofi.tax/arc** [taxschool.illinois.edu/taxbookarchive].

VOLUNTARY DISCLOSURE PROGRAM[185]

In December 2023, the IRS announced a voluntary disclosure program as a part of its efforts to address erroneous ERC claims. The program started after discussions with tax professionals and employers revealed businesses wanted to rectify their erroneous claims. The program was available for employers who received an ERC refund but were not eligible for the credit and wanted to repay the amount they received. The program required employers to repay only 80% of the funds they received from the credit and will not be charged penalty or interest.

Businesses participating in this program were required to submit Form 15434, *Application for Employee Retention Credit Voluntary Disclosure Program*, by **March 22, 2024,** for the IRS to review. For tax periods ending in 2020, the employer was also required to complete ERC-VDP Form SS-10, *Consent to Extend the Time to Assess Employment Taxes.* The IRS mailed letters notifying employers if they were accepted into the program. Applications that were accepted were required to repay 80% of the credit received. If an employer was unable to repay 80%, an installment agreement could be arranged on a case-by-case basis. Installment agreements would incur interest and penalties.

Second Voluntary Disclosure Program[186]

The IRS reopened the voluntary disclosure program on August 15, 2024. As part of its second iteration, the voluntary disclosure program requires participants to repay **85%** of the funds they received from the credit (up 5% from the 80% required in the first program). Similar to before, participants will not be charged penalty or interest if timely repaying the 85% of the credit they received. This second program is only applicable for repaying credits received for **tax periods in 2021.** Employers have until 11:59 PM local time on **November 22, 2024,** to participate in this second voluntary disclosure program.

Participants elect to participate in the disclosure program by preparing and filing Form 15434. Participants must use the IRS's Document Upload Tool to electronically upload the form and any required attachments.[187] Payments can be made through the Electronic Federal Tax Payment System (EFTPS), with separate payments for each tax period covered under the submitted Form 15434. For participants unable to repay the full 85% of the credit they received, the IRS may consider them for an installment agreement on a case-by-case basis, with agreements incurring interest and penalties.

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183. Ibid.

184. *Time You Can Claim a Credit or Refund.* Sep. 6, 2023. IRS. [www.irs.gov/filing/time-you-can-claim-a-credit-or-refund] Accessed on Jun. 24, 2024.

185. IRS Ann. 2024-3, 2024-2 IRB 364.

186. IRS Ann. 2024-30, 2024-36 IRB 581.

187. The Document Upload Tool is accessible at irs.gov/DUT.

Employers are eligible for the second voluntary disclosure program if the following are true.

- The employer is not currently under criminal investigation and has not been notified that they are under criminal investigation.
- The employer is not under an IRS employment tax examination for the tax period for which they are applying to the voluntary disclosure program.
- The employer has not received an IRS notice and demand for repayment of part or all of the ERC.
- The IRS has not received information from a third party that the taxpayer is not in compliance or has not acquired information directly related to the noncompliance from an enforcement action.
- The participant has not received notification from the IRS that the ERC the participant received is being recaptured for any tax period for which the participant is applying under the voluntary disclosure program.

Note. The IRS plans to mail up to 30,000 letters to taxpayers reversing or recapturing improper ERC claims. Because one of the eligibility requirements precludes taxpayers who already received such letters from participating in the program, taxpayers interested in the program should assess their situation and file Form 15434 as soon as possible.[188]

IRS AUDITS

As of March 2024, the IRS is still auditing thousands of ERC claims. The agency has sent over 12,000 letters to businesses recapturing the ERC claim and requiring **100%** repayment of the amount the business received, including penalties and interest charges. These letters are for ERC claims for tax year 2020 but the agency plans to send more letters for tax year 2021 as well. As of May 2024, the IRS has also opened 450 criminal cases regarding the ERC with 36 of them already resulting in federal charges. Of those, 16 investigations resulted in convictions and seven sentencings with an average sentence of 25 months.[189]

Employers selected for an ERC audit can expect a shorter examination period compared to an income tax return audit. The IRS will send an information document request (IDR) asking for information regarding the claim. Some of the documents the IRS may request include the following.[190]

- Details of employees paid wages for which the ERC was claimed
- Documentation that the employer was eligible to claim the ERC
- Supporting documentation for the calculation of the credit including copies of worksheets used to complete the Form 941-X
- Documentation of the full-time employees from 2019-2021
- Verification prohibited funds including a paycheck protection program (PPP) loan was not used to pay qualified ERC wages

188. *IRS reopens Voluntary Disclosure Program to help businesses with problematic Employee Retention Credit claims; sending up to 30,000 letters to address more than $1 billion in errant claims.* Aug. 15, 2024. IRS. [www.irs.gov/newsroom/irs-reopens-voluntary-disclosure-program-to-help-businesses-with-problematic-employee-retention-credit-claims-sending-up-to-30000-letters-to-address-more-than-1-billion-in-errant-claims] Accessed on Aug. 20, 2024.

189. IRS News Rel. IR-2024-78 (Mar. 22, 2024); IRS News Rel. IR-2024-169 (Jun. 20, 2024).

190. *ERC Update: Tax Professional Responsibilities and IRS Examinations.* Apr. 6, 2023. Cherry Bekaert LLP. [www.cbh.com/guide/articles/erc-update-tax-professional-responsibilities-and-irs-examinations/] Accessed on May 14, 2024.

After the IDR is submitted, the auditor will conduct an interview to collect more details about the claim. In more recent cases, the IRS is asking employers how they learned of the credit and who determined eligibility. A claim in which a credit promoter is involved may receive more scrutiny than one involving a tax preparer.[191]

Practitioner Planning Tip

Practitioners working with clients selected for an ERC claim audit should set client expectations for the audit and inform their clients that although they were selected for audit due to an ERC claim, the auditor will review the **entire Form 941** they filed, which may result in additional adjustments to the form besides the ERC.

191. *So you've been selected for an ERC audit, here's what to expect.* Oct. 3, 2023. Baker Tilly US, LLP. [www.bakertilly.com/insights/so-youve-been-selected-for-an-erc-audit] Accessed on May 14, 2024.