



# My Next Guest Needs No Introduction

**Lessons to learn from some of  
the asset management industry's  
leading specialists**

2023 Financial Services Tax Conference

July 12, 2023  
11:30 a.m.

A large, abstract graphic of a suspension bridge's cables and towers, rendered in white on a blue background, occupies the right side of the slide.

**Shaping the future:  
convergence  
& collaboration**

2023 Financial Services Tax Conference

# Presenters

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# Agenda

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**Artificial Intelligence in the Tax World**

# Audit Activity Update

# Hot topics for large partnership audits

## Campaigns

- Section 965
- TCJA topics
  - 163(j)
  - CFC planning
- Lending activities/ECI
- Losses/distributions in excess of partner's basis
- Sales of partnership interest
- SECA tax
- Withholding compliance

## IRS Fan Favorites

- Fee waivers
- Fee offsets
- Related party transactions
  - Debt
  - Services
  - Monitoring fees
- Transaction fees
- Termination fees
- Any position taken inconsistent with regulations
  - FTCs
  - Transactions with foreign subs/ holding structures

02

# Navigating Changes To The R&E Costs - §174 and §41

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# Section 174 R&E costs: Pre and Post TCJA

## Pre-TCJA Treatment of Section 174

### Options for recovering Section 174 R&E costs:

- Section 174(a) – Deduct as incurred
- Section 174(b) – Recover over no less than 60 months starting with benefit onset; project by project
- Charge to capital account and recover over useful life (Treas. Reg. 1.174-1)
- Section 59(e) election – Elective 10-year recovery; annual election; applies to specific amount of Section 174 expenses

### Rev Proc 2000-50 software development costs:

- Recovery methods also provided in Rev. Proc. 2000-50 (similar to those provided under Section 174)

## Post-TCJA Treatment of Section 174

### Options for recovering Section 174 R&E costs:

- Changes applicable for tax years beginning after December 31, 2021
- US-Based R&D amortized over 5 years
- Foreign-based R&D Amortized over 15 years
- Amortization begins using mid year convention in year costs paid or incurred
  - Initial year recovery is 10% US and 3.3% Foreign
- A cost must be treated as a 174 cost in order to be credit eligible.

### Rev Proc 2000-50 software development costs:

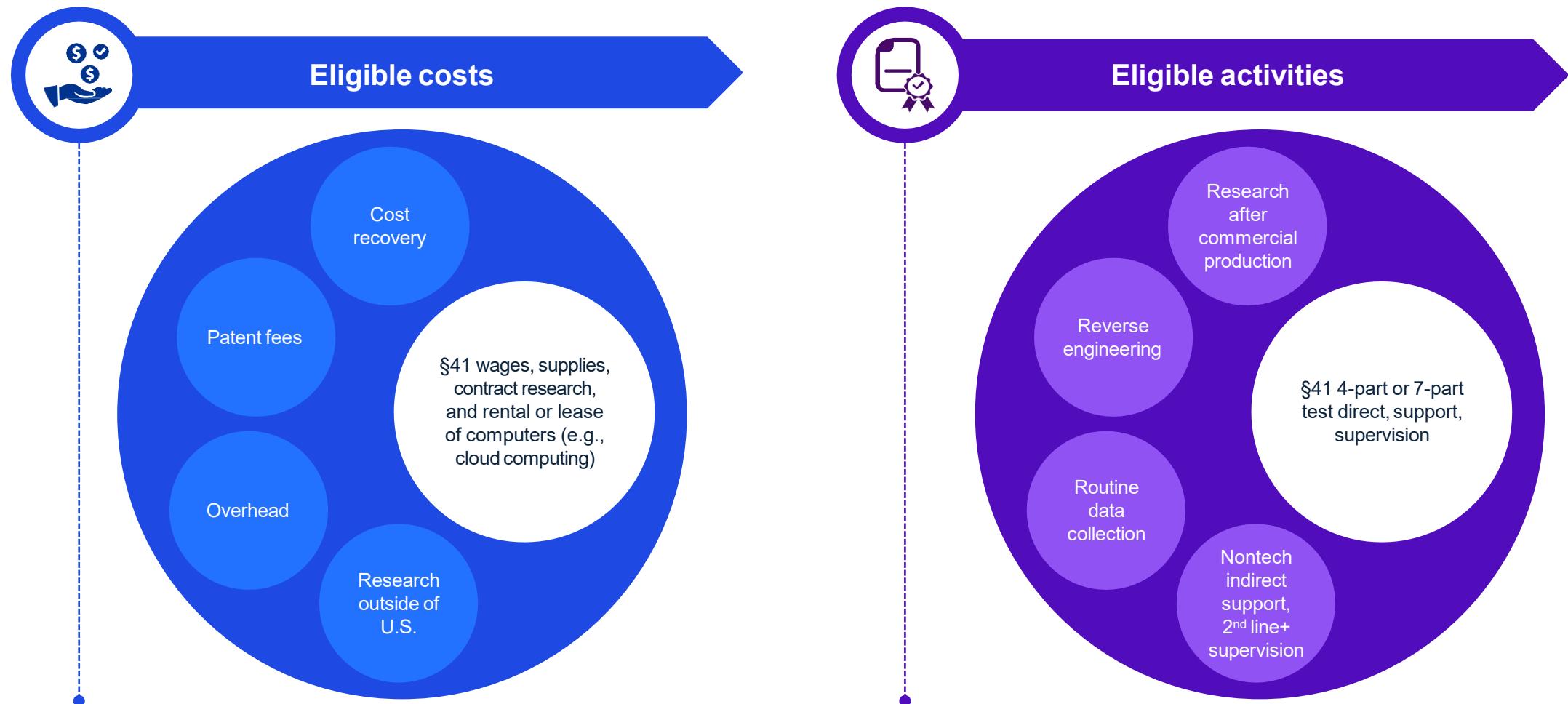
- Rev Proc 2000-50 costs are codified, and require the same amortization treatment, under Section 174

# Sample Capex Table for GAAP & R&D Tax Credit Eligible Phases

\* Activities that are eligible for the R&D Tax Credit

Capitalized (Tax Under Section 174)							
Not Capitalized (Book)		Capitalized (Book)				Not Capitalized (Book)	
Planning	Requirements*	Design*	Coding*	Testing*	Deployment	Data Conversion	Post Implementation
<ul style="list-style-type: none"> <li>- Establish Project</li> <li>- Governance</li> <li>- Create Development Plan</li> <li>- Procurement (RFP and RFI for external vendor selection)</li> </ul>	<ul style="list-style-type: none"> <li>- Develop a high level list of functional and non functional business requirements</li> </ul>	<ul style="list-style-type: none"> <li>- Developed detailed technical specifications</li> <li>- Define and document architecture specification</li> </ul>	<ul style="list-style-type: none"> <li>- Write source code</li> <li>- Log issues</li> <li>- Rewrite source code to optimize functionality and/or improve performance</li> </ul>	<ul style="list-style-type: none"> <li>- Testing</li> <li>- Testing</li> <li>- Unit</li> <li>- Integration</li> <li>- Performance/ Stress</li> <li>- Penetration</li> <li>- User Acceptance Test Support</li> <li>- Write test scripts</li> <li>- Document test results</li> <li>- Quality assurance review</li> </ul>	<ul style="list-style-type: none"> <li>- Readiness review and release</li> <li>- Development of software to facilitate data transfer and conversion</li> </ul>	<ul style="list-style-type: none"> <li>- Conversion of data from old to new systems</li> <li>- Purge old data no longer needed</li> <li>- Creation of new data</li> </ul>	<ul style="list-style-type: none"> <li>- Install software on end-user hardware</li> <li>- Develop training plan and materials</li> <li>- Deliver end user training</li> <li>- Bug fixing</li> <li>- Minor software updates</li> <li>- Config management and control</li> <li>- Quality control testing &amp; ongoing maintenance</li> </ul>
<b>Technical Project Management* (Cap and Exp Book)</b>							
<p><b>Technical Project Management of Requirements, Specifications, Architectural Design, Coding and/or Testing, including:</b></p> <ul style="list-style-type: none"> <li>- Participating in recurring cross functional team meetings</li> <li>- Reviewing project status</li> <li>- Proposing solutions to issues</li> <li>- Reviewing test results</li> <li>- Etc.</li> </ul>							

# Sample Capex Table for GAAP & R&D Tax Credit Eligible Phases



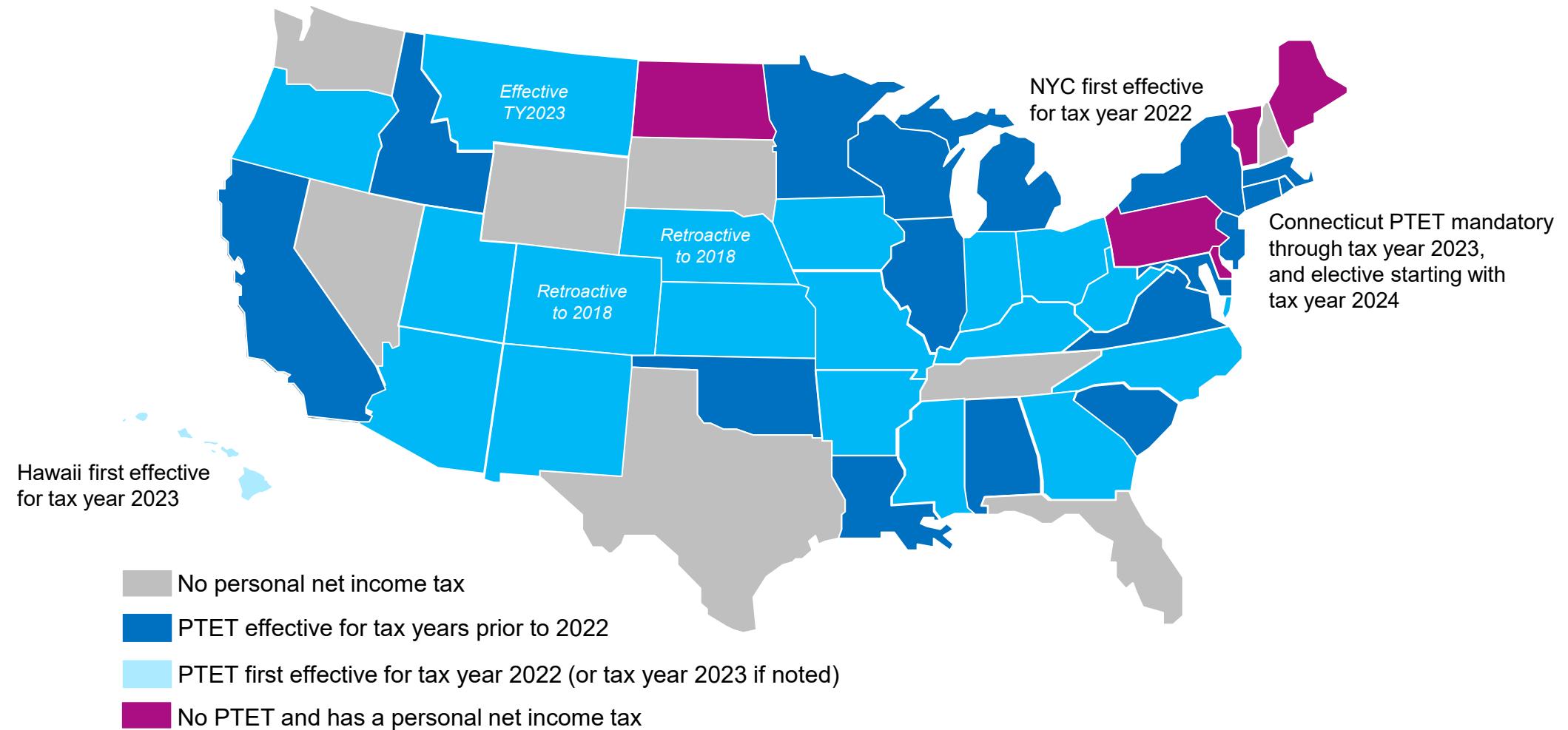
03

# Practical Issues Around State PTET Elections

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# Post-TCJA Elective PTETs



04

# Dealing With Section § 163(j) in a Rising Interest Rate Environment

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# 163(j) - Business Interest Expense Limitation

**KPMG**

## Section 163(j) Planning

By: Matthew Mosby, Xinchen Chen, Joshua Tompkins

08/12/2022

**Beginning in calendar year 2022, the calculation of adjusted taxable income ("ATI") under the interest expense limitation in section 163(j) shifts from an earnings before interest, taxes, depreciation, amortization ("EBITDA") formulation to an earnings before interest and taxes ("EBIT") formulation. As a result, taxpayers' section 163(j) interest deduction limitations may become more severe, and section 163(j) planning may take on heightened importance. This article describes, in very general terms, some approaches taxpayers may consider to address section 163(j) limitations.**

**Overview of Section 163(j)**

Subject to certain exceptions, section 163(j) disallows deductions for business interest to the extent net business interest expense exceeds 30 percent of ATI.<sup>[1]</sup>

Interest is defined under the section 163(j) regulations to include:

- Amounts traditionally treated as interest ("Category 1 Interest") – Category 1 Interest is generally noncontroversial and includes payments traditionally treated as interest (e.g., qualified stated interest and original issue discount).
- Amounts attributable to swaps with significant nonperiodic payments ("Category 2 Interest") – Category 2 Interest is subject to broad exceptions for cleared swaps and swaps with margin and collateral requirements similar to cleared swaps, such that payments made by many taxpayers using traditional swap arrangements are likely not subject to this definition.
- Other amounts treated as interest ("Category 3 Interest") – Category 3 Interest includes bond premium, ordinary income or loss on contingent payment debt instruments and inflation indexed debt instruments, non-ordinary course substitute interest payments, factoring income, and section 1258 gain.

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1 Year Treasury Rate



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# Best Practices in Choice of Jurisdictions

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# Choice of Jurisdiction

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https://www.caymaniantimes.ky/news/cayman-islands-on-eu-tax-blacklist-140220

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The Cayman Islands government says it's awaiting confirmation from the European Union following international media reports that the territory has been placed on the European Union's (EU) tax blacklist. Reputable international media outlets reported on Wednesday that the Cayman Islands had become the first UK territory to be blacklisted by the EU for failing to address concerns about tax abuse. It is said that the government here had not put adequate legislation in place to prevent companies from claiming tax advantages without having an adequate business presence in the territory. While the decision is said to have been taken on Wednesday, the Cayman Islands government says it is still awaiting formal notification.

# Choice of Jurisdiction



QAHC



ICAV



ADGM Corp



Ltd



SPC



QIAF



SIF



RIAIF



Ltd



SCSp-AIF



VCC

06

# Artificial Intelligence in the Tax World

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# Chat GPT

Is an apple july 185 call considered a qualified covered call for tax purposes

As an AI language model, I can provide general information, but I am not a tax professional. Tax laws and regulations can vary by jurisdiction, so it's important to consult with a tax advisor or accountant who is familiar with your specific circumstances and local tax laws.

Generally speaking, a qualified covered call refers to an options trading strategy that may qualify for certain tax advantages. In the United States, for example, the tax treatment of options transactions can depend on several factors, including whether the options are considered qualified covered calls.

To determine whether an Apple July 185 call would be considered a qualified covered call for tax purposes, you would need to consider the specific rules and criteria set forth by the tax authorities in your jurisdiction. These rules may include requirements related to the holding period of the underlying security, the strike price of the call option, and other conditions.

It's advisable to consult with a tax professional who can assess your situation, provide guidance on the tax implications of your options trading activities, and help you determine whether a particular call option meets the criteria for being considered a qualified covered call in your jurisdiction.

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# Chat GPT

is a bullet swap considered a notional principal contract under IRC 446

I am not a tax expert, but I can provide some general information. The Internal Revenue Code (IRC) Section 446 governs the methods of accounting for federal income tax purposes in the United States. Notional principal contracts (NPCs) are financial instruments, such as interest rate swaps, currency swaps, or equity swaps, that are used to manage risks or speculate on changes in interest rates, foreign currency exchange rates, or equity prices.

A bullet swap is a type of interest rate swap in which the notional principal amount is exchanged between two parties at the end of the contract term, rather than periodically during the term. The specifics of how a bullet swap is structured and its treatment under IRC Section 446 would depend on the details of the transaction and how it is documented.

Under IRC Section 446, taxpayers generally have the flexibility to choose their method of accounting, provided that the chosen method clearly reflects their income and is consistent with their overall method of accounting. However, certain rules and regulations may apply to specific types of financial instruments, including NPCs, which can impact their accounting treatment.

To determine whether a bullet swap is considered a notional principal contract and subject to specific rules under IRC Section 446, it would be advisable to consult a tax professional or refer to the relevant tax regulations and guidance provided by the Internal Revenue Service (IRS). They will be able to provide accurate and up-to-date information based on the specific circumstances and current tax laws.



# Q&A

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# Thank you!

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