

40th Annual TEI-SJSU High
Tech Tax Institute
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Hot Topics in Accounting for Income Taxes

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Agenda

- Presidential Candidate Tax Plans / Expiring Tax Provisions
- ASU 2023-09 Improvements to Income Tax Disclosures

Presidential Candidate Tax Plans /
Expiring Tax Provisions

2024 Presidential Outlook

Nearly unprecedented:

- Latest a leading modern candidate has dropped out was Truman on March 29, 1952 and Johnson on March 31, 1968 (July 21!)
- Last sitting president declining to run was Johnson in 1968
- Last election loser renominated was Nixon in 1968
- Last candidate to run after surviving an assassination attempt was Reagan in 1984

More unknowns than knowns:

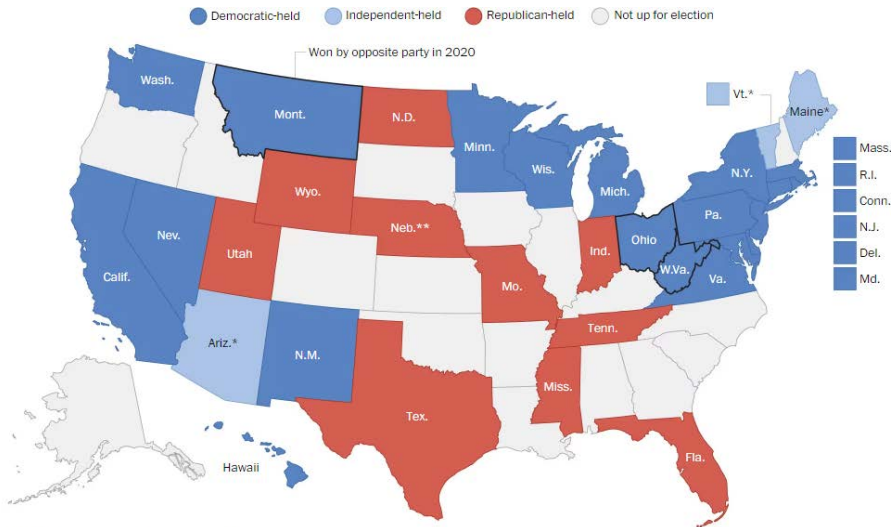
- Very little precedent for current environment
- Are polls worthless?

It's not all about the results: Policy outcomes also hinge on what emerges during campaigns

Key Aspects of Tax Platforms

	Trump	Harris
Corporate rate	<ul style="list-style-type: none"> • Retain 21% • 15% rate for domestic activity 	<ul style="list-style-type: none"> • Increase to 28% Previous at 35% ? • New tax cut for domestic investment
Individual	<ul style="list-style-type: none"> • Retain TCJA tax cuts • Not tax on tips • Exempt SS income from tax • No tax on overtime 	<ul style="list-style-type: none"> • Repeal TCJA tax cuts over \$400k • Raise rate to 39.6% and cap 199A • No tax on tips? • Close gap on 3.8% NII tax
Investment	<ul style="list-style-type: none"> • Index capital gains to inflation? • Target carried interest? 	<ul style="list-style-type: none"> • Tax capital gains at 28% • Financial transactions and big bank tax?
Tax increases	<ul style="list-style-type: none"> • Repeal energy incentives 	<ul style="list-style-type: none"> • Increase CAMT rate to 21% • Increase stock buyback tax to 4% • Billionaire's tax on unrealized gains
International	<ul style="list-style-type: none"> • Retaliatory taxes? Tariffs! Income tax? 	<ul style="list-style-type: none"> • Implement Pillar 2

2024 Senate Outlook



*Held by independent who caucuses with Democrats
 **Regular and special election

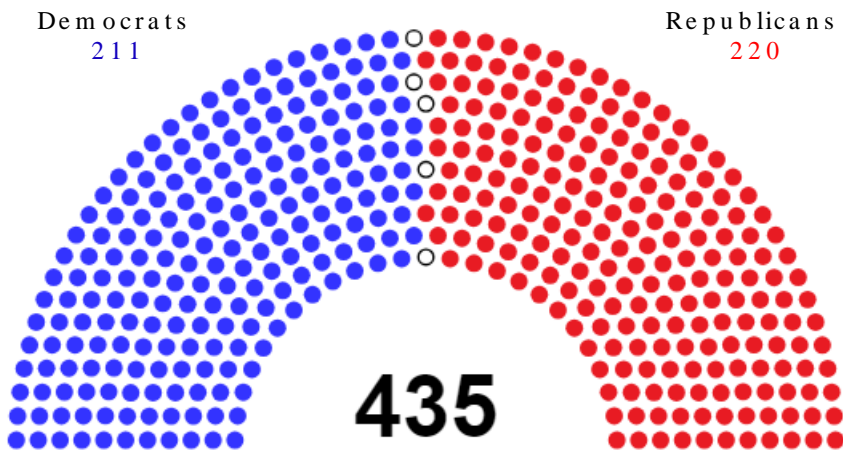
Dem s

- 23 seats to defend
- Best pickup opportunities: TX, FL

GOP

- 10 seats to defend
- Best pickup opportunities: MT, WV, OH, AZ, MI, WI, PA, VA, NV

2024 House Outlook



4 vacancies (3 D and 1 R)

Dem s

- Defending 5 seats in districts won by Trump

GOP

- Defending 18 seats in districts won by Biden

House and Senate have never flipped in opposite directions before

Taxmageddon 2025

Expiring provision	Cost
Individual tax provisions, including: <ul style="list-style-type: none"> • Section 199A deduction • SALT deduction • AMT thresholds • Rate and bracket changes • Itemized and standard deductions • Estate and gift tax exemption 	\$3.9 trillion
Expiring tax benefits, including: <ul style="list-style-type: none"> • Work opportunity tax credit • New markets tax credit • CFC look-through rule • Bonus Depreciation phase out (ending 2026) 	\$216 billion
International provisions: <ul style="list-style-type: none"> • GILTI deduction from 50% to 37.5% • FDII deduction from 37.5% to 21.875% • BEAT rate from 10% to 12.5% 	\$197 billion

Triggers are in place to force major tax legislation next year

Not necessarily offense v defense

Both parties may be interested in revisiting TCJA

Provisions not scheduled to change, like corporate rate, could be part of discussion

Parts of
Pillar 2 also
coming
online
abroad in
2024-25

Potential Timing for Action

Could they dither?

- Congress has gotten worse about retroactive fixes
- No one will be filing a return based on the changes until early 2027
- If we spill into 2026, will there be pressure to wait on Mid-term?

Does it have to be 2025?

- Expiration could hit paychecks in January 2026
- Bush tax cuts were resolved before expiration in 2010 and 2012
- If sweep, GOP wants to move quickly
- Split government could kick the can

What Does it Mean for Planning?

Despite uncertainty, there are things you can consider now:

- Pillar 2: Complex data-driven exercise to assess in-scope entities and safe harbors, modeling, new automated processes, return prep and filing, proactive planning
- Hold off on energy projects? What will survive?
- Estate and gift planning
- Section 163(j) and 174 and fixed assets: Interest capitalization to mitigate limit on interest deduction
- Timing plays with rate changes: Be careful of downsides with uncertain outlook (FDII?)

Would expiration dramatically alter entity choice? CBO thinks so...but many policy options still on the table, including corporate rate increases and extension of pass-through deduction

TCJA Post-2025 Changes

	Current Law	Post-2025 Sunset of TCJA
Global Intangible Low Taxed Income (GILTI)	10.5% ETR on GILTI / applies where CFC foreign ETR < 13.125% 50% deduction on GILTI	13.125% ETR on GILTI / applies where CFC foreign ETR < 16.406% 37.5% deduction on GILTI
Foreign-Derived Intangible Income (FDII)	37.5% deduction on FDII / 13.125% ETR on FDII	21.875% deduction on FDII / 16.406% ETR on FDII
Base Erosion Minimum Tax (BEAT)	10% rate (certain credits, notably R&D, treated favorably)	12.5% rate (favorable treatment of credits lapses)
Section 199A Deduction	20% deduction for qualifying passthrough income	Eliminated
Bonus Depreciation	Decreases 20% per year from 2023 until phased out for property placed in service after December 31, 2026	

Potential Tax Rate Increases – Timing Examples

Taxpayers may be able to generate permanent tax savings with a change in the tax rates by:

- Accelerating income – Recognizing more income in a lower tax rate environment versus a higher future rate
- Deferring deductions – Claiming more deductions in a future, higher, tax rate environment

- Where to start and where to look?
 - Schedule of deferred tax assets and liabilities
 - Current tax payable – US domestic, GILTI, etc.
- Goal is the opposite of traditional tax planning
 - Creating deferred tax assets
 - Accelerating deferred tax liabilities

Methods and Elections

Planning idea	Election, Method Change, Action Item	U.S.	Int'l	Section 481(a) Adjustment*
Direct reallocation method under section 263A	Method Change	X	X	Yes
Full inclusion method for advance payments under section 451(c)	Method Change	X	X	Yes
Capitalize software development costs under Rev. Proc. 2000-50	Method Change	X	X	Depends on current method
Electing section 59(e) on year 1 IRC section 174 amortization amount	Election	X	X	No
Interest capitalization under sections 263A(f) and/or 266	Election (Section 266) Method Change (Section 263A(f))	X	X	No
Analysis of accruals under section 461 (e.g., rebates)	Method Change	X	X	Yes
Elect to capitalize certain prepaid expenditures and/or employee compensation, overhead and de minimis costs	Election	X	X	No
Election to forgo bonus depreciation or alternative depreciation system (“ADS”)	Election	X		No
For compensation related accruals, consider the impact of not passing a board resolution which satisfies the all-events test	Action Item	X	X	No
Defer payments covered under section 404	Action Item	X	X	No
Forego CFC grouping election	Forego Election		X	No
Forego de-minimis safe harbor election under Treas. Reg. § 1.263(a)-1(f)	Forego Election	X	X	No
Elect to capitalize certain repair and maintenance costs	Election	X	X	No

*Section 481(a) adjustments that increase taxable income/E&P generally are recognized ratably over 4 years (or 2 years if the taxpayer is under examination and does not meet an exception, or 1 year if a de minimis or eligible acquisition transaction election is made). In addition, certain events may accelerate the recognition of a section 481(a) adjustment (e.g., sale of stock in CFC with applicable trade or business, applicable trade or business is incorporated or contributed to a partnership, or the sale of the business in a transaction to which section 1060 applies). Because recognizing a section 481(a) adjustment over less than 4 years may be desired, taxpayers should consider the applicability of these provisions as well as audit protection (which, if applicable, precludes the IRS from adjusting the item in tax years prior to the year of change).

Will Chevron make the regs vulnerable?

Supreme Court throws out Chevron test for assessing reg validity:

- Is the statute silent or ambiguous?
- If yes, is the agency ruling reasonable?

New test?

- Not as clear: Potentially Skidmore: Thoroughness of the agency's analysis, validity of its reasoning, consistency of interpretation with other agency interpretations
- Big difference if specific grant of authority

Other Impacts of Chevron

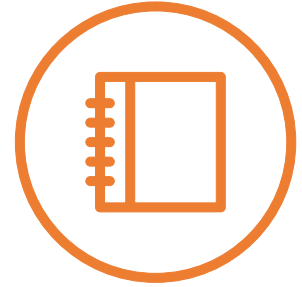
Potential consequences:

- More frequent challenges to regs
- Slower reg process with exhaustive analysis
- Less aggressive attempts to bend statute
- More specific grants of authority from lawmakers? More expansive legislative history? Statutory fixes to address challenges?

More positions on returns contrary to regulations? Still must disclose and reach a level of authority to sign a return

Tax Accounting Effects - Reminder

- The effect of a tax law change is reported as a discrete item in continuing operations in the period of enactment
- The effect includes any necessary adjustments to existing deferred tax assets and liabilities
- Since deferred taxes are measured at the enacted tax rate at which the underlying temporary differences are expected to reverse, scheduling the reversal of existing temporary differences may be necessary in some cases
- The forthcoming highlights, of both legislative and non-legislative activity, are not intended to be an all-inclusive compilation of state and local tax developments that may affect your company



Enacted changes can significantly impact Federal and state deferred tax amounts

ASU 2023-09 Improvements to Income Tax Disclosures

ASU 2023-09 Improvements to Income Tax Disclosure

December 14, 2023

Final ASU issued (ASU 2023-09)

Scope

Public Business Entities (PBEs) and non-PBEs

Effective Date: PBEs - Annual periods beginning after 12/15/2024;
non-PBEs – one year later

Early Adoption: Permitted

Transition: Prospective, with the option to retrospectively apply

Prospective: apply new ASU disclosures for the period ending
December 31, 2025 and continue to reflect the old ASU disclosures
for the prior comparative periods

Retrospective: apply new ASU disclosures for all periods presented

ASU 2023-09 Improvements to Income Tax Disclosure

All entities – disclose (annual basis only) income taxes paid (net of refunds received) disaggregated by:

- Federal, state, and foreign taxes.
- Individual jurisdiction on basis of quantitative threshold of 5% of total income taxes paid (net of refunds received).
- Comparative disclosures are not required.

All entities – disclose rate reconciliation information using both percentages and dollar amounts:

- Requires that PBEs disclose rate reconciliation information by category, including consideration of eight specific categories with further disaggregation
- Provide a qualitative disclosure about the states that contribute to the majority of the effect
- Provide a qualitative disclosure of individual reconciling items
- Require nonpublic entities provide a qualitative disclosure about specific categories and individual jurisdictions

Other disclosures

- Income statement amounts
- Unrecognized tax benefits
- Temporary differences

Materiality

ASC 105-10-05-6 The provisions of the Codification need not be applied to immaterial items.

Public Business Entity:

A public business entity is a business entity meeting any one of the criteria below. Neither a not-for-profit nor an employee benefit plan is a business entity.

- It is required by the US SEC to file or furnish FS or does file or furnish FS with the SEC
- It is required by the Securities Exchange Act of 1934 to file or furnish FS with a regulatory agency other than the SEC
- It is required to file or furnish financial statements with a foreign or domestic regulatory agency in preparation for the sale or for issuing securities not subject to contractual restrictions on transfer
- It has issued, or is a conduit bond obligor for securities that are traded, listed or quoted on an exchange or over-the-counter market
- It has issued one or more securities not subject to contractual restrictions on transfer and it is required by law, contract or regulation to prepare US GAAP FS and make them publicly available on a periodic basis

Effective Tax Rate Reconciliation

PUBLIC BUSINESS ENTITIES ("PBE")					NON - PBE
Min. <u>eight</u> required categories*	\$ and %	Country of Domicile	Breakout Requirements**	Gross/ Net	Qualitative requirement, numerical reconciliation is NOT required
0. Tax at statutory rate	Yes	Yes	N/A	N/A	
1. State and local income taxes, net of federal effect	Yes	Yes	Qualitative (> 50%)	Gross	
2. Foreign tax effects	Yes	No	= > 5%	Gross	
3. Changes in tax laws or rates enacted in the current period	Yes	Yes	No	Gross	
4. Cross-border tax laws	Yes	Yes	= > 5%	Gross	
5. Tax credits	Yes	Yes	= > 5%	Gross or Net	
6. Changes in valuation allowances	Yes	Yes	No	Gross	
7. Nontaxable or nondeductible items	Yes	Yes	= > 5%	Gross	
8. Changes in unrecognized tax benefits	Yes	No	No	Gross or Net***	

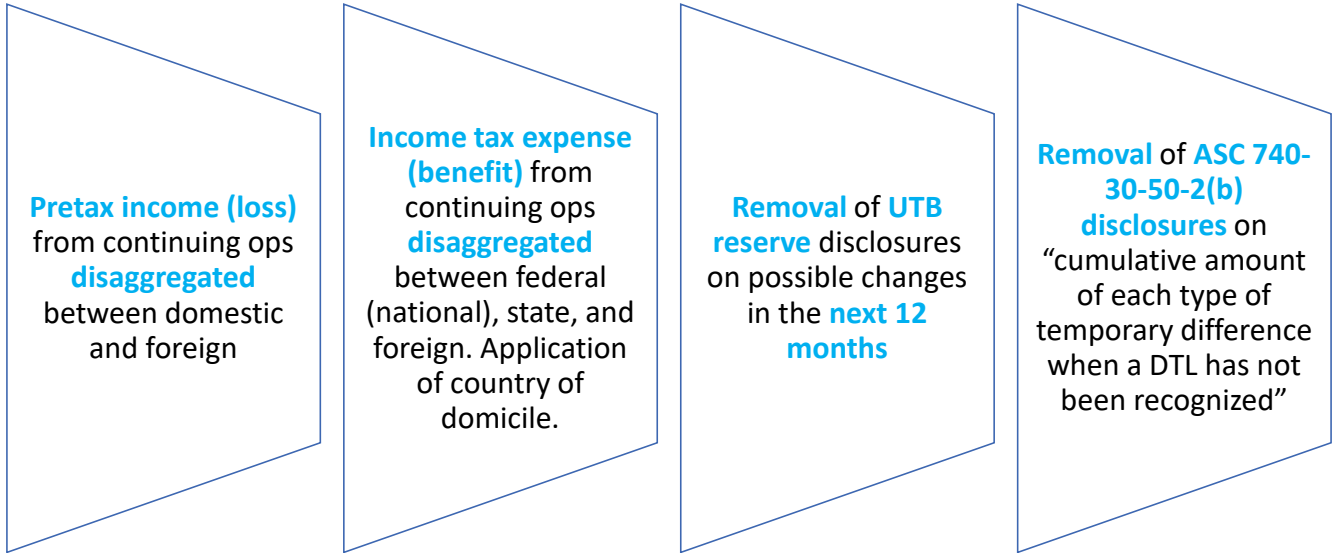
* Other areas to consider: Stock Based Compensation, Return to Provision True-up, Pillar 2, Restructuring, Withholding Taxes, etc.
 ** 5% of statutory tax rate
 *** Subsequent changes in prior year UTB disclosed on gross basis. Current year UTB can choose gross or net.

Rate Reconciliation—Public Business Entity Example

	Year Ended December 31, 20X2			Year Ended December 31, 20X1			Year Ended December 31, 20X0		
	Amount	Percent	%	Amount	Percent	%	Amount	Percent	%
U.S. Federal Statutory Tax Rate	\$ AA	aa	%	\$ BB	bb	%	\$ CC	cc	%
State and Local Income Taxes, Net of Federal Income Tax Effect ^(a)	AA	aa		BB	bb		CC	cc	
Foreign Tax Effects									
United Kingdom									
Statutory tax rate difference between United Kingdom and United States	(AA)	(aa)		(BB)	(bb)		(CC)	(cc)	
Share-based payment awards	AA	aa		BB	bb		CC	cc	
Research and development tax credits	(AA)	(aa)		(BB)	(bb)		(CC)	(cc)	
Other	(AA)	(aa)		BB	bb		(CC)	(cc)	
Ireland									
Statutory tax rate difference between Ireland and United States	(AA)	(aa)		(BB)	(bb)		(CC)	(cc)	
Changes in valuation allowances	(AA)	(aa)		(BB)	(bb)		CC	cc	
Enacted changes in tax laws or rates	-	-		BB	bb		-	-	
Other	AA	aa		(BB)	(bb)		(CC)	(cc)	
Switzerland	(AA)	(aa)		(BB)	(bb)		(CC)	(cc)	
Mexico	AA	aa		BB	bb		CC	cc	
Other foreign jurisdictions	(AA)	(aa)		(BB)	(bb)		CC	cc	
Effect of Changes in Tax Laws or Rates Enacted in the Current Period	-	-		-	-		(CC)	(cc)	
Effect of Cross-Border Tax Laws									
Global intangible low-taxed income	AA	aa		BB	bb		CC	cc	
Foreign-derived intangible income	(AA)	(aa)		(BB)	(bb)		(CC)	(cc)	
Base erosion and anti-abuse tax	AA	aa		BB	bb		CC	cc	
Other	AA	aa		-	-		-	-	
Tax Credits									
Research and development tax credits	-	-		(BB)	(bb)		(CC)	(cc)	
Energy-related tax credits	(AA)	(aa)		-	-		-	-	
Other	-	-		(BB)	(bb)		-	-	
Changes in Valuation Allowances	AA	aa		(BB)	(bb)		(CC)	(cc)	
Nontaxable or Nondeductible Items									
Share-based payment awards	AA	aa		BB	bb		CC	cc	
Goodwill impairment	AA	aa		BB	bb		-	-	
Other	AA	aa		(BB)	(bb)		CC	cc	
Changes in Unrecognized Tax Benefits	(AA)	(aa)		BB	bb		(CC)	(cc)	
Other Adjustments	AA	aa		(BB)	(bb)		(CC)	(cc)	
Effective Tax Rate	\$ AA	aa	%	\$ BB	bb	%	\$ CC	cc	%

^(a) State taxes in California and New York made up the majority (greater than 50 percent) of the tax effect in this category.

Others

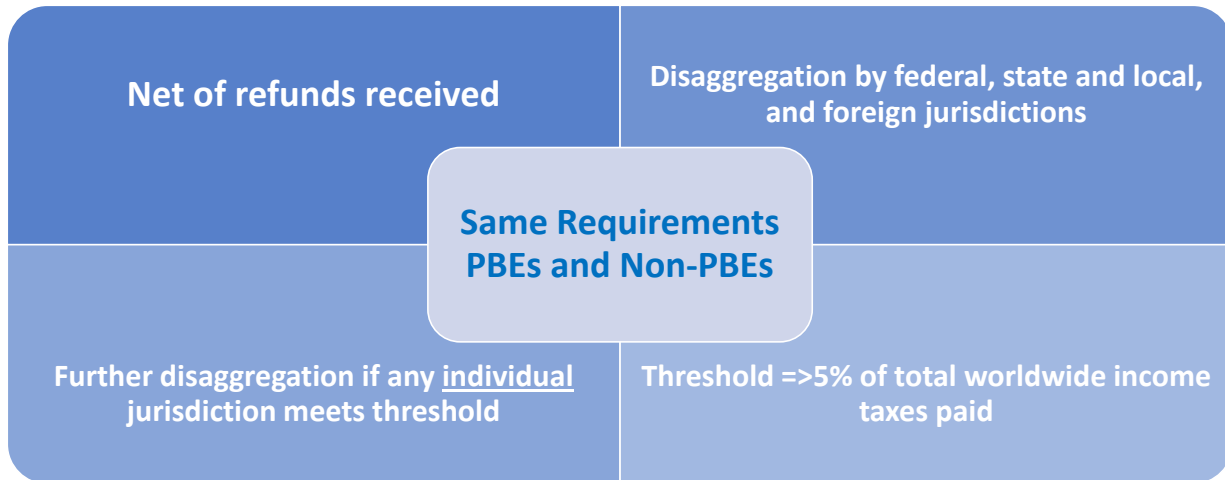


Income Tax Disclosure - Example

- Adoption/ Transition
- PBEs: Annual periods beginning after December 15, 2024, and interim periods beginning after December 15, 2025
 - All other entities: Annual periods beginning after December 15, 2025, and interim periods beginning after December 15, 2026
 - Early adoption is permitted for annual financial statements that have not been issued or made available for issuance
 - Prospective application is required, retrospective application is permitted

	Year Ended	
	December 31, 20X2	
	Amount	Percent
	\$	AA aa %
U.S. Federal Statutory Tax Rate		
State and Local Income Taxes, Net of Federal Income Tax Effect ^(a)	AA	aa
Foreign Tax Effects		
United Kingdom		
Statutory tax rate difference between United Kingdom and United States	(AA)	(aa)
Share-based payment awards	AA	aa
Research and development tax credits	(AA)	(aa)
Other	(AA)	(aa)
Ireland		
Statutory tax rate difference between Ireland and United States	(AA)	(aa)
Changes in valuation allowances	(AA)	(aa)
Enacted changes in tax laws or rates	-	-
Other	AA	aa
Switzerland	(AA)	(aa)
Mexico	AA	aa
Other foreign jurisdictions	(AA)	(aa)
Effect of Changes in Tax Laws or Rates Enacted in the Current Period	-	-
Effect of Cross-Border Tax Laws		
Global intangible low-taxed income	AA	aa
Foreign-derived intangible income	(AA)	(aa)
Base erosion and anti-abuse tax	AA	aa
Other	AA	aa
Tax Credits		
Research and development tax credits	-	-
Energy-related tax credits	(AA)	(aa)
Other	-	-
Changes in Valuation Allowances	AA	aa
Nontaxable or Nondeductible Items		
Share-based payment awards	AA	aa
Goodwill impairment	AA	aa
Other	AA	aa
Changes in Unrecognized Tax Benefits	(AA)	(aa)
Other Adjustments	AA	aa
Effective Tax Rate	\$ AA	aa %

Income Taxes Paid



Example – Income Taxes Paid

	Year Ended December 31, 20X2	Year Ended December 31, 20X1	Year Ended December 31, 20X0
U.S. federal	AA	BB	CC
U.S. state and local			
California	AA	BB	CC
New Jersey	-	BB	CC
New York	AA	BB	CC
Other	AA	BB	CC
Foreign			
United Kingdom	AA	BB	-
Ireland	AA	-	-
Japan	AA	BB	CC
Mexico	AA	BB	CC
Other	AA	BB	CC
Total	AA	BB	CC