



Spring Council

May 2023

	House	Senate
Fiscal State of the Nation	H. Con Res 46 <i>Fiscal State of the Nation Reconciliation</i>	S. Con Res 10 <i>Fiscal State of the Nation Reconciliation</i>
Accounting is STEM	H.R. 3541 <i>Accounting STEM Pursuit Act</i>	S. 1705 <i>STEM Education in Accounting Act</i>
529 Plans	H.R. 1477 <i>Freedom to Invest in Tomorrow's Workforce Act</i>	S. 722 <i>Freedom to Invest in Tomorrow's Workforce Act</i>
Tax Extension Safe Harbor	H.R. TBD <i>Simplify Automatic Filing Extensions (SAFE) Act</i>	To be introduced soon.

FEDERAL TAX FILING EXTENSION “SAFE HARBOR”

Issue

The Internal Revenue Service (IRS) frequently faces challenges in administering the tax filing season. The challenges could be attributed to factors like: (1) late enactment of tax legislation; (2) delays in the release of tax forms; (3) software interruptions; and (4) staffing challenges. In addition, taxpayers and their preparers must often obtain records to properly determine their tax, many of which come from a third party that is not within their control. As a result, it can be difficult to collect the data needed for a complete and accurate return by the original due date. To cope with these obstacles, taxpayers and tax professionals often request extensions of time to file tax returns.

Many people erroneously believe that filing an extension with the IRS allows them six additional months to pay any taxes owed. However, tax professionals know that getting an extension only gives you extra time to file – not extra time to pay.

While the IRS Code provides for an automatic extension so long as you file the appropriate form by the original due date, taxpayers are required to show the full amount of “properly estimated” tax liability for the current year on the extension. If the estimated tax liability for the current year is inaccurate, there is a risk that the extension could be deemed invalid and penalties could be applied. As a result, tax professionals and individual taxpayers filing for extensions by April 15 often perform time-consuming calculations of tax owed in the current tax year on the basis of incomplete or inaccurate information. This means putting hours of work into this initial estimation during the tax “busy season” and then a second calculation, preparation, and review process later when the final tax return is ultimately filed.

Legislation

The *Simplify Automatic Filing Extensions (SAFE) Act* would allow taxpayers the ability to calculate and rely on a safe harbor of 125% of the *prior year* tax to be paid in by the original due date to avoid penalties. This would reduce burdens on practitioners and individuals preparing their own returns, minimize the processing of penalties by the IRS and simplify the work surrounding the filing of federal tax extensions.

AICPA Position

The profession supports this legislation that would minimize taxpayers’ burden and risk of penalties and would allow tax practitioners the needed flexibility to navigate an increasingly unmanageable tax busy season.

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We anticipate a bipartisan bill introduction soon and we urge Senators to cosponsor the bill upon its introduction.

EXPANDING 529 PLAN USAGE

Issue

Reversing a growing talent shortage in the accounting profession will require a multi-pronged effort that leverages both short and long-term strategies. While the expense of the CPA exam preparation, application, and registration varies depending on the state, the total cost can easily exceed \$3,000 and is cited as a deterrent to students who might otherwise sit for the CPA exam. The profession believes that expanding the allowable use of 529 education savings plans would give would-be CPAs more flexibility as they decide how best to pay for the requirements associated with obtaining a license.

Legislation

The *Freedom to Invest in Tomorrow's Workforce Act* (H.R. 1477 / S. 722) would amend the Internal Revenue Code to broaden the allowable use of 529 savings plans to cover the cost of certain workforce training, credentialing programs, certification exams and maintenance of certification credentials. The legislation specifically allows funds to be used for expenses "associated with obtaining or maintaining recognized postsecondary credentials." Representatives Abigail Spanberger (D-VA) and Rob Wittman (R-VA) have reintroduced this legislation in the House. Senators Amy Klobuchar (D-MN) and Mike Braun (R-IN) have reintroduced this legislation in the Senate.

AICPA Position

Certifications and continuing education are cornerstones of the accounting profession, especially as tax and accounting laws continue to evolve. This bill allows greater flexibility to accounting professionals to gain and maintain professional certifications, including the CPA certification. The accounting profession supports the bills.

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RECOGNIZING ACCOUNTING AS A STEM PROFESSION

Issue

To ensure the profession meets the public's, clients' and employers' needs in a technology- driven marketplace, accountants learn and leverage cutting-edge technology skills. Officially recognizing accounting as a STEM curriculum will signal to the public markets that the accounting profession is ready and qualified to assess the technological world businesses are in today. The profession believes this will also increase student engagement with the accounting profession, which will help to build the CPA pipeline. History shows that early exposure to the accounting profession in high school will increase opportunities for students to understand the limitless possibilities of an accounting career and therefore increase their pursuit of such careers.

Legislation

The *Accounting STEM Pursuit Act* in the House and the *STEM Education in Accounting Act* in the Senate would help bolster the argument that accounting is a STEM field by allowing STEM K-12 grant funding to be used for accounting awareness and education. The bill adds “activities to promote the development, implementation, and strengthening of programs to teach accounting” to the list of allowable uses of grant funding under the Student Support and Academic Enrichment Grant program (Title IV, part A of the Elementary and Secondary Education Act) with a focus on increasing access to high-quality accounting courses for students through grade 12 who are members of groups underrepresented in accounting careers.

Representatives Haley Stevens (D-MI) and Young Kim (R-CA) have reintroduced this legislation in the House, and Senators Susan Collins (R-ME) and Jacky Rosen (D-NV) have reintroduced the companion bill in the Senate.

AICPA Position

The profession strongly supports accounting to be recognized as a STEM curriculum under the technology field. Allowing existing STEM K-12 grant funding to be used for accounting awareness and education would help students gain an interest in accounting at an earlier age and learn of the endless opportunities they may find should they pursue a career in accounting.

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FISCAL STATE OF THE NATION RESOLUTION

Issue

The consolidated federal financial statements and the Government Accountability Office's (GAO) audit report provide valuable information regarding the financial condition of the federal government that should be considered by policymakers while making key decisions. Congress, however, often focuses on the short-term view provided by the annual federal budget. Members of Congress need the full picture of the United States' financial health to appropriately make crucial budget and spending decisions for the nation.

Legislation

The *Fiscal State of the Nation Resolution* would establish an annual, joint hearing of the U.S. House and U.S. Senate Budget Committees to receive testimony from the U.S. Comptroller General on the federal government's consolidated financial statements. All Members of Congress would be invited to attend this yearly hearing. Enacting this resolution would ensure Congress is made aware of the information contained in the federal financial statements and better understands how current and/or future policy may affect the nation's long-term fiscal health.

Representatives Andy Barr (R-KY) and Scott Peters (D-CA) have reintroduced the resolution in the U.S. House, and Senators Kyrsten Sinema (D-AZ) and Joni Ernst (R-IA) have reintroduced the companion resolution in the U.S. Senate.

AICPA Position

The profession strongly supports this resolution, believing that it will foster additional transparency regarding the information included in the federal government's financial report and provide Members of Congress with an important perspective on the nation's fiscal health beyond the perspective provided by the annual federal budget alone.

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FEDERAL ISSUES

Anti-Money Laundering (AML): Beneficial Ownership Reporting

- In January 2024, FinCEN (a division of the Treasury Department) will begin requiring small businesses to file beneficial ownership information into a central database for use by local, state and federal law enforcement to facilitate their anti-money laundering activities. The purpose of filing this information is to identify who acts a beneficial owner in so-called shell corporations.
- CPA firms and their clients with fewer than 20 full time employees and earning less than \$5 million in gross receipts will need to file.
- AICPA has recently released supporting one-page information sheets for firms, as well as a one-page information sheet for clients. CPA firms may assist clients in filing, however on a state-by-state basis this could be deemed the unauthorized practice of law.

Anti-money Laundering (AML): *ENABLERS Act*

- International anti-corruption groups have called on nations to implement strict anti-money laundering initiatives.
- Included in these policy changes are requirements that gatekeeper professions such as realtors, lawyers, casinos, art dealers, and accountants be brought in to report on their customer and client activities to combat money laundering.
- CPAs already comply with existing bank secrecy act laws that prohibit money laundering. As a highly regulated profession following a strict code of conduct, firms are already actively engaged in know-your-client activities and have established anti-money laundering policies at their firms.
- Additional requirements are duplicative, disproportionately harm smaller firms and sole practitioners, and for these reasons the profession opposes this legislation and any other requirement to sweep CPAs into a gatekeeper role.

Non-compete agreements

- In January, the Federal Trade Commission released a proposed rule that very broadly would ban non-compete agreements across U.S. businesses.
- The intent of this rule is to encourage ease of movement for employees and competition in the job market.
 - However, the rule fails to recognize the legitimate use of non-compete agreements, especially in professions and in the high-skilled job market.
- The AICPA submitted comments encouraging the FTC to refrain from a one-size-fits-all approach, and we would expect the businesses community to take legal action if any final rule is as aggressive as the rule proposed.

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China Committee

- This is perhaps one of the few issues that has unified the political parties. At the beginning of this year, in an overwhelming bipartisan vote, the House voted to establish the Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party. The committee does not have legislative authority but will hold oversight hearings.
- Standing committees have been holding hearings related to China within their respective committee's jurisdiction and will likely continue to hold hearings.
- Some questions have been raised on the PCAOB's inspection agreement with China and how Congress can better strengthen the PCAOB's position in future negotiations. We're keeping a finger on the pulse as developments unfold with respect to U.S.-China relations.

False Claims Act (FCA) Activity

- The False Claims Act (passed originally in 1863) is used as a tool by the federal government to impose penalties on unscrupulous contractors who defraud the government.
- Last Congress, legislation was introduced to amend the FCA, including a requirement to shift the burden of proof to the defendant to disprove materiality.
- Accounting firms have been the subject of FCA claims and settlements in recent years, based on both their own government contracts and services they have provided to other government contractors.
- The legislation has not been reintroduced this Congress, but we are closely watching any legislation to amend the FCA.

Professional Licensing

- Some states indemnify (legally protect board members in legal proceedings brought against the board) their licensing boards and other states do not.
- The prospect of money damages in antitrust suits exposes state boards, their members and staffs to liability risk and creates a disincentive to serve on state boards.
- The profession believes that a federal solution is needed to ensure that current and prospective state board members are not deterred from serving.
- The profession is working on reintroduction of legislation to provide damages relief to licensing boards. The legislation uses a balanced approach to protecting the public while allowing for competition in the marketplace for consumers.

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Federal contracting

- In addition to FCA (referenced above), and given the anti-China sentiment, there is a possibility that legislation could be included in annual, must-pass legislation that would impose onerous reporting requirements on government contractors who do any business with China or even prohibit doing any contracting work for the federal government if a consulting firm does work with China.
- The Preventing Organizational Conflicts of Interest in Federal Acquisition Act was signed into law at the end of 2022. The bill requires federal contractors to disclose other business relationships with entities that conflict with the work that an agency has hired them to do. The accounting profession was not the target of the legislation, but could be impacted. During Senate committee markup, some improvement was made to include language related to professional standards and procedures.

Cryptocurrency/FinTech

- The FTX failure caused stress in the tech market, and with the subsequent failure of Silicon Valley Bank (SVB) and Signature Bank, the resulting Congressional investigations into these bank failures will push other agenda items further down the Congressional calendar.
- Some Members of Congress have used the failures at FTX, SVB and Signature Bank to question the role of the audit and push for changes in the private company audit process.

Digital Assets

- Legislation regulating stablecoins has circulated on Capitol Hill. This legislation is in discussion draft form and has not been formally introduced.
- The legislation may require CPA review of assets and attestation work in the future.

Standard setting

- The House Financial Services Committee postponed a hearing with the Financial Accounting Standards Board (FASB) that was originally scheduled to be held last fall. The hearing did not happen last Congress and has been postponed indefinitely until several priority banking issues clear the agenda for other business.
- The profession has a long-standing history in support of the independence of the standard setting process.

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Apprenticeships

- In May 2021, the U.S. Department of Labor (DOL) approved the AICPA to create a Registered Apprenticeship for Finance Business Partners, utilizing the CGMA Finance Leadership program.
- AICPA will be responsible for providing the training for registered apprentices while apprentices will receive their on-the-job training at employers who have signed an agreement with AICPA to sponsor their employees for the program.
- Upon completing the CGMA Finance Leadership Program, passing mandatory case study exams and meeting the experience requirements, apprentices will earn the CGMA certification.
- This opportunity ultimately opens the door for employers to apply for apprenticeship, workforce development grants and tax credits to assist with costs, where available.

Foreign Issuers

- Language passed last Congress accelerates from three years to two years the number of PCAOB non-inspection years before a foreign issuer would be delisted from a U.S. exchange.
- Inspectors were granted access in September 2022 and are expected to have ongoing access to Chinese companies' workpapers.
- We are monitoring any additional changes and issues related to the PCAOB's inspection of foreign companies.

Cannabis Banking

- The politics on cannabis remain complicated. Democrats are generally more supportive of legislation to ease restrictions and some Republicans agree with that position.
- However, there are Democrats who are not comfortable when it comes to the full de-scheduling of cannabis and will only consider cannabis from a banking perspective, while many Republicans are not comfortable with considering legislation even regarding banking and cannabis.
- A comprehensive bill is off the table, and targeted legislation such as the SAFE Banking Act face a steep hurdle because supporters of comprehensive legislation have been unwilling to let a targeted bill pass and risk losing leverage for a larger bill down the road.
- The politics are far apart and with vote margins so narrow in both the House and Senate, legislation in this space is very unlikely to move through this Congress.

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DOL Audit Quality Study

- The Department of Labor Employee Benefits Security Administration is completing a study of Employee Benefit Plan (EBP) audits, which is due out early summer 2023. Early indications are that it will be better than 2014 in some areas, and as is usual, DOL has kept the results close. This study may still show some audit quality issues.
- Following the DOL study in 2014, the AICPA embarked on program to enhancing audit quality which focused on EBP and single audits. This program has been expanded to include other kinds of audit quality challenges including those that appeared during COVID.
- The profession is committed to continuing to enhance and improve audit quality in all areas where the profession provides these services.

PCAOB Disciplinary

- Senator Reed (D-RI) and Senator Grassley (R-IA) have re-introduced legislation to make PCAOB disciplinary proceedings public at inception.
- The bill gives the PCOAB considerable power to force settlements, rather than appropriately litigate disciplinary cases.
- This legislation would irreparably damage an auditor's reputation in situations where the PCAOB eventually finds an auditor or firm has NOT violated PCAOB rules or standards.
- The bill would also interrupt candid conversations regarding the audit process which ultimately harms the PCAOB's ability to utilize the disciplinary process to better improve audit quality.

Sarbanes Oxley Act Sec. 404

- In April, the House Financial Services Committee marked up H.R 2799, the *Expanding Access to Capital Act of 2023*. A provision included in the bill would increase the threshold for public company compliance with the statutory audit (external audit as required under SOX Sec. 404(b), external auditor's attestation) from the current \$250 million to companies up to \$500 million in public float, and as high as \$900 million in public float if the company has revenue of less than \$250 million.
- The bill was agreed to by committee with a recorded vote of 28-21.
- The profession has a long-standing history in opposition to exempting additional public issuers from the requirements of SOX 404(b).

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TAX ISSUES

1099 K Threshold

- One of the surprise revenue-raisers in the American Rescue Plan Act of 2021 was a provision that lowered the 1099-K reporting threshold from \$20,000 to \$600.
- That provision was scheduled to start in early 2023, but after the AICPA and other groups pushed back, the IRS announced in late 2022 that it would delay the lower reporting threshold – and it's clear that the delay is meant to allow Congress to come up with a new, workable threshold.
- The AICPA supports increasing the threshold to at least \$5,000 but would prefer a higher number for administrability reasons.

Mobile Workforce

- AICPA has long supported federal legislation that would prohibit states from taxing most non-resident employees unless the employee is present and performing employment duties in the state for more than 30 days during the calendar year.
- Legislation would provide relief to taxpayers and their employers from a web of inconsistent state tax and withholding rules. The rise in remote and mobile work has brought more attention to this issue.
- Though legislation has previously passed the House, the New York state Congressional delegation opposes the bill because it may result in decreased revenue for that state.
- Senator John Thune (R-SD) and Senator Sherrod Brown (D-OH) are working to reintroduce the legislation this Congress.

Retirement legislation

- SECURE 2.0, which was signed into law on Dec. 22, 2022, made sweeping changes to retirement plans, increasing accessibility and adding more flexibility in an effort to encourage individuals to save more for retirement.
- Now that the law has been passed, the profession is working on the implementation phase. The law provides new opportunities for CPAs to add value for their clients in terms of tax and financial planning opportunities.
- We are identifying areas in need of immediate guidance and developing recommendations on how certain rules of the law should work.

Disaster Tax Relief

- The accounting profession supports legislation, the *Filing Relief for Natural Disasters Act*, which would give the IRS the authority to quickly postpone certain federal tax deadlines in response to state-declared disasters, which should hasten critically needed tax relief.

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- Giving the IRS this authority should address the “time lag” that occurs when the governor of a state has declared a disaster or state of emergency but the affected population must wait for a Presidential disaster declaration before federal tax relief kicks in.
- The bill is expected to be reintroduced soon.

IRS Service

- While the Inflation Reduction Act provided an \$80 billion infusion of funds into a beleaguered Service, the imbalance between the funds allocated to enforcement (over \$40B) and the funds allocated to taxpayer service (under \$4B) was concerning in the wake of several years of historically poor taxpayer service.
- The IRS released a Strategic Operating Plan in early April that outlined how it wished to spend the money through 2027.
- As a win for the profession, the Strategic Plan shifted funds into taxpayer service and IT modernization.
- In March, the AICPA sent a letter to the IRS with extensive suggestions regarding Operational Plan resources.
- The AICPA continues to work with key volunteers to publicize proposals that would improve tax practitioner workload compression.

IRS Paid Tax Return Preparers

- We support federal legislation, which we expect to be re-introduced soon, that would give the IRS clear but limited authority to regulate federal tax return preparers.

State Pass-through entity taxes

- A SALT cap work-around has been adopted by 30 states since the Tax Cuts and Jobs Act (TCJA) was enacted. Workarounds apply to S corporations, partnerships, and limited liability companies taxed federally as partnerships or S corporations and shifts state tax on business income from owners to the entity.
- The work-around allows the entity to federally deduct as an expense from business income the entity’s state income taxes paid in carrying on a trade or business.

Employee Retention Credit (ERC)

- Non-CPA firms are charging high contingency fees to prepare amended payroll tax returns to claim the ERC for clients who either don't qualify for the credit, or who qualify at a lower amount than stated by the ERC mill promotional ads.
- This will cause harm for firms’ clients until appropriate taxes and any resulting fees are paid.
- In response to the profession’s advocacy, IRS released IR 2022-183, in which the IRS publicly acknowledged the existence of third parties promoting improper ERC claims.

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and provided an anonymous reporting mechanism (Form 3949-A) to report tax-related illegal activities. Form 3949-A is not a new form, but the IRS has added ERC to the list of reportable offenses.

- This issue is ongoing, and the profession will provide support to the IRS as needed to ensure clients are no longer harmed by unscrupulous ERC mills.

Section 174 Research & Experimentation (R&E) Expenditures

- The Tax Cuts and Jobs Act (TCJA) amended section 174 to require capitalization and amortization of (R&E) expenditures, effective for tax years beginning after 2021. Starting in 2022, taxpayers are now required to amortize over 5 years for domestic expenditures and 15 years for expenditures attributed for foreign research. Before the TCJA amendment, taxpayers had the flexibility to either deduct in the current year or capitalize and amortize the R&E expenses.
- Since retroactive legislation was not passed by the end of calendar year 2022, the change has begun impacting members and taxpayers – including businesses of all sizes, particularly small and mid-size businesses who do not have the software capabilities to track these expenses or the cash flow to pay large the incremental tax liability.
- Currently, there is bipartisan support in Congress to extend the expensing of R&E and other expired provisions, but it is not clear what legislation will move that it can be included on and when that bill will move, and if any other political issues with other extenders will complicate the process. AICPA will continue advocating on this issue.

IRA Implementation

- While the Inflation Reduction Act (IRA) did not contain widespread tax changes, it did contain significant changes in a few select areas.
- We have and are continuing to discuss with government officials, as well as release comment letters with the goal of influencing guidance provided in the areas of CAMT, energy tax credits, corporate stock repurchase excise tax, and IRS funding.
- Initial guidance for all areas has been released, but there is a long way to go before implementation of these changes. Completed guidance in these areas is a priority for Treasury and the IRS, so we expect progress to continue in this year.

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ENVIRONMENT, SOCIAL AND GOVERNANCE (ESG) REPORTING

- There is an increasing demand driven by many stakeholders (e.g., investors, lenders, insurers, governments, consumers and employees) that is driving public and private companies to establish corporate sustainability initiatives that are increasingly becoming part of core business strategies. This has led leaders to think about the need to incorporate ESG efforts into the future of corporate finance and corporate accounting.
- As ESG reporting has become more mainstream, ensuring accuracy and reliability of the information can provide investors and stakeholders with confidence in ESG disclosures. Any ESG disclosure should be high quality, consistent and comparable.
- CPAs are uniquely qualified and well positioned to help companies get ready to provide quality ESG disclosures and to provide ESG assurance services to their clients.
- CPAs that provide assurance have the skills expertise, objectivity and independence that will allow them to play a critical role in strengthening the controls and processes over the systems relating to ESG reporting, signaling to stakeholders the importance the company places on ESG reporting and ultimately driving better decision-making based on enhanced quality of ESG information.
- Last year, the SEC issued a proposed rule on mandatory climate disclosure. Ultimately, it is up to the SEC and Congress to determine what if any disclosures should be mandated.
- In the meantime, as the SEC considers a final rule for climate disclosures or considers other ESG-related disclosures, the profession is providing resources, tools and guidance in both sustainability reporting and assurance to help meet the growing demand for ESG-related services.

