

EMPLOYEE RETENTION CREDIT ESSENTIALS FOR BUSINESSES

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Presented by:

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PRESENTERS



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Guy Nicio is a Partner and Chairman of the firm's Tax department. He has more than 20 years of public accounting experience and focuses on tax planning, compliance, and consulting with start-up to middle-market businesses and their owners. Guy also heads the firm's client accounting services group, which includes bookkeeping, sales and use tax compliance, along with fractional outsourced accounting solutions.



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Director, Tax

Bella Wang is a Tax Director with more than 20 years of experience in public accounting, specializing in tax planning, consulting, and compliance for large and midsize domestic and international businesses and high-net-worth individuals. She is also a contributing writer for the firm's *Solutions* newsletter and *Tax Alerts*.

AGENDA

- Qualifications
- Calculating and claiming the credit
- Income tax implication
- Interplay and maximize both PPP and ERC
- Other considerations / CA AB 80

QUALIFICATIONS

QUALIFICATIONS

PPP loan borrowers are now eligible to claim ERC and can apply retroactively to wages and healthcare benefits paid after 3/12/20.

The credit was also extended until December 31, 2021. Different rules apply to the 2020 versus 2021 ERC.

An ERC cannot be claimed on the same wages that were used for PPP loan forgiveness (**no double dipping**).



QUALIFICATIONS

To qualify, an employer must satisfy **one** of the following two criteria:

- experienced a significant reduction in gross receipts during any calendar quarter of 2020 or 2021 when compared to the same quarter in 2019 (50% reduction in 2020 and 20% in 2021)
- partial or complete suspension of its business operations in 2020 or 2021 due to the governmental orders limiting commerce, travel, or group meetings

QUALIFICATIONS

Significant reduction in gross receipts:

- Identify if any calendar quarter's gross receipts were 50% less in 2020 compared to 2019 (20% for 2021)

	Jan – March	April – June	July – Sept	Oct - Dec
2019	300,000	200,000	600,000	800,000
2020	280,000	70,000	360,000	680,000
Reduction	7%	65%	40%	15%

Qualified for the ERC in Q2, Q3 and Q4 even the 4th quarter gross receipts exceeded 80% of 2019 Q4 gross receipts.

QUALIFICATIONS

Significant reduction in gross receipts:

	Jan – March	April – June	July – Sept	Oct - Dec
2019	300,000	200,000	600,000	800,000
2021	255,000	80,000	528,000	696,000
Reduction	15%	60%	12%	13%

Qualified for the ERC in Q2 and Q3.

QUALIFICATIONS

Significant reduction in gross receipts:

	Jan – March	April – June	July – Sept	Oct - Dec
2019	300,000	200,000	600,000	800,000
2021	225,000	166,000	360,000	680,000
Reduction	25%	17%	40%	15%

Qualified for the ERC in all 4 quarters through 12/31/21.

QUALIFICATIONS

Gross receipts includes:

- Total sales (less returns and allowances)
- Investment income and income from incidental or outside source
 - Interest income
 - Dividend income
 - Rents
 - Royalties
 - Annuities
- Less adjusted basis in assets sold



QUALIFICATIONS

Gross receipts includes:

- Excludes sales tax if the tax is legally imposed on the purchaser of the good or service, and the taxpayer merely collects and remits the sales tax to the taxing authority
- Cash or accrual method of accounting



QUALIFICATIONS

Suspension of business operations:

- Statutory language: Any order, proclamation, or decree from the Federal government or any State or local government that limits “commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the COVID-19 and is related to the suspension of an employer’s operation of its trade or business. Statements from a governmental official, including comments made during press conferences or in interviews with the media, are not considered as governmental order.

QUALIFICATIONS

Suspension of business operations:

- Governmental orders include:
 - an order from the city’s mayor stating that all non-essential businesses must close for a specified period;
 - a State’s emergency proclamation that residents must shelter in place for a specified period, other than residents who are employed by an essential business and who may travel to and work at the workplace location;
 - an order from a local official imposing a curfew on residents that impacts the operating hours of a trade or business for a specified period; and
 - an order from a local health department mandating a workplace closure for cleaning and disinfecting.

QUALIFICATIONS

Suspension of business operations:

- Non-essential business – Governor issues an order that all non-essential businesses must close from March 20 through May 31, 2020. Wages paid from 3/20 – 5/31/20 qualified for ERC under suspension rule.

However, if a governmental order requires an employer to close its workplace, but the employer is able to continue operations by requiring employees to telework, there is no suspension.

QUALIFICATIONS

Suspension of business operations:

Example: Employer A, a software development company, maintains an office in a city where the mayor has ordered that only essential businesses may operate. Prior to the governmental order, all employees had teleworked once or twice per week, and business meetings were held at various locations remotely. Following the governmental order, the company required all employees to work remotely and limited client meetings to telephone or video conferences. Employer A is not considered having full or partial suspension of its operations due to the governmental order since it is able to continue its business operations in a comparable / consistent manner.

QUALIFICATIONS

Suspension of business operations:

Example: Employer D operates a physical therapy facility in a city where the mayor has ordered that only essential business may operate. Its business is not considered essential; therefore, it is required to close its workplace. Prior to the governmental order, none of its employees provided services through telework and all appointments, administration, and other duties were performed at the Employer D's workplace. Due to the governmental order, it moves to an online format and continues to serve some clients remotely, but employees cannot access specific equipment or tools that they typically use in therapy and not all clients can be served remotely. It is considered to have partial suspension of its business due to the governmental order because its workplace, including access to the physical therapy equipment, is essential to its operations, and it cannot continue in a comparable manner.

QUALIFICATIONS

Suspension of business operations:

If an employer incurs a significant delay (for example, beyond 2 weeks) in modifying its business operations to comparable telework, then it may be deemed to have partial suspension of its operations during the transition period.

The IRS guidance states that the following factors should be considered in determining if an employer can continue comparable operations:

- Whether an employer has adequate support (IT) so operations can continue remotely without interruption;
- The amount of portable work, or work otherwise adaptable to be performed from a remote location (i.e. accounting / finance);
- The role that the employer's physical work space plays in an employer's trade or business (critical and necessary, beneficial but not necessary, or merely convenient)

QUALIFICATIONS

Suspension of business operations:

- Essential & non-essential business: If under facts and circumstances, more than a nominal portion of its business operations are suspended by a government order.

Example: Restaurants – Dine in is suspended
Auto dealership – Sale portion is suspended
Hotel – banquet service is suspended
Retail store with online sales – retail is suspended

QUALIFICATIONS

Suspension of business operations:

- The gross receipts from the suspended portion of the business must be at least 10% of the total gross receipts (but determined based on the gross receipts of the same calendar quarter in 2019), or
- The hours of services performed by employees in the suspended portion of the business is not less than 10% of the total number of hours of service performed by all employees in the employer's business (determined based on number of hours of service performed in the same quarter in 2019)

QUALIFICATIONS

Suspension of business operations:

- Essential business:
 - Interruption in supply chain

Example: Employer X is a manufacturer that is considered as an essential business. Its raw material supplier is required to close its operations due to a governmental order and as a result, it was not able to procure these raw materials from an alternative supplier. It is considered having suspension of its business operations due to the supplier was unable to deliver the critical goods or services to the business.

QUALIFICATIONS

Suspension of business operations:

- Essential business:
 - Reduce operating hours by a governmental order
- Example:** Employer B is food processing company and it operates 24 hours a day before COVID. A governmental order by local health department requires all essential food processing businesses to deep clean and sanitize their workplaces every day to reduce risk of COVID exposure. Due to the government order, it can only operate 18 hours a day so a deep cleaning can be conducted. It is considered to have partial suspension of its operations.

QUALIFICATIONS

Suspension of business operations:

- Governmental orders that require customers to stay at home which caused a reduced demand for goods or services do not qualify for suspension (but may meet gross receipts test) (i.e. mechanical shop)
- If an employer that voluntarily reduces its hours due to COVID-19, it is not considered as suspension and not eligible for the credit.



QUALIFICATIONS

Suspension of business operations:

- All members of an aggregated group are treated as a single employer. If the operations of one member of the aggregated group are suspended due to a governmental order, then all members of the group are considered having partial suspension, even if another member is in a jurisdiction that is not subject to a governmental order.

To meet the suspension requirement, it is based on facts and circumstances and subjective. We should evaluate each employer's situation carefully to make such determination.

CALCULATING AND CLAIMING THE CREDIT

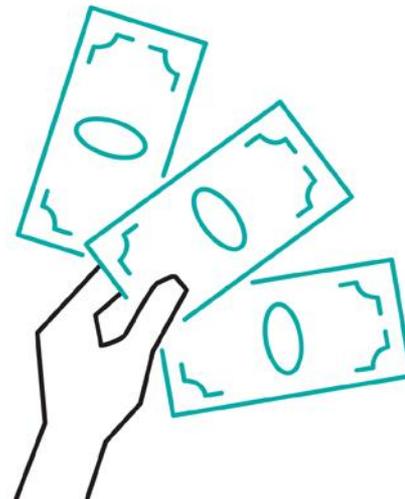
CALCULATING AND CLAIMING THE CREDIT

	2020	2021
Applicability	Qualified wages paid after 3/12/20 – 12/31/20	Qualified wages paid from 1/1/21 – 12/31/21
Credit Amount	50% of Qualified Wages (Maximum \$10,000 per employee per year)	70% of Qualified Wages (Maximum \$10,000 per employee per quarter)
Maximum Credit	\$5,000 per employee	\$28,000 per employee

CALCULATING AND CLAIMING THE CREDIT

Qualified wages:

- Wages and qualified health plan expenses that the employer paid on employees' behalf.
- Wages that are exempt from FICA are not eligible for ERC.
- Compensation of owners/shareholder/partner that own more than 50% are not eligible for ERC.
- Wages paid to relatives of more than 50% owner not eligible for ERC.



CALCULATING AND CLAIMING THE CREDIT

Qualified wages with more than 100 full-time equivalent (FTE) employees in 2019 (change to 500 for 2021 ERC):

- Only wages paid to an employee for time that the employee is not providing services during the qualifying period. If employee is paid for telework, the wages won't qualify for the credit.
- May not treat the amounts paid to employees for paid time off for vacations, holidays, sick days and other days off as qualified wages.

CALCULATING AND CLAIMING THE CREDIT

Qualified wages with more than 100 FTE employees in 2019 (change to 500 for 2021 ERC):

- Increase in the amount of wages paid to employees during the time that employees are not providing services do not qualify of the credit. Qualified wages paid to an employee may not exceed what the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the commencement of the suspension period.

CALCULATING AND CLAIMING THE CREDIT

Qualified wages with more than 100 FTE employees in 2019
(change to 500 for 2021 ERC):

- Employer, a restaurant, had more than 100 FTEs in 2019
- Had partial suspension of operations from 4/6/20 -5/31/20
- Take-out and delivery service available
- It paid all employees same wages as pre-COVID (no reduction)
- It paid 100% of health insurance premiums of \$150/week/employee

Employee	Weekly Gross Pay	Wages 4/6/20-5/31/20	Qualified wages	Health Insurance	Qualified wages + Insurance	\$10K limit	50% of qualified wages
John: working 60%	1,500	12,000	4,800	1,200	6,000	6,000	3,000
Mary: not working	2,000	16,000	9,600	1,200	10,800	10,000	5,000
Total							8,000

CALCULATING AND CLAIMING THE CREDIT

Qualified wages with 100 or less FTE employees in 2019 (change to 500 for 2021 ERC):

- All wages qualified even during the time employees are working
- Can include wages paid under the pre-existing vacation, sick and other leave policy as qualified wages



CALCULATING AND CLAIMING THE CREDIT

Qualified wages with less than 100 FTE employees in 2019
(change to 500 for 2021 ERC):

- Employer, a restaurant, had less than 100 FTEs in 2019
- Had partial suspension of operations from 4/6/20 -5/31/20
- Take-out and delivery service available
- It paid all employees 60% of wages at pre-COVID time
- It paid 100% of health insurance premiums of \$150/week/employee

Employee	Weekly Gross Pay	Wages 4/6/20-5/31/20	Qualified wages	Health Insurance	Qualified wages + Insurance	\$10K limit	50% of qualified wages
John: working	1,500	12,000	7,200	1,200	8,400	8,400	4,200
Mary: Not working	2,000	16,000	9,600	1,200	10,800	10,000	5,000
Total							9,200

CALCULATING AND CLAIMING THE CREDIT

Large employer (more than **100** full-time employees (FTE) in 2019 for 2020 and **500** employees in 2019 for 2021)

- FTE means an employee who had an average of at least 30 hours of service per week or 130 hours of service in the month in any calendar month in 2019. The total FTE is determined by taking the sum of the number of FTE in each calendar month in 2019 and dividing that total by 12.
- For employer-started business in 2019, it is determined by taking the sum of the number of FTE in each **full** calendar month in 2019 and divide it by number of full calendar months in 2019.

CALCULATING AND CLAIMING THE CREDIT

Large employer (more than **100** full-time employees (FTC) in 2019 for 2020 and **500** employees in 2019 for 2021)

- For members of an aggregated group, all entities are treated as a single employer and must combine their average number of FTE employees in 2019 for the 100 or 500 total FTE test.



CALCULATING AND CLAIMING THE CREDIT

Affiliation Rules (Aggregated Group)

Employers are considered as one single-employer if:

- It is parent-subsidary group where a common parent owns more than 50% of the subsidiaries,
- It is included in a brother-sister combined group where a group of 5 or fewer people owns 80% or more of each corporation, or
- It is a combined group which is a group of three or more corporations each of which is either a parent-subsidary group or a brother-sister controlled group.

CALCULATING AND CLAIMING THE CREDIT

How to allocate the ERC to an eligible employer that is a member of an aggregated group?

- The amount of the ERC with respect to a member of the aggregated group is based on the member's proportionate share of the qualified wages giving rise to the credit for each calendar quarter (or other prescribed period for which a payroll tax return is required to be filed) for which the credit is claimed.



CALCULATING AND CLAIMING THE CREDIT

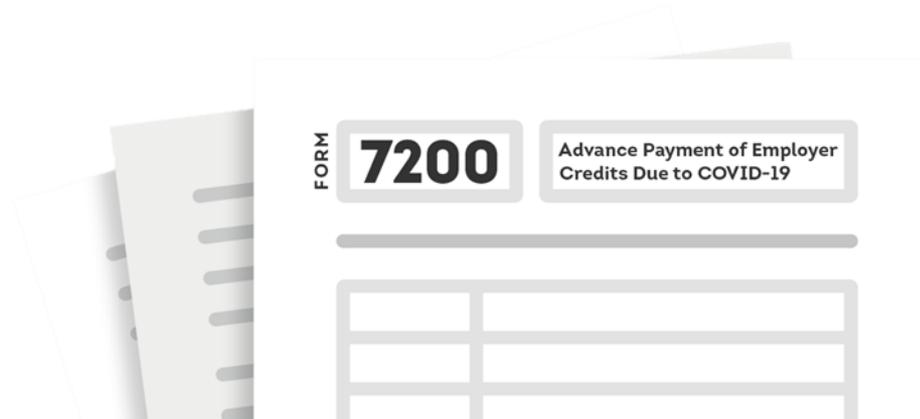
Claiming the credit:

1. Claim the credit on the amended payroll tax return, form 941X for 2020 or Q1 2021 credit if the Form 941 had already been filed.
2. Claim the credit on timely filed form 941
3. Request an advance payment from the IRS by filing an Advance Credit Form (IRS Form 7200)

Example: Employer Z has \$10,000 in qualified wages which resulted in \$7,000 credit. Employer's total withholding for all employees is \$8,000 after deferral of employee's payroll tax. Employer may deposit \$1,000 and retain the \$7,000 credit.

CALCULATING AND CLAIMING THE CREDIT

- May file Form 7200 to request an advance payment of ERC at any time before the end of the month following the quarter in which qualified wages were paid.
- Form 7200 may be filed multiple times during each quarter
- Amounts entered in lines 1,2,3,5 and 6 represent cumulative totals for the quarter
- Form 7200 must be filed before Form 941 is filed



CALCULATING AND CLAIMING THE CREDIT

- No banking information is required on Form 7200. The IRS will issue refund check to the business address on record.
- The taxpayer will receive IRS letter 6313 if the IRS needs written verification that address listed on form 7200 is current mailing address of business.
- If employer receives an advance payment in excess of the amount of the allowable credit, it will need to be paid back upon reconciliation when the form 941 is filed.

INCOME TAX IMPLICATION

INCOME TAX IMPLICATION

Income tax deductions must be reduced by the amount of the credit received in the year the credit was generated.

- Credit claimed on 2020 form(s) 941 or 941X will reduce the wages deducted on the 2020 tax returns regardless of when the refunds due to the credits were actually received.
- The wages were still tax deductible on the California return.

**INTERPLAY AND
MAXIMIZE BOTH PPP
AND ERC**

INTERPLAY WITH PPP

PPP Loan Forgiveness:

- Expenses are fully tax deductible
- Loan forgiveness is not taxable

It is a dollar-to-dollar benefit

ERC:

- Salaries to the extent of credit is not tax deductible (may affect Section 199A deduction and R&D credit due to reduction in wages)
- Credit is not taxable

Benefit = 70 cents on \$1 wage – tax liability on the credit

INTERPLAY WITH PPP

- Choose the most beneficial covered period for PPP forgiveness (salary reduction / FTE reduction consideration).
- Maximize 40% non-payroll cost for PPP forgiveness. Maximize retirement plan contributions for PPP.
- All wages outside of PPP covered period should be used for ERC if qualify.
- Wages paid during covered period in excess of \$46,154 should be used for ERC.
- Owner-employee wages should be used for PPP.



**OTHER
CONSIDERATIONS /
CALIFORNIA
ASSEMBLY BILL 80**

OTHER CONSIDERATIONS

Wages Paid by a Third Party:

- Credit earned by a common law employer should be claimed by Professional Employer Organization (PEO) on its Form 941, Schedule R.
- Employer can file a Form 7200 and provide a copy to PEO to reconcile with final Form 941.
- Need to provide advanced notice to PEO on amount of credit that can be claimed on the Form 941. PEO will rely on information provided by the employer. Employer has burden of proof.

OTHER CONSIDERATIONS

Recovery Start-up Business

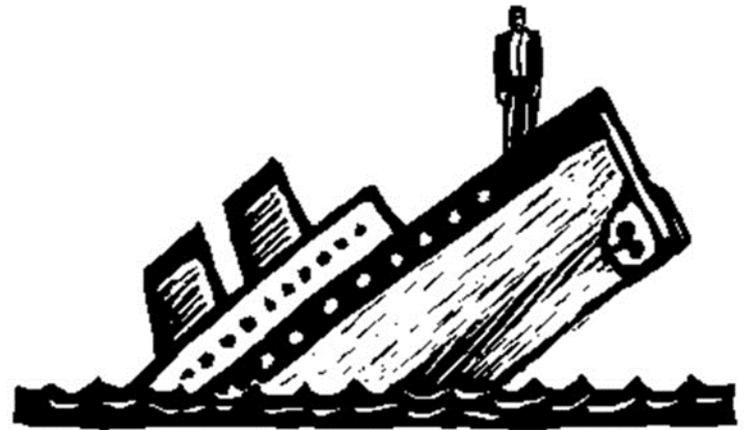
- Started after February 15, 2020
- Gross receipts of \$1 million or less
- Credit is capped at \$50,000 in aggregate for all employees for each of the 3rd and 4th quarters of 2021. Only applies to Q3 and Q4 of 2021.



OTHER CONSIDERATIONS

Severely financially distressed business

- Employers with a greater than 90% decline in gross receipts in any quarter in 2021 compared to 2019
- Waives the 500 full-time employee threshold
- Qualified wages include wages paid to all employees
- Only applies to Q3 and Q4 of 2021



OTHER CONSIDERATIONS

Other considerations

- Can file amended payroll tax returns for year 2020 by April 15, 2024.
- Substantial requirements:
 - Government order that suspends employer's operations
 - Any records the employer relied upon to determine whether more than a nominal portion of its operations were suspended due to governmental order
 - Any records the employer used to determine a significant decline in gross receipts
 - Any records for qualified wages paid (payroll record)

OTHER CONSIDERATIONS

Other considerations

- Substantial requirements:
 - Large employer, work records and documentation to show wages were paid for time an employee was not providing services.
 - Documentation shows how employer determined the amount of qualified health plan expenses.
 - Documentation related to the aggregated group determination
 - Copies of any completed Forms 7200 filed.
 - Copies of completed Form 941 filed
 - ***All records should be kept for at least 4 years (5 years for 2021 Q3 and Q4 ERC)***

CALIFORNIA PROPOSED ASSEMBLY BILL 80

Pending legislation on tax deductibility of PPP expenses on 2020 California return

- No longer a \$150,000 limit on the amount of PPP expenses that may be deducted.
- To qualify, a business must demonstrate at least a 25% reduction in gross receipts in the 1st, 2nd, or 3rd quarter of 2020 compared to the same quarter in 2019. If the entity was not in business during all of 2019, then the business must show a 25% reduction in gross receipts during any quarter in 2020 from the 2019 calendar quarters it was in operation. If they were in business for all of 2019, they can also compare annual 2019 gross receipts with 2020 annual gross receipts.

QUESTIONS?

DISCLAIMER

The topics covered in this presentation do not constitute tax or legal advice.
You should always consult your tax, legal, or financial advisor for
direction regarding your specific situation.

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Eighteenth Floor
Los Angeles, CA 90071

ABOUT WINDES

WINDES BY THE NUMBERS

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Irvine

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- Mergers & Acquisitions Strategy
- Outsourced Accounting Services
- Paycheck Protection Program (PPP) Loan Forgiveness
- Value Acceleration & Exit Planning

INDUSTRY RECOGNITION

- Acknowledged by **INSIDE Public Accounting** (IPA) as one of the top 25 “Best of the Best” accounting firms in the country
- **Accounting Today** Regional Leader and Firms to Watch
- Ranked as an **IPA** Top 200 Accounting Firms in the nation since its inception
- “Best Places to Work in Los Angeles and Orange Counties” for consecutive years by the **Los Angeles Business Journal** (LABJ) and **Orange County Business Journal** (OCBJ). For 2019, Windes was ranked #3 best place to work in Orange County.
- One of the Largest Accounting Firm in Los Angeles County” by the **LABJ**
- “17th Largest Accounting Firm in Orange County” by the **OCBJ**
- “2009, 2011, 2012, 2015, 2016, 2017 and 2019 Best Accounting Firms to Work For” in the country by **Accounting Today**
- Recognized by the **OCBJ** and **OneOC** as a “The Civic 50” in Orange County in 2017 and 2018. In 2019, Windes was the Medium Workforce Winner.
- Acknowledged by the **OCBJ** as a “2020 Companies that Care”



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PRESENTER BIOS

GUY NICIO

Guy has more than 20 years of public accounting experience. He is Chairman of the firm's Tax department and also serves on the firm's Board of Directors.

He focuses on tax planning, compliance, and consulting with start-up to middle-market businesses and their owners, working closely with his clients to analyze and maintain the most tax efficient structure to suit each client's unique situation.

Guy's tax experience and expertise includes analysis and selection of business entities, federal and multi-state income tax compliance for businesses and individuals, tax planning optimization and strategy, and audit defense.

He serves a wide variety of clients in the real estate, construction, manufacturing, professional services, healthcare, and restaurant industries, as well as high-net-worth individuals.

Guy also heads the firm's Comprehensive Office Solutions Group, which provides client accounting services such as bookkeeping, payroll solutions, sales and use tax compliance, business property tax returns, accounting software implementation and conversions, and fractional outsourced accounting solutions.



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PARTNER – CHAIRMAN, TAX

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Bella joined Windes in 2000 and has over 20 years of experience in public accounting. Her practice focus is tax planning, consulting, and compliance for large and midsize domestic and international businesses and high-net-worth individuals.

Bella assists clients with business entity selection, tax ramifications related to mergers and acquisitions, and reorganization and planning for transactions. She specializes in international tax considerations, which includes international tax planning and compliance, and consulting on a broad range of inbound and outbound tax issues. Bella helps clients understand the implications of international tax developments to minimize their worldwide tax burdens, as well as advising on international mergers and acquisition transactions. She also consults on ASC 740 and ASC 740-10 analysis, including financial statement disclosure requirements.

Bella serves a number of industries, including manufacturing, real estate, wholesale, technology/E-commerce and retail, construction, transportation, oil and gas, import/export, professional services, and healthcare.

Bella is a contributing writer for the firm's *Solutions* newsletter and *Tax Alerts*. She is also an in-demand speaker and presents on various topics pertaining to new tax laws and tax planning strategies. In addition, Bella is in charge of training and mentoring internal staff. She is also fluent in Mandarin.



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