BerryDunn

ELEVATE

Annual Commercial Summit | 2024

Navigate Sunsetting Tax Laws and Post-Election Impacts

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BerryDunn

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Presenter

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Agenda

01 Highlights of Tax Proposals from President Elect Trump

02 Sunsetting Provisions of the Tax Cuts & Jobs Act

03 Federal Tax Update – Select Topics

04 State Tax Update – Select States

05 Other Updates – Beneficial Ownership Information (BOI)

Learning objectives

- To highlight the tax policy proposals of President Elect Trump
- To understand some recent and soon to be expiring tax provisions enacted under previous legislation
- Highlight recent tax law changes in states in the Northeast

Section 01

Highlights of Tax Proposals from President Elect Trump

Tax Proposals of President Elect Trump

Business Income Tax Proposals

- Decrease the corporate tax rate to 20% (21% currently).
- Lower corporate income tax rate to 15% for companies making products in the US.
- Impose 10-20% across the board tariffs on imported good, 25% on nations seen as contributing to illegal immigration, 60% on products from foreign rivals, and 100% - 200% on certain foreign automobiles.
- Eliminate many of the energy tax credits enacted under the Inflation Reduction Act.
- Reinstate and make permanent expiring TCJA provisions including:
  - Immediate expensing of research and experimental costs
  - 100% bonus depreciation
  - Increase Sec. 179 cap for small businesses
  - Sec. 163j EBITDA based interest limitation

Tax Proposals of President Elect Trump

Individual Income Tax Proposals

- Decrease top marginal rate to 25% (decrease from 37% currently) or alternatively.
  - Implement a 2-tier tax bracket system (15% and 30% rates).
  - Replace the existing personal income tax system with tariffs.
- Make many of the 2017 TCJA tax breaks permanent, including the 20% QBI deduction on pass-through income.
- Exempt social security benefits, tips, and overtime pay from taxation.
- Increase the child tax credit – possibly as high as $5,000.
- New tax credit for family caregivers.
- New deduction for personal interest paid on auto loans.
- New deduction for purchase of home generators.

Tax Proposals of President Elect Trump

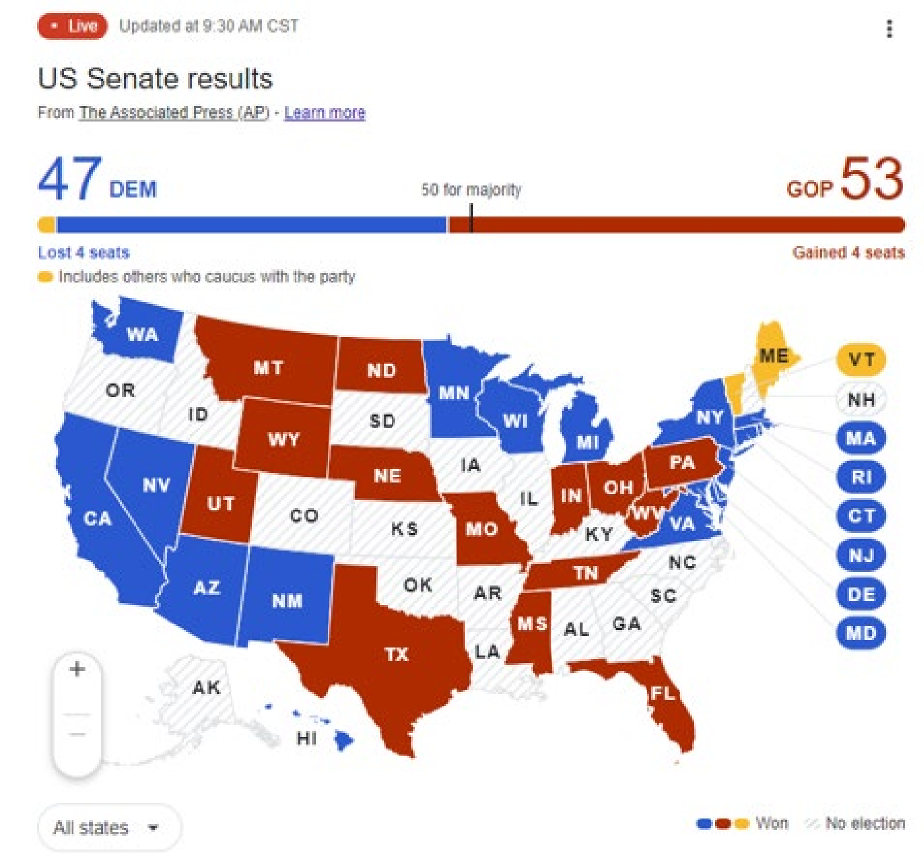
Other Tax Policy Proposals

- Tax university endowments which would be used to fund a new, free institution called American University.
- Make permanent the gift and estate tax provisions enacted under the TCJA.
- Make permanent the TCJA rules for international taxation set to expire at the end of 2025, like:
  - Base-erosion and anti-abuse tax.
  - Foreign-derived intangible income deduction.
  - Global intangible low-taxed income deduction.

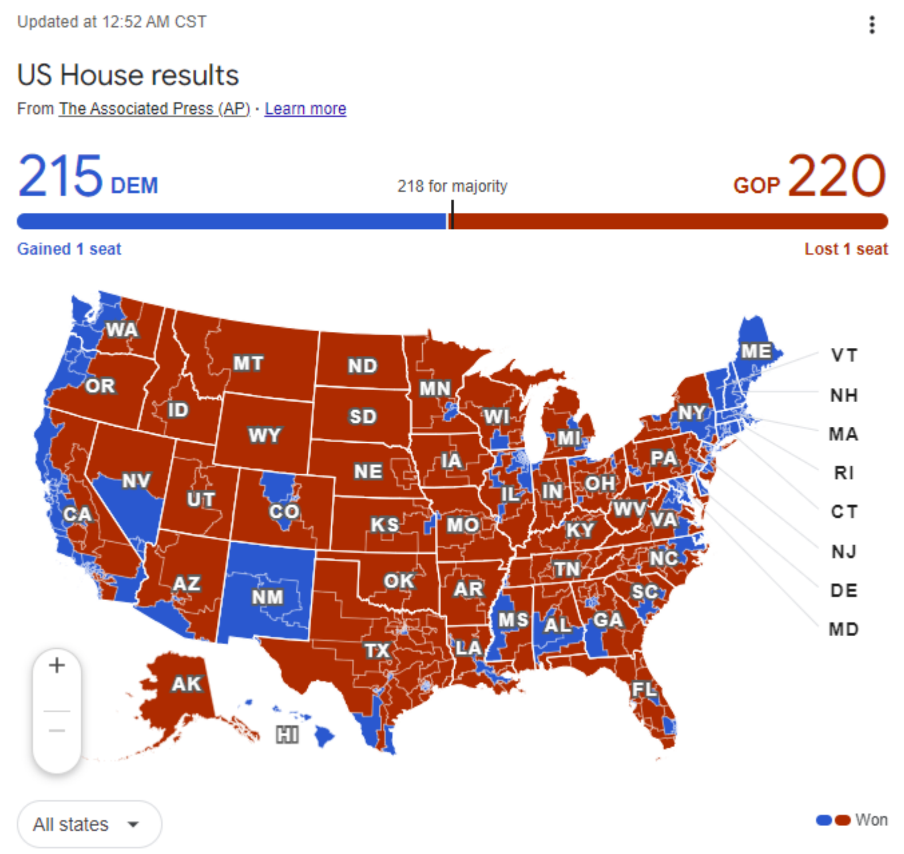
The Cost and How to Pay for It

Republican sweep – Unified control of the three branches of government

US Senate Results



US House Results



The Cost and How to Pay for It

Fiscal impact according to the Committee for a Responsible Federal Budget report

Estimated cost of Trump's proposal

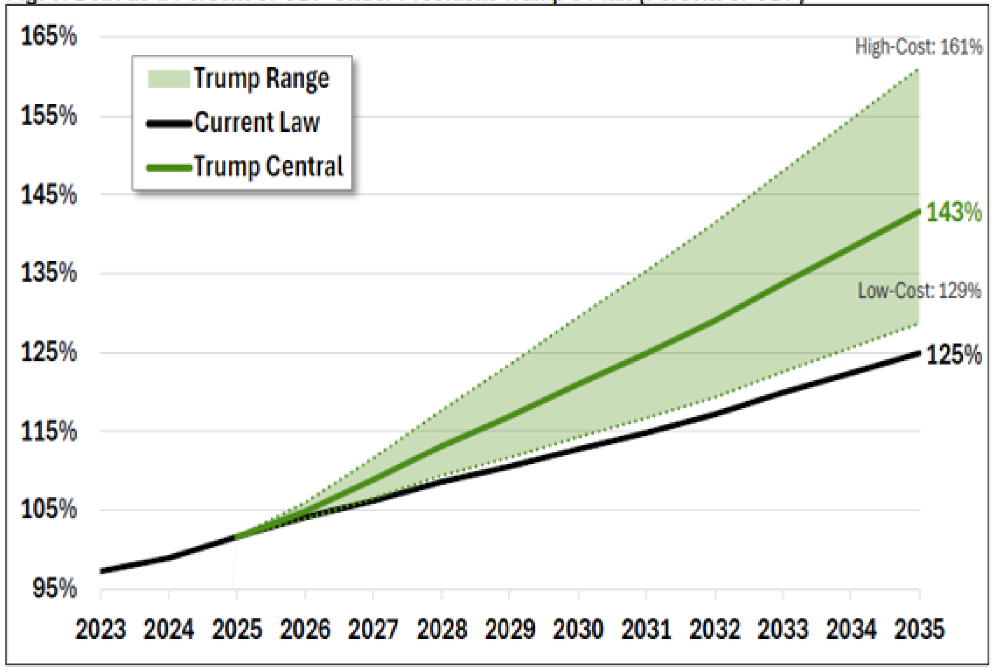
Fig. 7: Summary of Trump Plan, Savings/Costs(-) (billions, 2026-2035)

Policy Proposals	Low	Central	High
Extend and Modify the Tax Cuts & Jobs Act (TCJA)	-$4,600	-$5,350	-$5,950
Exempt Overtime Income from Taxes	-$500	-$2,000	-$3,000
End Taxation of Social Security Benefits	-$1,200	-$1,300	-$1,450
Exempt Tip Income from Taxes	-$100	-$300	-$550
Lower Corporate Tax Rate to 15% for Domestic Manufacturers	-$150	-$200	-$600
Enact or Expand Other Individual and Small Business Tax Breaks	-$150	-$200	-$350
Strengthen and Modernize the Military	-$100	-$400	-$2,450
Secure the Border and Deport Unauthorized Immigrants	$0	-$350	-$1,000
Enact Housing Reforms, Including Credits for First-Time Homebuyers	-$100	-$150	-$350
Boost Support for Health Care, Long-Term Care, and Caregiving	-$50	-$150	-$300
Subtotal, Tax Cuts and Spending Increases	**-$6,950**	**-$10,400**	**-$16,000**
Establish a Universal Baseline Tariff and Additional Tariffs	$4,300	$2,700	$2,000
Reverse Current Energy/Environment Policies and Expand Production	$750	$700	$550
Reduce Waste, Fraud, and Abuse	$250	$100	$0
End the Department of Education and Support School Choice	$200	$200	$0
Subtotal, Revenue Increases and Spending Reductions	**$5,500**	**$3,700**	**$2,550**
Net Interest	**-$200**	**-$1,050**	**-$2,100**
Total, Net Deficit Impact	**-$1,650**	**-$7,750**	**-$15,550**

Note: Figures rounded to the nearest $50 billion

Estimated effect on the national debt

Fig. 8: Debt as a Percent of GDP Under President Trump's Plan (Percent of GDP)



Source: Committee for a Responsible Federal Budget based on Congressional Budget Office baseline.

The Cost and How to Pay for It

Enacting law could still face significant hurdles, budget reconciliation is the likely path forward

Budget Reconciliation

What is it?

Permits legislation impacting revenues and spending to pass the Senate with 51 votes rather than the 60-vote filibuster threshold. Spending, revenue, or the debt limit may be addressed under reconciliation together or separately, but only once per budget resolution, and only one budget resolution is approved for each fiscal year.

What has it been used for

Inflation Reduction Act (IRA) (2022)	American Rescue Plan Act (ARPA) (2021)	Tax Cuts & Jobs Act (TCJA) (2017)	Portions of Affordable Care Act (ACA) (2010)	Extenders, capital gains rate extension (TIPRA) (2006)	"Bush tax cuts" (2001, 2003)

What is the process

- House and Senate approve budget with reconciliation instructions
- Committees report legislation meeting instructions
- House and Senate approve same bill, President signs

What can't be included

The Byrd Rule deems extraneous provisions that:

- Do not produce a change in outlays or revenues
- Produce changes in outlays or revenue that are merely incidental
- Increase net outlays or decrease revenue during a fiscal year after those covered by the bill
- Increase outlays or decrease revenue if the provision's title as a whole fails to achieve the committee's instructions
- Are outside the jurisdiction of committee that submitted the title or provision
- Change Social Security

Examples of the Byrd Rule in action

- TCJA: expanding 529 accounts to home-school deemed incidental to non-budgetary policy
- ACA repeal effort: eliminating essential health benefits, selling insurance across state lines ruled as no revenue effect
- Revenue-raising provisions taking effect in later years of the budget window enabled permanency of TCJA corporate rate cut by clearing rule on decreasing revenue in years beyond the budget window

Bloomberg Tax

The Cost and How to Pay for It

Enacting law could still face significant hurdles, budget reconciliation is the likely path forward

- Other considerations:
  - Budget reconciliation can be enacted by a simple majority vote in the Senate vs the 60-vote threshold required to pass a tax bill.
  - Pushback is expected from members of both parties given current debt levels, interest costs, deficit spending, and other fiscal concerns that threaten to slow economic growth.
  - Tariffs are largely inflationary. Trump's proposed deportation program likely to exacerbate the situation.
  - Fiscal Responsibility Act of 2023 suspended the debt ceiling through January 1, 2025.

> We can't just have it be unlimited, whatever we want it to be
>
> **Senator James Lankford**
> Republican of Oklahoma and Finance Committee member
> (NY Times, Nov. 7)

Polling question #1

Section 02

Sunsetting Provisions of the Tax Cuts & Jobs Act

Sunsetting Provisions of the Tax Cuts & Jobs Act

Recently sunset provisions and more on the horizon

1

Required capitalization of Section 174 research and experimental expenses

Effective January 1, 2022

2

Limits on the deductibility of business interest expense under Section 163j

Effective January 1, 2022

3

Incremental reduction of bonus depreciation rates under Section 168k

Effective January 1, 2023

4

Expiration of the qualified business income (QBI) deduction under Section 199A

Effective January 1, 2026

5

Other miscellaneous provisions of importance

Sunsetting Provisions of the Tax Cuts & Jobs Act

Recently sunset provisions and more on the horizon

01

Required capitalization of Section 174 research and experimental expenses: Effective January 1, 2022

Cost recovery period: 5-year (Domestic) vs 15-year (Foreign).

Applicable costs: Direct (wages, supplies, etc.) and indirect (rent, utilities, etc.).

Compliance challenges to consider: Cost identification and documentation, impact with other Internal Revenue Code (IRC) sections (41, 163(j), 263A, etc.), and state conformity issues.

IRS announced in mid-September they anticipate releasing proposed regulations in near future.

02

Limits on the deductibility of business interest expense under Section 163j: Effective January 1, 2022

Deduction is limited to sum of: (a) business interest income, (b) 30% of adjusted taxable income (ATI), and (c) floor plan financing interest.

ATI calculation: EBITDA vs EBIT.

Exceptions for small businesses, certain electing businesses, and the ADS trade-off.

Sunsetting Provisions of the Tax Cuts & Jobs Act

Recently sunset provisions and more on the horizon

03

Incremental reduction of bonus depreciation rates under Section 168k: Effective January 1, 2023

2022 was the last year of 100% bonus. Beginning 2023, the rate drops 20% per year until completely phased out in 2027. The rate is 40% for tax year 2025.

04

Expiration of the qualified business income (QBI) deduction under Section 199A: Effective January 1, 2026.

Remains 20% of QBI from certain pass-through entities.

Potential impacts if not renewed.

05

Other miscellaneous provisions of importance.

Most business (corporate) provisions were made permanent, e.g., corporate tax rate reduction (21%), repeal of AMT. Not so for pass-through entities.

Individual: Marginal tax rate changes, SALT limitation, standard deduction, and personal exemptions, child tax credit, estate tax exemptions.

Planning Considerations in the Current Environment

Uncertainty over tax policy requires an agile response strategy

- Expect revenue raisers in the form of a corporate rate hike to curb cost of extending TCJA provisions.
- Scenario planning and flexibility will be key.
  - Most of the TCJA's corporate provisions were permanent whereas individual provisions revert back to prior law at the end of 2025.
  - Accelerate income/deductions to take advantage of existing rates.
  - Evaluate planned capital expenditures in conjunction with the following:
    - Current bonus phaseout rules with potential for reinstatement of 100% bonus in future legislations.
    - Review of alternate fixed asset accounting methodologies, e.g. placed in service dates; recovery periods; repairs & maintenance expense vs capital improvements/betterments vs materials & supplies; safe harbors (De minimis and Remodel-refresh).
  - Diversification of investments, managing liquidity, and access to lines of credit.
  - Evaluate other tax efficient investment strategies such as retirement plan contributions, tax loss harvesting, Roth conversion, cost segregation studies, or clean energy tax credits enacted under the IRA.

Polling question #2

Section 03

Federal Tax Update – Select Topics

Deadline for Digital Asset Safe Harbor is Fast Approaching

Action required before January 1, 2025

Digital Assets Tax Safe Harbor

- Prior to finalizing broker reporting regulations, Treasury permitted the universal method for basis tracking.
  - Assumes all taxpayer's digital assets are held in one account/wallet (even if not the case.)
  - Owner could specifically identify basis for digital asset sold from the pool.
  - Could result in orphaned basis with no digital assets or digital assets with no basis.
- Final regulations indicate that IRS interpreted Sec. 1012(c)(1) to be applied on a wallet-by-wallet method, i.e. universal method is no longer permissible.
- Rev Proc. 2024-28 provides a safe harbor for those who used the universal method.
  - Available until January 1, 2025 and allows for a one-time allocation.

Summary of Enforcement Initiatives Announced by the IRS

Targets include high net worth individuals and related enterprises

- The IRA provided billions in IRS funding to address tax evasion and improve taxpayer services.
  - **Areas of focus**
    - Sale of partnership interests, negative tax basis capital accounting issues, and related party basis shifting transactions lacking economic substance.
    - Corporate Jets – personal vs business use; depreciation deductions.
    - Conservation easements, passive activity determinations, and investment interest tracing.

Section 04

State Tax Update – Select States

Elective PTE Taxation & The SALT Cap

Do state elective tax regimes have a purpose following repeal of the SALT cap?

- Most states now have PTE tax polices following enactment of the TCJA in 2017.
  - 36 states have enacted laws, and 10 states structured theirs to expire if the cap is repealed or expires (CA, CO, IA, IL, MA, MI, MN, OR, UT and VA).
  - Connecticut’s program was designed to raise revenue by not offering a full offsetting credit.
  - States may continue to use them as an alternate to withholding or pivot to the CT model if the cap is repealed or raised.
  - Projections show repeal would cost $1.2 trillion over 10 years (Committee for a Responsible Federal Budget). Raising the cap to $25K & $50K (S & MFJ respectively) seems more likely.

Northeast State Income Tax Changes

Maine

- Installment sale election (Effective January 1, 2024) - Interest associated with an installment sale of property for which the election is made by a nonresident individual taxpayer to pay the Maine tax on the gain in the year of the sale or in a subsequent tax year is excluded from Maine taxable income in the year of the election and any subsequent tax year.
- Maine capital investment credit (Repealed effective January 1, 2025) - Unused credit carryforwards may still be utilized.
- Dirigo Business Incentives program tax credit. (Effective January 1, 2025) – New tax credit for qualified businesses certified under the DECD program that make eligible capital investments in business property or provide qualified training to its employees within the State.

Northeast State Income Tax Changes

Massachusetts

- Beginning January 1, 2025, single sales factor apportionment is being adopted for all industries in Massachusetts.
- Beginning January 1, 2024, individual taxpayers must file their Massachusetts income tax returns in the same manner as is filed for federal income tax purposes (married filing joint vs. married filing separately).
- Department of Revenue required to analyze the impact of 4% millionaire’s surtax (took effect in 2023) on the Massachusetts Pass-Through Entity Tax.

Northeast State Income Tax Changes

New Hampshire

- Beginning January 1, 2023, single sales factor apportionment was adopted.
- Proposed legislation made in 2024 aims to reduce the Business Profits Tax (BPT) from 7.5% to 7% incrementally between 2025 and 2029 and reduce the Business Enterprise Tax (BET) from .55% to .25% in phases through 2027.
- Beginning January 1, 2025, the interest and dividends tax is repealed (individual taxpayers).

Northeast State Income Tax Changes

Vermont

- Single sales factor apportionment adopted effective for tax years beginning January 1, 2023.
- Despite adoption of single sales factor, property and payroll apportionment must still be reported to the state.
- State imposed tiered minimum tax as measured by Vermont gross receipts changed materially for all tiers beginning on January 1, 2023.

Polling question #3

Section 05

Beneficial Ownership Information (BOI) Update

Beneficial Ownership Information (BOI) Reporting

New requirement overseen by the Financial Crimes Enforcement Network (FinCEN)

- Mandatory reporting for beneficial owners who directly or indirectly own or control a company.
  - Corporate Transparency Act passed and signed into law in 2021 on a bipartisan basis.
  - Aims to increase the U.S. governments efforts to make it harder for bad actors to hide or benefit from ill-gotten gains through shell companies or other opaque ownership structures.
  - BOI E-filing website launched on January 1, 2024.
  - Beneficial owners are individuals who either directly or indirectly exercise substantial control over a reporting company or owns or controls at least 25% of reporting company's ownership interests.

Beneficial Ownership Information (BOI) Reporting

Requirements apply to pre-existing and newly created businesses

- Businesses created before January 1, 2024, have until January 1, 2025, to file an initial BOI report (to the extent required).
- A reporting company created or registered in 2024 will have 90 calendar days to file after receiving actual or public notice that its creation or registration is effective.
- A reporting company created or registered on or after January 1, 2025, will have 30 calendar days to file after receiving actual or public notice that its creation or registration is effective.

Beneficial Ownership Information (BOI) Reporting

Recent Updates

1

There have been roughly 6.5 millions filing year to date out of the expected 32 million reports expected to be filled per Phil Lam, FinCEN's BOI Operations and Innovation Chief (Tax Advisor, Nov. 2024)

2

Most of these are associated with new business filings

3

AICPA sent a letter to congress on November 11 seeking at least a one-year suspension of to allow more time for the small business community to comply with the law

Beneficial Ownership Information (BOI) Reporting

Recent Updates

- Hurricane relief: Six-month extension granted for those affected by Beryl, Debby, Francine, Helene, and Milton.
  - For companies that have an original reporting deadline beginning one day before the disaster declaration date and ending 90 days after.
- Must be in a FEMA designated area.
  - **Hurricane Milton**: Oct 4 – Jan 2
  - **Hurricane Debby:** Jul 31 – Oct 29
  - **Hurricane Francine:** Sep 8 – Dec 7
  - **Hurricane Helene:** Sep 22 – Dec 21
  - **Hurricane Beryl:** Jul 4 – Oct 2

Beneficial Ownership Information (BOI) Reporting

Recent Updates

- Several cases continue to make their way through the courts. Completed cases have provided limited relief (upheld or refused to restrain enforcement).
  - National Small Business United, et al. v. Yellen, et al., United States District Court, Northern District of Alabama, Case No. 5:22-cv-01448-LCB (On appeal but issued an injunction against the CTA for association members).
  - Firestone v. Yellen - noteworthy because the court ruled that the plaintiff was unlikely to succeed on the merits because the CTA did not violate the U.S. Constitution.
  - Due to conflicting opinions, unlikely that any U.S District Court would issue a nationwide injunction before year end. If NSBU v. Yellen is upheld, an appeal to the USSC is expected in 2025.

Beneficial Ownership Information (BOI) Reporting

Recent Updates

- U.S. District Court for Eastern District of Texas issues preliminary injunction against enforcement – December 3, 2024.
  - Texas Top Cop Shop v Garland, et al. (Case No. 4:24-cv-00478).
  - Judge Amos L Mazzant III issued a nationwide injunction noting that corporate regulation is traditionally within the states' jurisdiction and is "likely" unconstitutional, the CTA disrupts the balance of power to the U.S. federalist system, and burdens businesses with compliance costs.
    - "*The fact that a company is a company does not knight Congress with some supreme power to regulate them in all aspects—especially though the CTA, which does not facially regulate commerce*," Mazzant said
  - Potential next steps from the incoming administration.
  - Recommendations for businesses moving forward.
  - The ruling is expected to be appealed.

Questions?

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Thank you!

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