
rkl
VIRTUAL
2021 Tax and A&A Update

Housekeeping Items

- The webinar will be recorded and shared as soon as it is available via email
- Today’s materials will be shared in the chat box
- All lines are muted
- NASBA CPE requirements – in order to receive CPE for this webinar:
  - Participants must be connected to the session (both audio and presentation) for its entirety
  - Participants must answer twelve questions/elements of engagement
  - Four (4) hours of CPE in the field of taxation will be granted if you meet these requirements

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Welcome

Ed Monborne, CPA| CEO

POLLING QUESTION #1

To be eligible for CPE, 12 polling questions must be answered.

Today’s Team & Agenda

8:10 – 9 a.m.	Individual Update	Ryan Moore
9 - 9:50 a.m.	Business Tax Update	Jonathan Clark
9:50 - 10:10 a.m.	Break and Raffle Prizes	Wendy Lance
10:10 - 10:40 a.m.	International Tax Update	Kirsten Deeds
10:40 - 11:10 a.m.	State and Local Tax Update	Michael Bannasch
11:10 - 11:30 a.m.	Estate/Gift Update	Amy Heim
11:30 – Noon	Wealth Update	Bill Onorato
Noon	Thank you and Closing Remarks	Wendy Lance

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WHAT'S NEXT

Individual Tax Update

Presented by: Ryan Moore, CPA, CVA, CGMA | Partner, Tax Services Group

What Will We Discuss

01.

Legislative Update

A quick look at the latest news coming out of Washington and a summary of what's on the table.

02.

Individual Tax Changes: Income & Adjustments

2021 changes impacting the individual with a look at income and adjustments to income.

03.

Individual Tax Changes: Deductions & Credits

Continuation of 2021 changes discussion, focusing on itemized deductions and various credits.

04.

Planning Opportunities

A look at some tax planning opportunities as we close out the year.

05.

Questions & Closing

Follow up with your RKL team member to answer those difficult questions.

What is Going on in Washington?!

Passed: Infrastructure Investment and Jobs Act

- No direct or immediate impact on individual taxes
- Indirect impacts include early termination of Employee Retention Tax Credit and new crypto asset information reporting requirements on brokers

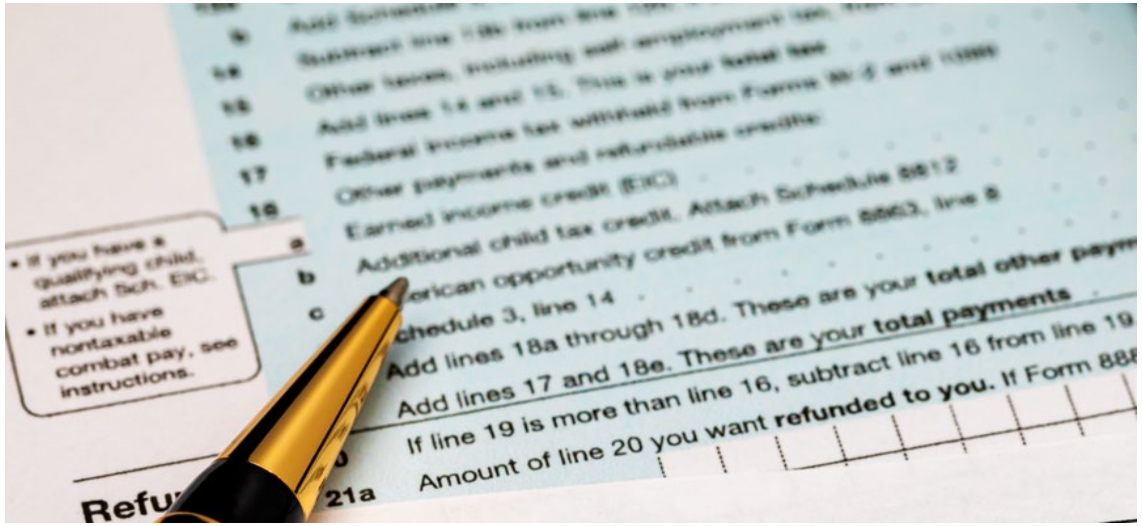
Pending: Build Back Better Act

- Changes to the top individual and capital gains tax rates
- Expansion of Net Investment Income Tax (NIIT)
- 3% surcharge on modified AGI over $5 million

Build Back Better Act – Passed by House

- What's included?
  - New "surcharge" on high earners
    - 5% on Modified Adjusted Gross Income (MAGI) over $10 million
    - Plus another 3% on MAGI over $25 million
  - Extend enhanced Child Tax Credit (CTC) through 2022 and make entire CTC refundable, permanently
  - Limit individual IRA contributions when balances reach $10 million
  - Raise cap on state and local (SALT) deduction from $10,000 to $80,000 through 2030
  - Amend Sec. 1202
  - Changes to NIIT
  - Wash-sale rules

Taxable Income



Filing Status

- No change to five filing statuses
- Due diligence requirements for Head of Household status (also EITC, CTC/ACTC/ODC or AOTC)
  - $545 per failure preparer penalty

2021 Tax Brackets

Taxable Income Brackets and Rates

Tax Rate	Taxable Income (S)	Taxable Income (MFJ)	Taxable Income (HOH)
10%	Up to $9,950	Up to $19,900	Up to $14,200
12%	$9,951 to $40,525	$19,901 to $81,050	$14,201 to $54,200
22%	$40,526 to $86,375	$81,051 to 172,750	$54,201 to $86,350
24%	$86,376 to $164,925	$172,751 to $329,850	$86,351 to $164,900
32%	$164,926 to 209,425	$329,851 to $418,850	$164,901 to $209,400
35%	$209,426 to $523,600	$418,851 to $628,300	$209,401 to $523,600
37%	Over $523,600	Over $628,300	Over $523,600

POLLING QUESTION #2

To be eligible for CPE, 12 polling questions must be answered.

Taxable Income

- Salaries
- Interest and dividends
- Capital gains or losses
  - Short-term – ordinary tax rates
  - Long-term – capital gain tax rates

Long-Term Capital Gain / Dividend Rates

- 0% rate applies to:
  - Single filers with taxable income up to $40,400 (up from $40,000 for 2020)
  - Head of Household with taxable income up to $54,100
  - Joint filers with taxable income up to $80,800 (up from $80,000 for 2020)
- 20% rate starts for:
  - Single filers at $445,851 (up from $441,451 for 2020)
  - Head of Household filers at $473,751 (up from $469,051 for 2020)
  - Joint filers at $501,601 (up from $496,601 for 2020)
- 15% rate applies for filers with taxable income in between the 0% and 20% bookends outlined above

Don't forget about the NIIT

Taxable Income *(continued)*

- Business income, rental income and royalties
  - Section 199A
    - Income from pass-through entities, real estate properties or other business ventures
    - Reduce taxable income coming from business (pass-through) by up to 20%
    - Ceiling limited to 20% of AGI

- Income from trust of estate

- Social Security
  - Taxability capped at 85%

If You're Self-Employed…

- Dollar threshold on 20% deduction for pass-through income increased
  - Taxable income >$329,800 for joint filers (up from $326,600 for 2020)
  - Taxable income >$164,900 for others (up from $163,300 for 2020)
- Tax credits for pandemic-related sick or family leave extended to cover leave through September 30, 2021
- Deductions for business meals increased from 50% to 100% for 2021 (and 2022)
- Self-employed taxes cannot be deferred in 2021 (as they were in 2020)
- $250,000 cap on deductible business losses ($500,000 for joint filers) is back after going away for 2018 through 2020 tax years

Taxable Income *(continued)*

- Unemployment Compensation (UC)
  - American Rescue Plan Act made unemployment compensation (to the certain thresholds) exempt from federal income tax in 2020
  - Unfortunately, that exemption only applied to 2020
  - U/C fully taxable (as if it were wages) in 2021

- Net Operating Losses (NOL)
  - 2021 NOL's subject to TCJA rule
    - May NOT be carried back
    - If / when carried forward, only able to offset 80% of taxable income
    - Additionally, any 2018, 2019, or 2020 NOL carried forward to 2021 is limited to the same 80% of taxable income offset

Adjustments to Taxable Income

Adjustments

- Moving expenses
  - Only for members of the Armed Forces

- Alimony
  - Nontaxable for agreements dated after December 31, 2018
  - Payments are non-deductible by payor
  - Treatment also applies to divorce or separation decrees that are modified after December 31, 2018, if the modification specifically states that the new treatment now applies

Adjustments *(continued)*

- Child support
  - Non-deductible for payor

- Educator expense deduction
  - Deduct supplies purchased by teachers for classroom
  - Maximum deduction of $250 for single filer educators, $500 if two educators file MFJ
  - Out-of-pocket expenses for COVID-19 protective items now qualify
    - Face masks, hand soap and sanitizer, disposable gloves, etc.

Adjustments *(continued)*

- Student loan interest deduction
  - Deduct interest up to $2,500 per tax year
  - Annual income limitations (modified AGI)
    - Single / Head of Household / Qualifying widow(er) – Completely phased out at $85,000
    - Married Filing Jointly – Completely phased out at $170,000

- Student loan relief

Retirement Plans

- Retirement Plan contributions
  - Maximum contribution amounts for 401(k), 403(b) and 457 plans remain $19,500 with $6,500 “catch-up” for those 50 and up
  - Maximum contribution amount for SIMPLE set at $13,500 with $3,000 “catch-up”

- Individual Retirement Accounts (IRAs) – Including ROTH IRA’s
  - Deductible amount for IRA contributions set at $6,000 for both 2021 & 2022
  - Individuals 50 and over can contribute an additional $1,000 “catch-up” each year
  - Deductibility subject to limitations and phaseouts

Health Savings & Flexible Savings Accounts

- 2021 HSA
  - Annual cap on contributions
    - $3,600 for self coverage
    - $7,100 for family coverage
    - Those born prior to 1967 can contribute an extra $1,000

- 2021 FSA
  - Annual cap on contributions $2,750 (set to increase to $2,850 in 2022)
  - Accounts typically operate on annual “use-it-or-lose-it” basis
  - Rules softened to allow more “flexibility” – when workers’ used funds expire
  - Contribution limit for dependent care FSA increased to $10,500 (up from $5,000) but is slated to revert back to $5,000 in 2022

Home Office Deduction

- Self-employed taxpayer (Schedule C or K-1)
  - Deduct home office deduction on related form
  - May deduct portion of mortgage interest and real estate taxes attributable to the portion of the home used for the business
  - The home office deduction is subject to limitation based on the income earned by the taxpayer in the related activity

- Miscellaneous itemized deduction
  - Home office expenses remain nondeductible for employees as a 2% miscellaneous itemized deduction

POLLING QUESTION #3

To be eligible for CPE, 12 polling questions must be answered.

Estate & Gift Taxes

Estate & Gift Taxes

- Lifetime estate and gift exemption for 2021
  - Increased to $11.7 million (up from $11.58 million)
  - $23.4 million for couples
  - Estate tax rate remains 40%

- Annual gift exclusion
  - $15,000 per recipient
  - No gift tax filing requirement so long as gift does not exceed annual exclusion

Standard Deduction

Standard Deduction

Filing Status	2020 Standard Deduction	2021 Standard Deduction
Single / Married Filing Separately	$12,400	$12,550
Married Filing Jointly / Surviving Spouse	$24,800	$25,100
Head of Household	$18,650	$18,800

Itemized Deductions

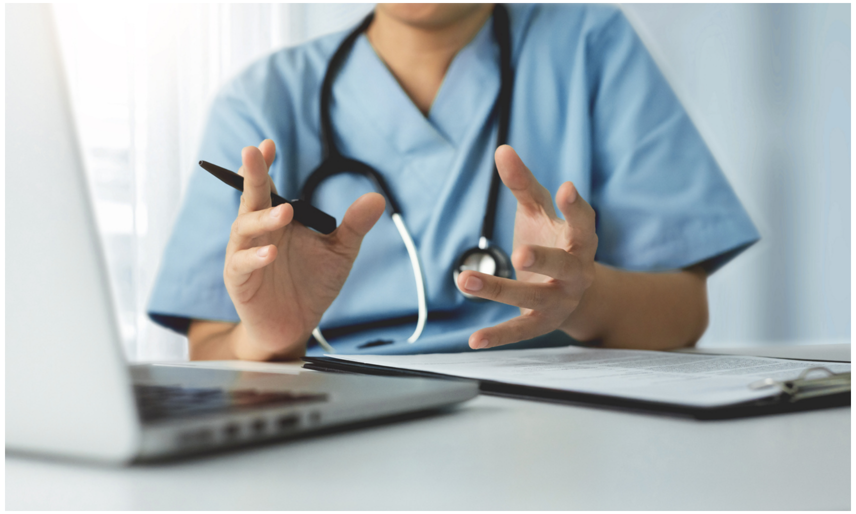
Itemized Deductions

- General reminders
  - Certain miscellaneous expenses remain nondeductible
    - Investment fees and expenses
    - Tax preparation fees
    - Unreimbursed employee business expenses

  - Final estate/trust deductions are now allowed to be deducted as an adjustment to income or an itemized deduction, depending upon the character of the expense

Medical Expenses

- Adjusted gross income threshold remains at 7.5% for all taxpayers in 2021, contrary to the originally scheduled increase to 10%



State, Local and Real Estate Taxes

- Deduction limited to $10,000 ($5,000 if MFS) for the aggregate of:
  - State and local real and personal property taxes AND
  - State and local income tax (or state and local sales tax paid, if higher)

- Foreign income tax is included in limited deductible amount; however, deduction is disallowed for foreign property taxes unless the property is used in a trade or business

State, Local and Real Estate Taxes *(continued)*

- Payment of state and local income taxes in 2020 that relate to a tax imposed in 2021 are treated as paid in 2021
- Real property taxes paid in 2021 are only deductible in that year if they are assessed in 2021 under state and local law
- Real estate taxes paid on rental property or in connection with trade or business are fully deductible against the rental/business income
- Personal property taxes paid in connection with a trade or business are fully deductible against that business income

Mortgage Interest

- Deduction for mortgage interest is limited to debt of up to $750,000 incurred after December 15, 2017
- Debt limit of $1,000,000 for grandfathered debt (incurred before December 15, 2017)
- The deduction for mortgage insurance premiums was set to expire in 2020, but thanks to the Consolidated Appropriations Act of 2020, the ability to claim this deduction was extended one year

Exceptions to New Debt Limit

- $1,000,000 ($500,000 MFS) debt limit continues to apply:
  - Binding written contract before 12/15/17 to close prior to 1/1/18 as long as purchased before 4/1/18
  - Refinance of existing acquisition indebtedness provided:
    - The extent the amount of the debt resulting from the refinancing does not exceed the amount of the refinanced debt
    - The exception will not apply after:
      - Expiration of the term of the original debt

        OR
      - Earlier of the expiration of the first refinancing of the debt or 30 years after the date of the first refinancing

Exceptions to New Debt Limit *(continued)*

- Home equity loan interest may be deductible
  - Funds are used to buy, build or substantially improve the taxpayer’s home that secures the loan
  - Examples:
    - Interest on a home equity loan used to build an addition to an existing home is generally deductible
    - Interest on a home equity loan used to pay personal expenses such as credit card debt is not deductible
    - Interest on a home equity loan on a taxpayer’s main home to purchase a vacation home is not deductible
  - Loan will be subject to new dollar limit on qualified residence debt

Charitable Contributions

- CARES Act enhancements
  - **Cash only** contributions allowed up to 100% adjusted gross income (AGI) limitation
    - Suspends the 60% AGI limitation for 2021 (as was the case in 2020)
    - The 100% AGI limitation does not apply to contributions to donor advised funds
  - Above the line deduction for standard deduction filers
    - $300 maximum deduction allowed for charitable contributions per person, MFJ filers can deduct up to $600 in 2021

- Contribution carryovers due to noncash donations
  - If an appraisal was required with original donation, the appraisal needs to be attached to carryover years

Charitable Contributions *(continued)*

- 50% limitation applies for noncash contributions to a 50% limit organization
- 30% limitation applies for appreciated property donations to a 50% limit organization
  - Sale at fair market value would have resulted in long-term capital gain
- Five-year contribution carryforward for contributions that exceed adjusted gross income limitations
- Documentation
  - Taxpayers required to obtain contemporaneous written acknowledgement for contributions of $250 or more

Other Taxes

Alternative Minimum Tax

- Exemptions
  - $114,600 for Married Filing Jointly (up from $113,400 in 2020)
  - $73,600 for Single and Head of Household filers (up from $72,900 in 2020)

- Phase-outs
  - $1,047,200 for MFJ (up from $1,036,800 in 2020)
  - $523,600 for Single and HOH filers (up from $518,400 in 2020)

Kiddie Tax

- Unearned income for children under age 19 and college students under age 24
- Unearned income over $1,100 for 2021 taxed at child's marginal tax rate
- Unearned income over $2,200 is taxed at the parent's marginal tax rate
- Tax Cuts and Jobs Act (TCJA) changed to rates used by trusts and estates
- SECURE Act of 2019 reverted back to pre-TCJA levels which are in coordination with parents rates

Net Investment Income Tax (NIIT)

- 3.8% tax on investment income if modified adjusted gross income exceeds:
  - Single - $200,000
  - MFJ - $250,000
  - MFS - $125,000
- What's included as "investment income"?
  - Capital gains
  - Dividends
  - Taxable interest
  - Rent and royalty income
  - Passive income from investments in which you don't actively participate
  - Business income from trading financial instruments or commodities
  - Taxable portion of nonqualified annuity payments

POLLING QUESTION #4

To be eligible for CPE, 12 polling questions must be answered.

Credits

Child Tax Credit

- Credit increased from $2,000 to $3,000 per child in 2021; $3,600 for children 5 years old or younger (subject to income phaseouts)
- Credit is fully refundable
- Half of the 2021 credit currently being paid in advance
  - Started on July 15 and will end on December 15
- IRS is issuing Letter 6419 to provide taxpayers with the amount of advanced child tax credits received

Child and Dependent Care Tax Credit

- Credit is fully refundable for 2021
- Maximum credit percentage 35% to 50% (up from 20% to 35% for 2020)
- Credit is allowed for up to $8,000 for one child and $16,000 for more than one (up from $3,000 and $6,000 respectively for 2020)
- Credit is fully available for families making less than $125,000 per year (a big jump from the $15,000 threshold for 2020)
- Credit is completely phased out for families making more than $438,000 per year

Recovery Rebate Credit

- American Rescue Plan Act authorized a third round of stimulus checks (direct payments)
  - $1,400 per taxpayer plus $1,400 for each dependent
  - Adjusted gross income phaseouts:
    - Single filers – starts at $75,000 and completely phased out at $80,000
    - HOH filers – starts at $112,500 and completely phased out at $120,000
    - MFJ filers – starts at $150,000 and completely phased out at $160,000
- Recovery rebate credit available to taxpayers who did not receive third round payments but will be eligible based on 2021 income
  - If the reverse is true, payment received already will not need to be paid back
  - Direct payments are not considered taxable income
  - IRS is issuing Notice 1444-C to report stimulus payments received

Premium Tax Credit

- Helps Americans cover premiums for health insurance purchased through the exchange
- The American Rescue Plan Act enhanced the credit for 2021 (and 2022)
  - Reduced the percentage of annual income that households are required to contribute
  - Expanded eligibility to people with income above 400% of federal poverty line
- Advance payments that exceed credit amount on 2021 return must be repaid

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Education Credits

- Lifetime Learning Credit
  - Credit is capped at $2,000
  - Phaseout thresholds permanently increased
    - For single filers – Modified AGI between $80,000 and $90,000
    - MFJ filers – Modified AGI between $160,000 and $180,000

- American Opportunity Tax Credit (Hope Credit)
  - Maximum credit of $2,500
  - The same phaseout ranges apply as Lifetime Learning Credit

Tax "Extenders"

Tax "Extenders"

- Mortgage insurance premiums deduction
- Nonbusiness energy property credit for certain energy saving improvements to your home
- Alternative energy vehicle credits
  - Fuel cell motor vehicle credit
  - Alternative fuel vehicle refueling property credit
  - Two-wheeled plug-in electric vehicle credit
- Exclusion for forgiven mortgage debt
- 7.5% AGI threshold for deducting medical expenses **made permanent**

Planning Opportunities

Planning Opportunities

For Individuals:
Retirement contributions / Roth conversions
Charitable gifting
Reduce capital gains exposure
Asset location
Estate and gift tax

Retirement Account Contributions

- $19,500 cap on contributions to 401(k), 403(b) and most 457 plans
- Individuals aged 50 and over can contribute an additional $6,500 per year
- Self-employed individuals may contribute up to $58,000 to self-employed 401(k) and those aged 50 and over can contribute an additional $6,500 per year
- $6,000 cap on contributions to IRAs
- Individuals aged 50 over and contribute an additional $1,000 per year
- RMD (Required Minimum Distribution) age increased to 72 (from 70 1/2) as a result of the SECURE Act and RMD waiver no longer applies

Roth IRA Conversions

- May make sense if:
  - Taxable income falls enough to qualify for a lower tax bracket
  - IRA has lost value as a result of market fluctuations

- Roth IRA contributions not permitted for individuals with AGI over $140,000 and couples over $208,000

Charitable Gifting

- Donate long-term appreciated securities
- Donor Advised Funds
- Bundling deductions
- Donate IRA to charity

Reduce Capital Gains Exposure

- Balance sale of appreciated investments with others that have lost value
  - Tax loss harvesting
- Reduce exposure to Net Investment Income Tax by keeping income below the thresholds
  - $200,000 for individuals
  - $250,000 for married couples
- Gifting appreciated shares to adult children or parents in lower tax brackets

Asset Location

- Strategically place asset classes in different types of accounts
- Higher growth-oriented assets are placed in tax-deferred or tax-free accounts
- Tax-exempt income sources placed in taxable accounts

Estate & Gift Tax

- 2021 estate and gift tax exclusion amount $11.7 million

- Take advantage of higher amount now before (eventual) changes
  - Intentionally defective grantor trusts
  - Spousal lifetime access trusts
  - Annual exclusion gifts (up to $15,000 per person)
  - Direct payments to medical providers or qualifying educational institutions
  - Low interest loans (IRS AFR)

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Thank You for Joining Us

Whatever your next move, we're here to help.

Ryan Moore, CPA, CVA, CGMA

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WHAT'S NEXT

Business Tax Update

Presented by: Jonathan Clark, CPA, MST | Partner, Tax Services Group

Agenda

- Legislative updates
- Due date reminders
- Updates on COVID pandemic tax relief
- Revisit key business tax deductions
- Key form changes
- Conclusion

Legislative Update

Pending Legislation – Build Back Better

- 3.8% Net Investment Income Tax will be expanded for taxpayers with income in excess of $400,000 ($500,000 for MFJ).
  - Included in NII will be interest, dividends, rents, etc. and regular pass-through income, EVEN IF the taxpayer materially participates.
    - Presumably, this means that non-passive business losses will reduce NII.
  - Also in NII will be gain from the sale of assets or interests of a business in which you materially participate.
  - The increase will be phased in.
  - Effective date: tax years beginning after 12/31/2021.
- Expansion of 461(l) – Excess business losses will no longer be converted into NOLs. Instead, they will be business losses in the next year, subject to testing.
  - No longer a one year deferral of the loss.
  - What happens to unused disallowed losses if taxpayer passes away?
  - Effective date: tax years beginning after 12/31/2020.

Pending Legislation – Build Back Better

- Surcharge on high income individuals, estates and trusts
  - 5% of modified adjusted gross income that exceeds:
    - $10,000,000 for individuals
    - $5,000,000 for married filing separate
    - $200,000 for estate or trust, plus
  - 3% of modified adjusted gross income that exceeds:
    - $25,000,000 for individuals
    - $12,500,000 for married filing separate
    - $500,000 for estate or trust
  - Effective date: tax years beginning after 12/31/2021

Pending Legislation – Build Back Better

- Corporate Alternative Minimum Tax
  - 15% minimum tax on the profits of corporations that report over $1 billion in profits (based on “adjusted financial statement income”)
  - Tax can be reduced by corporate AMT foreign tax credit
  - Only applies to C corporations with average annual adjusted financial statement income in excess of $1 billion for the three prior tax years (threshold is reduced to $100M in the case of certain corporations with foreign parents)
  - Effective date: tax years beginning after 12/31/2022
- 1% surcharge on corporate stock buybacks
  - Tax equal to 1% of the fair market value of any stock of a corporation that the corporation repurchases during the year would be imposed
  - Applies to any domestic corporation whose stock trades on an established securities market
  - Effective date: repurchases occurring after 12/31/2021

Pending Legislation – Build Back Better

- SALT Cap – modification of limitation on deduction for state and local taxes
  - Changes the limitation of SALT deductions from $10,000 to $80,000 ($40,000 in the case of an estate or trust or a married individual filing a separate return)
  - Amends termination date of the provision from 1/1/2026 to 1/1/2031 (i.e. $10,000 cap would come back into play for 2031 tax year)
  - Effective date: tax years from 2021 - 2030
  - Consider impact on Notice 2020-75 (“SALT workaround”)
    - Many states and some cities have enacted tax laws that impose a mandatory or elective entity-level tax on partnerships and S corporations that do business in the jurisdiction or have income derived from or in connection with sources within the jurisdiction, commonly referenced as “pass-through entity taxes” (PTE taxes)
- Increased investment in IRS enforcement
  - Legislation looks to close “tax gap” by allocating an increased amount to the IRS to improve enforcement

POLLING QUESTION #5

To be eligible for CPE, 12 polling questions must be answered.

Due Date Reminders

Business Tax Filing Deadlines

Key Business Tax Filing Deadlines	
Tax Form	**Due Date(s)** (for calendar year entities)
Partnerships (Form 1065) & S Corporations (Form 1120S)	March 15, 2022
C Corporations (Form 1120)	April 18, 2022 (due to Emancipation Day observance on April 15, 2022 in D.C.)
Employee Benefit Plans (Form 5500)	August 1, 2022
Extended return filings for partnerships & S Corporations	September 15, 2022
Extended return filing for C Corporations & Employee Benefit Plans	October 17, 2022

Nonprofit Form 990 Series Filing Deadlines	
Filing for December 31 year-ends	May 16, 2022
Extensions for December 31 year-ends	November 15, 2022
Filing for June 30 year-ends	November 15, 2022
Extensions for June 30 year-ends	May 15, 2023
All other year-ends	15th day of the fifth month following the end of the organization's taxable year (extensions due six months after that date)

Payroll Return Filing Deadlines

Payroll Return Filing Deadlines	
Tax Form	**Due Date(s)** (for calendar year entities)
Forms 1094-C and 1095-C (health insurance offer and coverage info)	January 31, 2022 to employees February 28, 2022 to IRS if filing hard copy March 31, 2022 to IRS if e-filing
Form 1099 (see below for 1099-NEC – nonemployee compensation)	January 31, 2022 to recipients February 28, 2022 to IRS if filing hard copy March 31, 2022 to IRS if e-filing
Forms W-2, W-3 and 1099-NEC	January 31, 2022 to employees/ recipients, Social Security Administration and IRS if filing hard copy or e-filing
Form W-4: Employees who claimed exempt must submit a new form (new for 2022)	February 15, 2022

COVID Pandemic Tax Relief

Paycheck Protection Program (PPP)

Background

- SBA-backed loan program introduced by the CARES Act
- Two opportunities to apply for loans through this program if meeting certain criteria
- Ability to apply for and receive loan forgiveness as long as funds were used based on specific guidelines

- Tax-exempt income when forgiven and any associated expenses are fully deductible for tax purposes
- Basis increases for the tax-exempt income for pass-through shareholders

PPP Clarifications

- Rev-Proc. 2021-48: Timing Issues
  - Treat such income as received or accrued when either
    - Expenses eligible for forgiveness are paid or incurred
    - An application for a PPP loan forgiveness is filed
    - PPP loan forgiveness is granted
- Rev-Proc. 2021-49: Allocation of Tax-exempt income and Deduction
  - 704(b)
- Rev-Proc. 2021-50: Amended Returns for Eligible Partnership
  - Allows BBA partnership to file amended Form 1065s and issued amended K-1s for the above purposes for tax years ending after March 27, 2020
  - Must be filed or furnished on or before December 31, 2021
- If loan is not fully forgiven, must report adjustment on an amended return or Administrative Adjustment Request

PPP Final Items to Note

- State considerations of PPP forgiveness
    - Pennsylvania conforms to federal tax treatment
    - Most states have conformed but there are a few leftover and some with other limitations
- Don’t forget to increase basis when loan forgiveness occurred
- Don’t forget to apply for forgiveness if you haven’t already
    - PPP borrowers have until the loan maturity date to apply for and receive forgiveness
    - PPP loan payments are deferred until 10 months after the end of the covered period if forgiveness is not applied for

Employee Retention Tax Credit (ERTC)

- The ERTC is a quarter-by-quarter refundable employment credit claimed on qualified wages
- Claimed on Form 941, Employer's Quarterly Federal Tax Return
- Eligibility Requirements
  - Number of employee requirements
    - 2020 Tax Year – Between 1 – 100 W2 employees
    - 2021 Tax Year – Between 1 – 500 W2 employees
  - Be able to meet one of the following two requirements
    - Forced to fully or partially close or reduce hours due to government orders
    - A significant decline in gross receipts
      - 2020 Tax Year – 50% decline in gross receipts when comparing a quarter in 2020 vs 2019
      - 2021 Tax Year – 20% decline in gross receipts when comparing a quarter in 2021 vs 2019

Employee Retention Tax Credit (ERTC)

- Tax Year 2020 – 50% of qualified wages up to a maximum amount of $5,000 per employee for the calendar year
- Tax Year 2021 – 70% of qualified wages up to a maximum amount of $7,000 per employee, per quarter up to $21,000 for the entire year
- Can receive ERTC and PPP (wages that are qualified for ERTC cannot have been paid with PPP funds)
- Program expired September 30, 2021 (was supposed to run until December 31, 2021)
- Can be claimed retroactively on an amended Form 941 for both 2020 and 2021 tax year
- ERTC is **not** includible in gross income but it **is** subject to expense disallowance rules
    - Expense disallowance should be recognized in the period in which the expenses were paid that qualified for the credit
    - If you are retroactively claiming 2020 credit, an amended 2020 tax return would be appropriate

Reminder on Deferred Employment Taxes

- If employer or self-employed individual deferred 6.2% OASDI or SE tax for 3/27 to 12/31/2020 under the CARES Act, 50% is due by 12/31/2021.
- Be sure to follow directions; clearly label and don't combine with other payments.
- Avoid penalties on entire liability by paying each 50% installment on time!
- Guidance to reference if needed:
  - Self-employed: COVID Tax Tip 2021-96 (https://www.irs.gov/newsroom/how-self-employed-individuals-and-household-employers-repay-deferred-social-security-tax)
  - Employers: Form 941 instructions
    - If use 3rd party payer – COVID Tax Tip 2021-99 (https://www.irs.gov/newsroom/making-payments-for-deferred-tax-reported-by-third-party-payers)
  - PMTA 2021-07 (https://www.irs.gov/pub/lanoa/pmta-2021-07.pdf)
    - If either the 12/31/21 or 12/31/22 payment is late, penalties owed on entire deferred balance.

POLLING QUESTION #6

To be eligible for CPE, 12 polling questions must be answered.

Business Tax Deductions

Net Operating Losses

- Under the Tax Cuts and Jobs Act (TCJA), the ability to carryback a net operating loss (NOL) arising in tax years beginning after December 31, 2017 was eliminated.
- In addition, an NOL carryover can only be used to offset 80 percent of current taxable income.
- The CARES Act lifts the carryback and taxable income restrictions for NOLs generated in tax years beginning after December 31, 2017 and before January 1, 2021 (i.e. 2018, 2019 and 2020 losses) permitting a five-year carryback of NOLs arising in those tax years.
- The CARES Act also temporarily eliminates the 80 percent limitation, reinstating it for tax years beginning after 2020.

NOL Rules Summary

Tax Year NOL Generated	NOL Rules	NOL Limitation
Pre-TCJA – NOL generated in tax years before 12/31/2017	Carryback 2 years and carryforward 20 years	No limitation, 100% of taxable income
Under the CARES Act – NOL generated in tax years beginning after 12/31/2017 and beginning before 1/1/2021	Carryback 5 years and carryforward indefinitely	100% of taxable income (prior to 2021) 80% of taxable income (after 2020)
Post-TCJA – NOL generated in tax years beginning on or after 01/01/2021	No carryback but carryforward indefinitely	80% of taxable income

Excess Business Losses

- Section 461(l) was originally effective for tax years beginning after December 31, 2017
  - Effective until tax year beginning before January 1, 2026
- CARES Act delayed the implementation for 2018 – 2020
  - If you filed 2018 or 2019 returns and limited losses, remember to file an amended return
- Limitation if $262,000 / $524,000 for joint returns for 2021
  - Will be calculated on Form 461
  - Indexed for inflation annually

Excess Business Loss Example

- Gross Business Income - $1,000,000
- Gross Business Deductions - $1,500,000
- Excess Business Losses - $238,000 ($1,000,000 – ($1,500,000 - $262,000)
- $238,000 would be treated as a NOL carryforward to 2022

CARES Act Clarifications

- Services as an employee is not considered a trade or business for section 461(l) purposes
- NOLs are excluded from the excess business loss calculation
- Only trade or business capital gains are included, not capital losses

Outstanding Issues with EBLs

- Are guaranteed payments considered business income?
- Is gain or loss from disposition of an interest in a partnership or S corporation conducting active trade or business considered section 461(l)?

Business Meals

- CARES Act Changes
  - For the period January 1, 2021 – December 31, 2022 business meals paid to a restaurant are 100% deductible
- Only available for food or beverages provided by a restaurant
  - Restaurant is defined for these purposes as a business that sells food or beverages for *immediate consumption*, regardless of whether the items are consumed on or off the premises
  - This does not included grocery stores, liquor stores, convenience stores, vending machines
  - Does also not include onsite eating facilities
- Other limitations
  - Must have a business purpose for the meal
  - Meals can't be "lavish or extravagant"
  - Taxpayer or employee of the taxpayer must be present at the meal
  - Meal is provided to taxpayer or business associate of taxpayer such as customer or client

Business Meals Examples

AMOUNT DEDUCTIBLE FOR TAX YEARS 2021-2022

Example Situations:	100%	50%	Zero
Restaurant meals with partners, clients and prospects	X		
Entertainment such as baseball and football games with clients and prospects			X
Employee meals for convenience of employer, served by in-house cafeteria		X	
Employee meals for required business meeting, purchased from a restaurant	X		
Meal served at a business meeting held in a hotel meeting room	X		
Meal consumed in a fancy restaurant while in overnight business travel status	X		
Meals cooked by you in your hotel room kitchen while traveling away from home overnight		X	
Year-end party for employees and spouses	X		
Golf outing for employees and spouses	X		
Year-end party for customers classified as entertainment			X
Meals made on premises for the general public at a marketing presentation	X		
Team-building recreational event for all employees	X		
Golf, theater, or football game with your best customer			X
Meal with a prospective customer at the country club following your non-deductible round of golf	X		

Meals & Entertainment Recordkeeping Tips

- Maintain certain details about events and expenses to support deductions taken.
  - This can be as simple as a copy of the receipt with attendees and a short phrase regarding purpose of the meal jotted down on the back.
- If using a standardized expense reimbursement form, update it to include prompts for pertinent information, such as attendee details and purpose or primary discussion topic of the meal.
- Consider setting up separate general ledger accounts for each class of meals and entertainment instead of merging into one account.
  - This may keep the deduction and documentation process clearer and simpler.

Parking Expenses: Qualified or Nondeductible?

- Does your business offer free parking or cover transportation costs for employees?
  - Expenses paid or incurred by employers to provide employee parking are (generally) nondeductible.
- Qualified parking is defined as:
  - Parking provided to employees on or near the business work premises, or
  - Parking on or near a location from which employees commute to work by commuter highway vehicles, mass transit or van pool.
- Parking is considered qualified (and thus a taxable fringe benefit) even if the business owns a facility or lot.
- Exception:
  - Section 274(e)(8) - Parking in rural, industrial, or remote areas - the full consideration to pay for such parking is presumed to be zero and fully deductible.

TCJA Changes for 2022 under §174

- §174 R&D Treatment
  - Tax years beginning after 12/31/21 – capitalize R&E and amortize ratably over five years using mid-year convention.
    - If R&D retired, abandoned, or disposed of before fully amortized, must continue to amortize.
    - Accounting method change via cut-off method (no §481(a) adjustment).
      - Watch for IRS guidance on this. Will Form 3115 be required?
    - New §174(c)(3) – “any amount paid or incurred in connection with the development of any software shall be treated as a research or experimental expenditure.”
    - §280C(c) modified including to provide that if §41 credit exceeds amount allowed as a deduction for tax year, amount chargeable to capital account for the tax year for such expenses shall be reduced by the amount of such excess.
    - Need a new book vs. tax adjustment.
    - Note: Expensing of R&D under §174 has existed since 1954.
  - ***Build Back Better Act (HR 5376) would postpone this to tax years beginning after 12/31/2025***

Section 163(j) – Business Interest Limitation

- TCJA generally limits the deduction for business interest expense for businesses that have average gross receipts (last three years) greater than $26 million at the sum of:
    - Business interest income
    - 30 percent of the adjusted taxable income (ATI)
    - Floor plan financing interest expense for the taxable year
- Certain real property trade or business have the ability to elect out but have to use ADS for depreciation and cannot claim additional first-year depreciation deductions under Section 168(k)
- The CARES Act increases the ATI limitation from 30 to 50 percent for taxable years beginning in 2019 and 2020 for C corporations and S corporations
- The 50 percent limitation was only applicable to tax years beginning in 2020 for partnerships

Section 163(j) – Business Interest Limitation

- Congress has not renewed the 50 percent provision for tax years beginning after December 31, 2020
- Calculation of ATI will no longer include amortization and depreciation for tax year beginning on or after January 1, 2022
- Final regulations provide a subtraction to tentative taxable income upon the sale or disposition of depreciable property that is equal to the greater of EBITDA Period DD&A allowed or allowable with respect to the property ("Recapture Subtraction")
  - Alternative method allows the recapture subtraction to be computed as the lesser of:
    - Any gain recognized on the sale or disposition of such property
    - Any EBITDA period DD&A with respect to such property
  - The Negative Adjustment Cap provides that the subtraction is required only to the extent that the positive adjustment for EBITDA Period DD&A resulted in an increase in the amount allowed as a deduction for business interest expense in the year of the EBITDA Period DD&A

Section 199A – Qualified Business Income Deduction

Overview

- Section 199A permits the owners of sole proprietorships, S corporations and partnerships to take a deduction of 20% against their income from the business
  - Reduces the top effective rate to 29.6%
  - Effective for tax years ending after December 31, 2017 and before January 1, 2026
  - Deduction is allowed for trusts and estates that own an interest in a flow-through entity

Section 199A – Qualified Business Income Deduction

Qualified Business Income deduction limitations:

- Specified Service Trade or Business (SSTB)
- Wage and investment limitations
  - THE GREATER OF:
    - 50% of the W-2 wages with respect to the business, or
    - 25% of the W-2 wages with respect to the business plus 2.5% of the unadjusted basis of all qualified property
- Overall limitation: The deduction is limited to 20% of the excess of taxable income over the sum of any net capital gain

Section 199A – Qualified Business Income Deduction

Income thresholds

- If taxable income is less than the “threshold amount” for the year, the taxpayer is able to ignore the wage and investment limitations and also whether or not the business is an SSTB
  - Taxable income threshold (2021)
    - $164,900 for individual taxpayers
    - $329,800 for married taxpayers filing jointly
  - Phase-in range (2020)
    - $214,900 for individual taxpayers
    - $429,800 married taxpayers filing jointly

Section 179 Expense Deduction

IRC Section 179 allows a taxpayer to elect to deduct the cost of certain types of property as an expense, rather than requiring the cost of the property to be capitalized and depreciated

- Applies to qualifying property purchased for use in the active conduct of a trade or business and placed in service during the year
- Expensed amount reduces basis for depreciation
- Predominate business use = more than 50%

Section 179 Expense Deduction

Qualifying property:

- Tangible personal property
- Off-the-shelf computer software
- Qualified Improvement Property (QIP)
- The following improvements to non-residential real property in service after the date such building was first placed in service (i.e. not new construction):
  - Roofs
  - Heating, ventilation and air conditioning
  - Fire protection and alarm systems
  - Security systems

Section 179 Expense Deduction

Limitations

- Non-qualifying property
  - Land improvements
  - Real property, with the exception of QIP and the improvements named above
  - Property held for investment or held/used by an estate, trust, tax-exempt or passive activity
  - Property used predominantly outside the U.S., by governments or foreign persons
- 2021 dollar limitation: Aggregate cannot exceed $1,050,000
- 2021 capitalization limitation: Dollar limitation is reduced (but not below zero) by amount of total Section 179 property placed in service during taxable year that exceeds $2,620,000
- 2021 maximum depreciation deduction for sport utility vehicles is $26,200
- Section 179 deduction cannot exceed aggregate taxable income

Bonus Depreciation

The bonus rate for property acquired and placed in service after September 27, 2017:

Year Placed In Service	Qualifying Property	Longer Production Period Property and Certain Aircraft
Acquired After 9/27/2017 – 12/31/2022	100%	100%
2023	80%	100%
2024	60%	80%
2025	40%	60%
2026	20%	40%
2027	None	20%

Bonus Depreciation

Qualifying property includes:

- Property depreciable under MACRS and recovery period of 20 years or less;
- Qualified improvement property placed in service after 2015;
- MACRS water utility property;
- Computer software depreciable over three years; and
- Qualified film, television show or theatrical production acquired and placed in service after September 27, 2017.

Constructed, manufactured, produced property:

- Deemed acquired when work of a significant physical nature begins. Under an elective safe harbor, work of a significant physical nature begins when more than 10% of the total cost of a project has been paid for by a cash basis taxpayer or incurred by an accrual basis taxpayer.

Purchased/used property:

- Effective for property **acquired** and placed in service after September 27, 2017, property previously used by an unrelated person may qualify for bonus depreciation.

Qualified Improvement Property

Qualified Improvement Property (QIP) defined:

- Interior renovation made by the taxpayer to a commercial building already in service
- Excludes:
  - Elevators
  - Escalators
  - Footprint expansions
  - Internal structure framework components
    - Load-bearing walls
    - Steel beams/girders
    - Concrete floor
    - Shell of the building

Qualified Improvement Property

- CARES Act technical correction
  - Effective 1/1/2018
  - 15-year recovery period (20 year for ADS) using straight-line and half or mid-year convention
  - Change retroactive after technical correction
    - Can amend or file Form 3115 to correct the prior erroneous 39-year life for taxable year ending 2018, 2019 or 2020
  - QIP eligible for bonus depreciation

Cost Segregation

What is cost segregation?

- Tax savings strategy to identify portion of building cost considered personal property and a land improvement
- Why beneficial?
  - Identified assets have shorter lives and accelerated depreciation methods, plus bonus
  - Client getting more deductions in earlier years so can use more cash flow to reinvest in the business
- When to consider?
  - New construction, renovation, expansion, purchase and tenant fit-outs

Cost Segregation

- Look-back studies:
  - Correcting depreciation as if study performed back in time
  - One time additional depreciation deduction in current year – 481(a) deduction
  - Going forward identified assets depreciated at correct lives and methods
  - Requires Form 3115, Change of Accounting Method

- While cost segregation is a tax savings strategy, it incorporates other strategies as part of that analysis:
  - Qualified Improvement Property (QIP)
  - Bonus depreciation
  - Capitalization test under TARs

Charitable Contribution Limits

- Regular corporate deduction limit is 10% of taxable income.
- Increased limit to 25% through 2021 for eligible charities.
  - Does not automatically apply. Corporations must choose to apply the limit with each contribution.
- Increased limit for donations of food to 25% of taxable income from 15%.
- Always remember to keep records to substantiate contributions made.
- Qualifying organizations are most often public charities, recognized as 501(c)(3) nonprofit organizations. They also include:
  - Federal and State governments, provided the gift is for the benefit of the public.
  - Civil defense organization organized under federal, state and local law.
  - Domestic fraternal societies operating under a lodge system, provided the gift is used for charitable purposes.

Small Business Accounting Methods

- Overall cash method, accounting for inventories, election out of 263A and the ability to not use percentage-of-completion method on long-term contracts
- Applicable for taxpayers with average annual gross receipts of $26,000,000 or less over a prior 3 taxable year period
- Need to watch for tax shelters
  - Syndicate are included in the definition of a tax shelter
  - Election available to use prior year income in the determination of a tax shelter
- Does require a Form 3115 to be filed to switch any of the above methods

POLLING QUESTION #7

To be eligible for CPE, 12 polling questions must be answered.

New Business Forms

Form 7203 – S Corporation Shareholder Stock and Debt Basis Limitations

- Form instructions indicate taxpayers must go back to the beginning of time to establish basis.
- Since this is an actual form, not simply a schedule to attach, there is a higher obligation to do basis reconstruction work.

Conclusion

Planning Considerations in the Current Environment

- Choice of entity considerations.
  - Perhaps C corporations could become viable alternative, especially when considering §1202 exclusion for QSBS?
- Charitable planning prior to 12/31/2021.
- Excess business losses & timing considerations – look to marry up timing for trade or business income and losses.
- 163(j) limitations for 2022 could be a bigger issue.
- LIFO method changes could be great opportunity for 2021 due to inflation.
- R&D credit is still around!
- Estate planning/succession planning – important, especially if Build Back Better gets revised to include significant changes to estate tax laws.

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Thank You for Joining Us

Jonathan Clark, CPA, MST

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Break

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VIRTUAL

2021 Tax and A&A Update

Now let's pick today's raffle winners!

If you see your name in the chat box, a member of the marketing team will contact you directly after the conclusion of today's webinar to claim your prize.

POLLING QUESTION #8

To be eligible for CPE, 12 polling questions must be answered.

ADVISORS for WHAT'S NEXT

International Tax Update

Presented by: Kirsten Deeds, CPA, MBA | International Tax Practice Leader

International Tax Update

01.

Global OECD Developments

- Worldwide tax treaties
- Global minimum tax

02.

U.S. Tax Reform 2.0?

- Alternative minimum tax
- GILTI calculation changes
- Section 250 deduction changes
- Foreign tax credit changes

03.

Changes in U.S. ITAX Compliance

- Form 5471 reporting
- Schedules K-2 and K-3 reporting

OECD Developments

OECD Developments

Focused on Base Erosion Profit Shifting (BEPS):

- Pillar One – profit allocation and nexus
- Pillar Two – global minimum tax at 15%

Who's Impacted?

- Focusing on large multinationals – revenue above €750 million
- Tax on excessive income, particularly on intangible-related income
- Potential for simplification options for smaller businesses (safe harbors)

Timing

- Sign in 2022
- Implementation beginning in 2023
- Political agreement versus legislative power

Build Back Better: Tax Reform 2.0?

ADVISORS for WHAT'S NEXT

Alternative Minimum Tax

Proposed Alternative Minimum Tax on Large Business:

- 15% on adjusted book income
  - Exceptions: S Corporations, regulated investment companies and real estate investment trusts
- Applies to entities with over $1 billion in financial statement income
- Would also apply to international financial reporting groups with income over $100 million
- Allows for AMT foreign tax credit

Aligns with the BEPS Pillar Two initiative

Global Intangible Low Tax Income (GILTI)

Applies to Controlled Foreign Corporations

- Intended to target low-taxed intangible income
- Aggregates CFCs foreign income – nets tested income and tested losses

Reduction of Tangible Income

- Defined as 10% of Qualified Business Asset Investment (QBAI)
- Less: CFC net interest expense

Section 250 Deduction – 50%

- Capped at taxable income
- Lost in case of consolidated federal taxable loss

Foreign Tax Credits – "Use it or lose it!"

- FTC haircut at 80%
- Subject to expense allocations for foreign tax credit limitation
- High tax exclusion election

GILTI Changes

Country-by-Country Method

- All calculations would be done on a country-by-country method rather than aggregating all attributes

Reduction of QBAI

- Reduces allowed tangible return from 10% of QBAI to 5% of QBAI
- Reduction does not apply to U.S. territories

Tested Loss Carryforward

- Allows the carryforward of tested loss to future years

Reduce FTC Haircut

- Reduces the foreign tax credit haircut from 20% to 5%

FTC Carryforward

- Allow carryforward of foreign taxes for five years

Expense Allocation

- Reduces requirements to allocate U.S. group expenses to GILTI income in determining foreign tax credit limitation

ITAX Deductions and Credit Modifications

Section 250 Deduction Modifications

- Reduce GILTI Sec. 250 deduction from 50% to 28.5%
- Reduce foreign-derived intangible income (FDII) from 37.5% to 24.8%
- Remove income limitation to take deduction

Section 245A DRD Modification

- Dividend received deduction applies only to controlled foreign corporations
- Would no longer apply to 10% owned foreign corporations

Modifications to FTC Rules

- Repeal the foreign branch income basket
- Repeal one-year foreign tax credit carryback

Large Taxpayer ITAX Proposals

Interest Expense Deductibility – 163(n)

- Applies to companies with >$12 million in interest expense
- U.S. companies as part of an “international financial reporting group”
- Limit U.S. deduction to 110% of worldwide interest expense

Base Erosion & Anti-Abuse (BEAT) Modifications

- Applies to companies with >$500 million in revenue
- Removes 3% of deductions safe harbor
- Phases rate from 10% in 2022 to 18% in 2025

Effective Dates

Delayed effective dates allow for some flexibility in understanding the new rules and modeling to determine their impact.

Proposal	Proposed Effective Date
Alternative minimum tax	Years after 12/31/22
GILTI Calculation Changes	Years after 12/31/22
Modifications to Sec. 250 Deduction	Years After 12/31/22*
Modifications to FTC rules	Years After 12/31/22
Business interest expense limitation	Years After 12/31/22
Modifications to BEAT	Years After 12/31/21
Repeal of election for one-month deferral in tax years of SFCs	After 11/30/22
245A DRD application to CFCs only	Made after date of enactment

POLLING QUESTION #9

To be eligible for CPE, 12 polling questions must be answered.

International Tax Compliance Updates

Form 5471 Reporting Expansion

	2017	2018	2019	2020
Form 5471	8 pages	17 pages	20 pages	26 pages
Filing instructions	18 pages	29 pages	35 pages	42 pages
New schedules	-	1. Schedule E-1 2. Schedule I-1 3. Schedule P	-	1. Schedule Q 2. Schedule R
Significant expansion	-	1. Schedule B 2. Schedule G 3. Schedule J	1. Schedule J 2. Schedule P	1. Schedule I 2. Schedule E 3. Schedule E-1 4. Schedule H 5. Schedule J 6. Schedule P
Categories of filer	2, 3, 4, 5	1, 2, 3, 4, 5	1, 2, 3, 4, 5	1a, 1b, 1c, 2, 3, 4, 5a, 5b, 5c

2021 Form 5471 Updates

Updated Form 5471 and instructions expected later this month and next month

Additional Questions

- New Schedule G-1 to report information related to cost sharing arrangements

Intercompany Transaction Disclosures

- Additional line items for certain types of income/expenses on Schedule M
- Loan guarantees, "other" amounts

Foreign Tax Credit Baskets

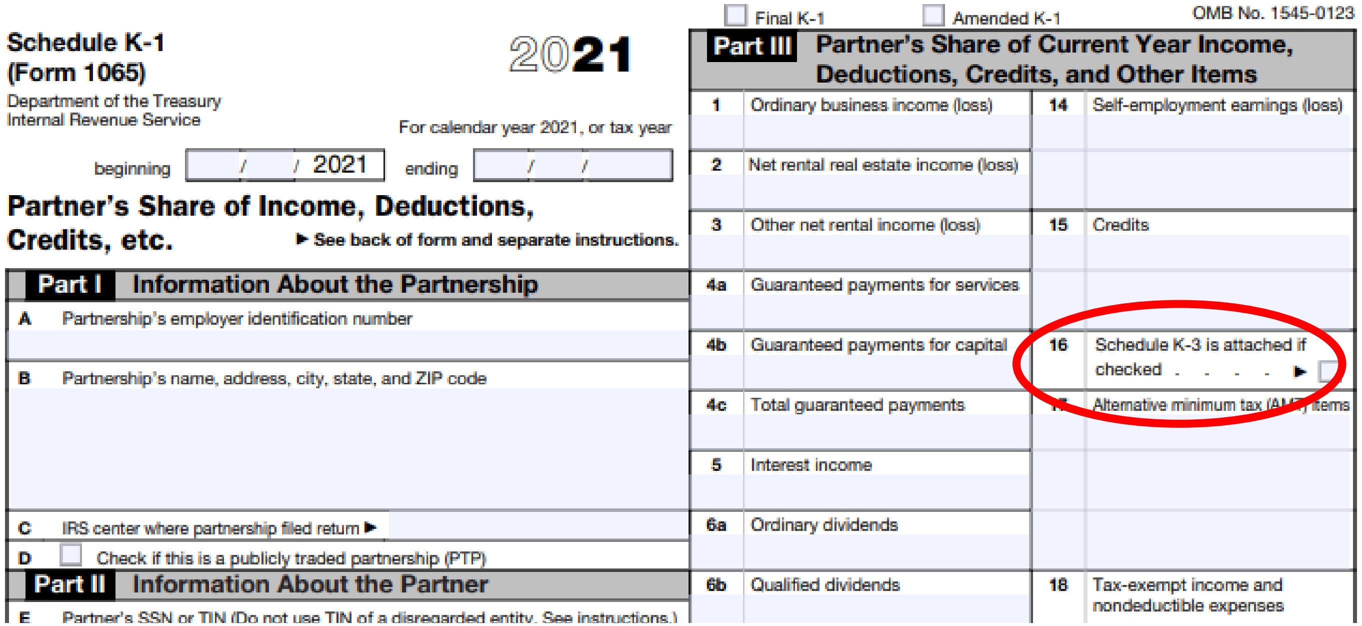
- Addition of a "TOTAL" code Schedule E and Schedule E-1 to aggregate different foreign tax baskets

E&P and PTEP Baskets

- Addition of "TOTAL" code for Schedule J, P and R to aggregate different E&P/PTEP baskets

Schedules K-2 and K-3 Reporting

- Expands the international tax reporting for partnerships and S-Corps
- Takes K-1 Section 16 disclosures and expands into international-specific reporting
- Required for reporting of international attributes
- Each schedule is 14 pages or more of reporting
  - Still uncertain whether all pages are required
  - Expecting IRS to release FAQs ahead of filing season
- Transition relief available under Notice 2021-39



Final K-1 Amended K-1 OMB No. 1545-0123

Schedule K-1 (Form 1065) 2021

Department of the Treasury
Internal Revenue Service

For calendar year 2021, or tax year

beginning / / 2021 ending / /

Partner's Share of Income, Deductions, Credits, etc. ▶ See back of form and separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code

C IRS center where partnership filed return ▶

D Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's SSN or TIN (Do not use TIN of a disregarded entity. See instructions.)

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss)	14	Self-employment earnings (loss)
2	Net rental real estate income (loss)		
3	Other net rental income (loss)	15	Credits
4a	Guaranteed payments for services		
4b	Guaranteed payments for capital	16	Schedule K-3 is attached if checked . . . . ▶
4c	Total guaranteed payments	17	Alternative minimum tax (AMT) items
5	Interest income		
6a	Ordinary dividends		
6b	Qualified dividends	18	Tax-exempt income and nondeductible expenses

Next Steps

What's Next…?

- Consider modeling some of the Build Back Better proposals
  - GILTI: Country-by-country versus relaxing of NOL rules
- Potential Capital Gain Rates Proposals in the Senate
  - Impacts to IC-DISCs
- S-Corps and Partnerships
  - Consider foreign reporting needs
  - Give extra time to compliance process in first year

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Thank You for Joining Us

Whatever your next move, we're here to help.

Kirsten Deeds, CPA, MBA

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State and Local Tax Update

Presented by: Michael Bannasch, CPA, MST | State and Local Tax Practice Leader

What Will We Discuss

01.

Pass-Through Entity Tax Elections

Status of Federal SALT deduction cap workarounds implemented by states

02.

Economic Nexus

Wayfair Supreme Court case re: sales tax still an issue and migrating to income tax realm

03.

Remote Work

State tax considerations while expanding your hiring footprint

Pass-Through Entity Tax Elections

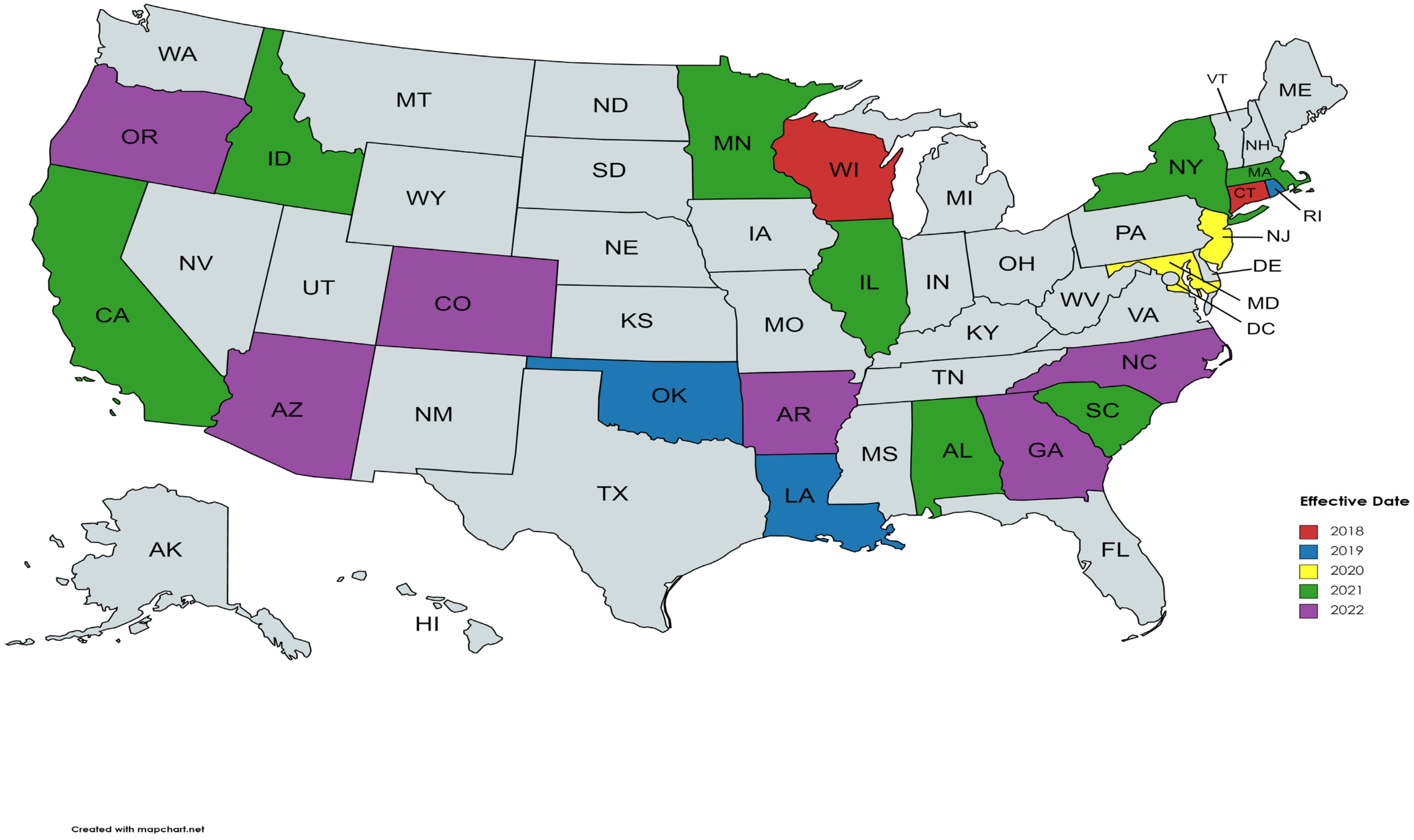
Background

- Tax Cuts and Jobs Act of 2017 implemented a $10,000 cap on the itemized deduction for state and local taxes
  - Income taxes or sales taxes
  - Real estate taxes
  - Personal property taxes
- Cap is in effect for 2018 – 2025
  - Significant debate in Congress about modifications
- States trying to work around the cap to benefit their residents
  - "Charitable contributions" in lieu of property taxes
    - Blocked by IRS via regulations in August 2019
  - New York Employer Compensation Expense Tax
    - Silence from IRS
  - Pass-Through Entity Tax Elections
    - Unofficially blessed by IRS via Notice 2020-75

What are PTETs?

- PTET = Pass-Through Entity Tax
- Legal change by states to impose income tax on partnerships and S corporations (including LLCs taxed as either) and sole proprietors in some states
- Owners' pass-through income no longer subject to tax in the state
  - Owner includes pass-through income but gets credit for share of tax paid by entity, OR
  - Owner excludes pass-through income
- Converts legal personal income tax burden (deduction capped at $10k) to legal business income tax burden (no deduction cap)
- Intended economics of this legal change
  - Generally no change in state-level tax
  - Save federal income tax at marginal rate

States with PTETs



POLLING QUESTION #10

To be eligible for CPE, 12 polling questions must be answered.

Would these Elections Benefit Me?

- It depends
- Resident owner of a business only operating in elective state – YES
  - E.g. New Jersey resident with an S corporation law firm only operating in state
- Issues with nonresident owners getting credit in their resident state for tax paid to elective state – MAYBE
  - PA partnerships vs. S corporations
  - Election might benefit only some owners
  - Interaction of marginal federal tax bracket and state tax rate
  - Impact on Federal QBI, NIIT, SE Tax

Example

- Spouses are PA residents and own 100% of pass-through entity whose sole operations are rental real estate in New York with taxable income of $100k
  - Presume they are in 37% federal bracket, itemize deductions and are already over the $10k SALT cap
  - Ignore possible impacts on QBI, NIIT and SE Tax
  - The New York PTET will be taxed at 6.85%, so tax of $6,850
- If an S corporation –
  - Federal savings = $6,850 * 37% = $2,535
  - NY – Neutral because of credit on individual NY return for PTET paid
  - PA – Neutral because S corporation shareholder can claim credit for tax paid to NY by entity
- If a partnership – Same for federal and NY
  - PA – Costs $3,070 because of lost resident credit ($100k * 3.07%)
  - Overall net cost of $535 because of election

Economic Nexus

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Background

- Wayfair, Wayfair, Wayfair
  - 2018 U.S. Supreme Court case that said states could impose sales tax collection responsibilities on businesses without physical presence in state
  - All states have passed Wayfair laws – Missouri goes into effect 2023
- Not just a sales tax issue
  - "Doing business" statutes / *Geoffrey*
  - Factor presence standards
  - Businesses protected by P.L. 86-272

Sales Tax – Where Do We Stand?

- States have caught up… businesses have not
- No good statistics, but have seen multiple expert commentators say they think compliance rate for small to mid-market businesses is still under 50%
  - This could include businesses who are doing *something* but not everything – e.g. slowly rolling out compliance burden, or doing their best but making mistakes
- Spoken with two businesses in past 45 days with estimated liability >$1 million
- Can be risky to just register and go forward
- There are ways to mitigate the risk – exemption certificates, VDAs, use tax paid by customers

Sales Tax – "I'm already compliant…"

- Keep measuring thresholds – gross vs. retail vs. taxable sales
  - Sales via marketplace facilitators
- Keep up with exemption certificate maintenance
- Understand that taxability varies by state
  - SaaS
  - Manufacturing equipment
  - Services
- Check whether vendors have started charging you sales tax
- Risk is not just audits by state – due diligence by buyers

Other Taxes – Factor Presence Nexus

Over $500k sales	
Alabama	$538 (inflation-adjusted)
California	$637,252 (inflation-adjusted)
New York	$1 million
Oregon	$750k for Corporate Activity Tax
$500k sales	
Colorado	
Connecticut	
Massachusetts	
Maine (beginning 2022)	
Ohio	
Pennsylvania	
Tennessee	
Texas Franchise Tax	

$350k sales – Michigan (only C corporations)
$100k sales
Hawaii
Washington Business & Occupation Tax

Income Tax – "Doing Business"

- Virtually all states say that "doing business" in their state creates income tax nexus
  - Delaware is probably the only exception
- Doing business = "Actively engaging in any transaction for the purpose of financial or pecuniary gain or profit."
  - States with factor presence standards don't necessarily view those as safe harbors
- Since early 1990s (*Geoffrey*), it has been understood states could impose economic nexus for income tax purposes – subject to restrictions of P.L. 86-272
- Businesses other than those that only sell tangible personal property are potentially at risk
  - Historically, states have not pursued service providers – primarily IP holding companies and financial institutions

Income Tax – Public Law 86-272

- Federal law from 1959 that can protect sellers of tangible personal property from state income tax
  - Only activities in state are sales solicitation and ancillary activities
  - Orders are approved out of state
  - Orders are shipped from outside the state
- *Wayfair* case has emboldened states to “reinterpret” P.L. 86-272 for the Internet age
- States will soon be adopting changes that say a business violates P.L. 86-272 protections if it has an interactive website other than for sales solicitation
  - Post-sale help via chat
  - Accepts job applications
  - Cookies for other market research or inventory management
  - Email link on website

Remote Work

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Background

- Hiring or placing an employee in a state historically has created nexus for sales tax and income tax purposes
- COVID-19 caused many states to allow remote work without creating nexus
- State leniency on this has been expiring as the pandemic winds down (maybe) – e.g. Pennsylvania's guidance expired July 1, 2021

Remote Work Issues

- Payroll Taxes
  - Employee withholding tax
    - Possible convenience of employer test for PA non-residents working for PA companies
  - Unemployment tax – does not necessarily follow withholding
  - Other new (to you) taxes – e.g. CA state disability insurance, WA paid family leave
- Sales Tax
  - Mostly not an issue because of Wayfair economic nexus
  - But physical presence does still create nexus, even though the risk might be small
- Income Tax
  - If not a seller of TPP, might take you from murky economic nexus to clear physical nexus
  - If a seller of TPP, employee might be doing unprotected P.L. 86-272 activities
  - Can impact apportionment percentages

Remote Work – How RKL Helps

- State Taxes
  - Advise you of tax registrations and payroll tax obligations
  - Determine sales tax exposure and suggest compliance procedures
  - Advise whether employee in state will subject you to income tax in that state and calculate amount of tax

- Other Human Capital Management (HCM) Matters
  - Establish/review remote work policies
  - Compensation analysis for remote workers
  - Advise about state mandates for employee benefits and labor laws

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Thank You for Joining Us

Whatever your next move, we're here to help.

Michael Bannasch, CPA, MST

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POLLING QUESTION #11

To be eligible for CPE, 12 polling questions must be answered.

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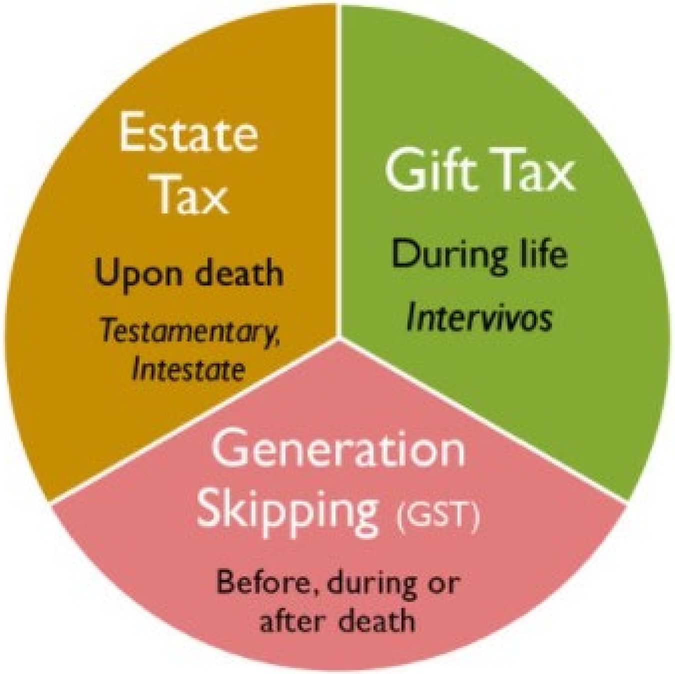
Gift and Estate Tax Update

Presented by: Amy Heim, CPA | Estate and Trusts Tax Practice Leader

Agenda

- Gift Estate Tax Overview (Unified System)
- Portability
- Miscellaneous
- Planning

Gift and Estate Tax Overview (Unified System)



Exclusions

- First $15,000 for 2021 and first $16,000 for 2022 of a present interest in property (gift tax annual exclusion)
- Unlimited exclusion for payment of certain tuition or medical expenses
- $11,700,000 estate and gift tax exemption for 2021
- $12,060,000 estate and gift tax exemption for 2022
- 40% tax rate after the exemption

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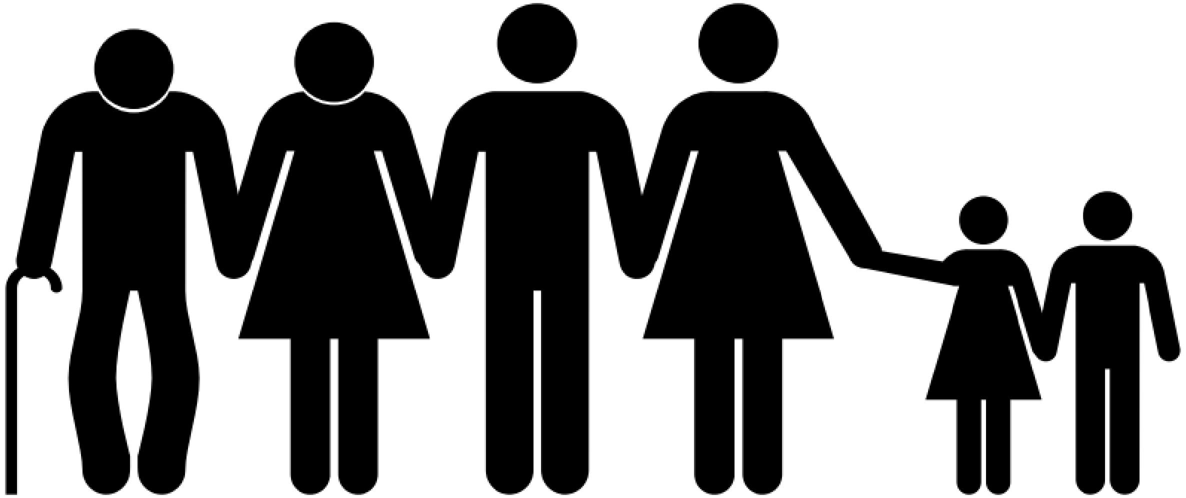
Generation-Skipping Transfer Tax (GST)



Generation-Skipping Transfer Tax (GST)

- The annual GST Exemption for 2021 is $15,000.
- The GST was implemented in order to ensure that transfer tax is paid as assets transferred from one generation to the next.
- Originally created in 1976, but completely repealed and rewritten in 1986.
- Skip person – a skip person may be a trust or a natural person; a person two or more generations below transferor (grandchildren and younger generations), or non-relative more than 37 ½ years younger than transferor.
  - Gift outright to skip person ($15,000 cash gift to grandchild).
  - Gifts in trusts – can ONLY qualify for GST annual exclusion if:
    - (1) Single beneficiary – during the life of the beneficiary, no distributions may be made to anyone other than the beneficiary; and
    - (2) Inclusion in the beneficiary's estate – at the individuals death, the trust assets are included in the beneficiary's estate.

Gift - Example

- In January 2021, Tom, single, gifts $20,000 to his friend, Barb. Barb is 20 and Tom is 60. The annual gift tax exemption in 2021 is $15,000. Therefore, Tom makes a taxable gift of $5,000.
- $15,000 of the gift will qualify for the gift tax annual exclusion, as well as the GST exclusion.
- Tom will file a Form 709, Gift Tax Return for 2021.
- The $5,000 will be subtracted from Tom's estate and gift tax exemption, which is currently set at $11.7 million. It will also be subtracted from his GST exemption, which is also $11.7 million.
- $11,700,000 - $5,000 = $11,695,000.
- Later in 2021, Tom dies. His net estate is $11,700,000.
- His exemption at death is not $11,700,000 but $11,695,000, since he already used $5,000 of his estate and gift tax exemption during life.

Direct Skip Example

- In 2021, Sally transfers $15,000 to an Irrevocable Trust for the benefit of her grandchild, Andrea, who has a $15,000 Crummey withdrawal power. The trust document provides that the trust assets are includable in Andrea's estate.
- Transfer to this trust is a direct skip.
- Therefore, this $15,000 gift qualifies for the gift and GST annual exclusion.
- Alter the fact pattern – the trust is not includable in Andrea's estate – it would not qualify for the $15,000 GST annual exclusion and the donor would need to allocate $15,000 of their GST exclusion to this gift.

Crummey Withdrawal Powers

Gifts to Trusts

- Not a present interest unless the trust instrument gives the beneficiaries of the trust the power to demand immediate possession and enjoyment of principal or income of the trust.
- This is known as a Crummey power, *Crummey*, 397 F.2d 82 (ninth Cir. 1968).
- Example 1:
    - On June 5, 2020, Bob and Fran Barrett established the BFB Family Trust. The trust's beneficiaries are the Barretts' five children.
    - The Barretts gifted $75,000 to the trust in 2020. The BFB Family Trust contains Crummey powers. The Barretts file a gift tax return in 2020 and elect out of generation-skipping transfer tax for the current and all future gifts.
- Example 2:
    - On June 5, 2020, Bob and Fran Barrett established the BFB Family Trust. The trust's beneficiaries are the Barretts' five children and 15 grandchildren.
    - The Barretts gifted $300,000 to the trust in 2020. The BFB Family Trust contains Crummey powers. The Barretts file a gift tax return in 2020 and allocate GST to current and all future gifts to this trust. Even though the Crummey power provides a present interest, this gift will not qualify for the generation-skipping transfer tax annual exemption. Therefore, the Barretts will each use $150,000 (total $300,000) of their $11.7 million generation-skipping transfer exemption.

Crummey Withdrawal Powers

General requirements:

- Notice must be given to power holders.
- Power holders must be given a reasonable period within which to exercise the power after notice (for example, 30 days).
- Annual exclusion applies in chronological order to gifts of present interests made during the year.
- If the donor is making gifts to a grandchild outright or in a trust that qualifies as nontaxable direct skips under Section 2642(c), be sure the donor makes those gifts before any gifts that would not qualify as nontaxable direct skips under this section.

Crummey Withdrawal Powers - Example

- REMEMBER – that annual exclusion applies in chronological order to gifts of present interests made during the year.
- Pamela contributes $75,000 to a trust in February 2021, giving each of her five grandchildren the right to withdraw $15,000. In November, she gives each $15,000 in cash.
- Gifts to the trust qualify for the gift tax annual exclusion but are **not nontaxable direct skips**. Cash gifts would qualify as nontaxable direct skips, but by November, she had used the grandchildren's gift tax annual exclusions.
- Pamela will have to allocate a total of $150,000 of GST exemption to cover all the gifts, rather than just $75,000, since the cash gifts were not made first.

Adequate Disclosure

Adequate Disclosure

- The statute of limitations for assessing gift tax does not begin to run unless a gift tax return is filed (IRC Sec. 6501) and the transfers are *adequately disclosed*.
- It may be beneficial to file a return for certain gifts whose value is below the annual exclusion if there is a risk of the IRS challenging the valuation of the items transferred (i.e. art objects, undivided interests or closely held stock).
- *Redstone,* liability was imposed 41 years later.

Adequate Disclosure

- Description of transferred property and any consideration received
- Identity of the relationship between parties
- If to a trust, taxpayer identification number and description of the trust terms (attach a copy of the trust agreement)
- Description of any position taken that is contrary to regulations or published rulings
- Disclosure of method used to determine FMV (including discounts) or an appraisal

Sunset – Tax Years Beginning after December 31, 2025

POLLING QUESTION #12

To be eligible for CPE, 12 polling questions must be answered.

Portability

Portability

- Any unused estate tax exclusion (DSUE) amount may be transferred to a surviving spouse in a portability election.
- This is done by timely filing of an estate tax return, Form 706 (due nine months from date of death).
- Estates filing only for the purpose of electing portability may file Form 706 on or before the second anniversary of the decedent's death.
- The unused exclusion amount transferred from the deceased spouse is added to the surviving spouse’s $11.7 million exclusion (2021 exclusion).
- The IRS has the power to examine the DSUE amount on the deceased spouse’s estate tax return, even if the statute of limitations of assessing estate or gift tax has expired.

Why Portability

- There is a "use it or risk losing it" point.
- Gifts made by a surviving spouse will first use the DSUE amount from the last deceased spouse, before using the surviving spouse's own basic exclusion amount.
- If there is a subsequent marriage, the DSUE from the first deceased spouse remains available so long as the most recent spouse remains alive.
- If the second spouse dies, the unused DSUE of the first spouse is lost.

Why Portability

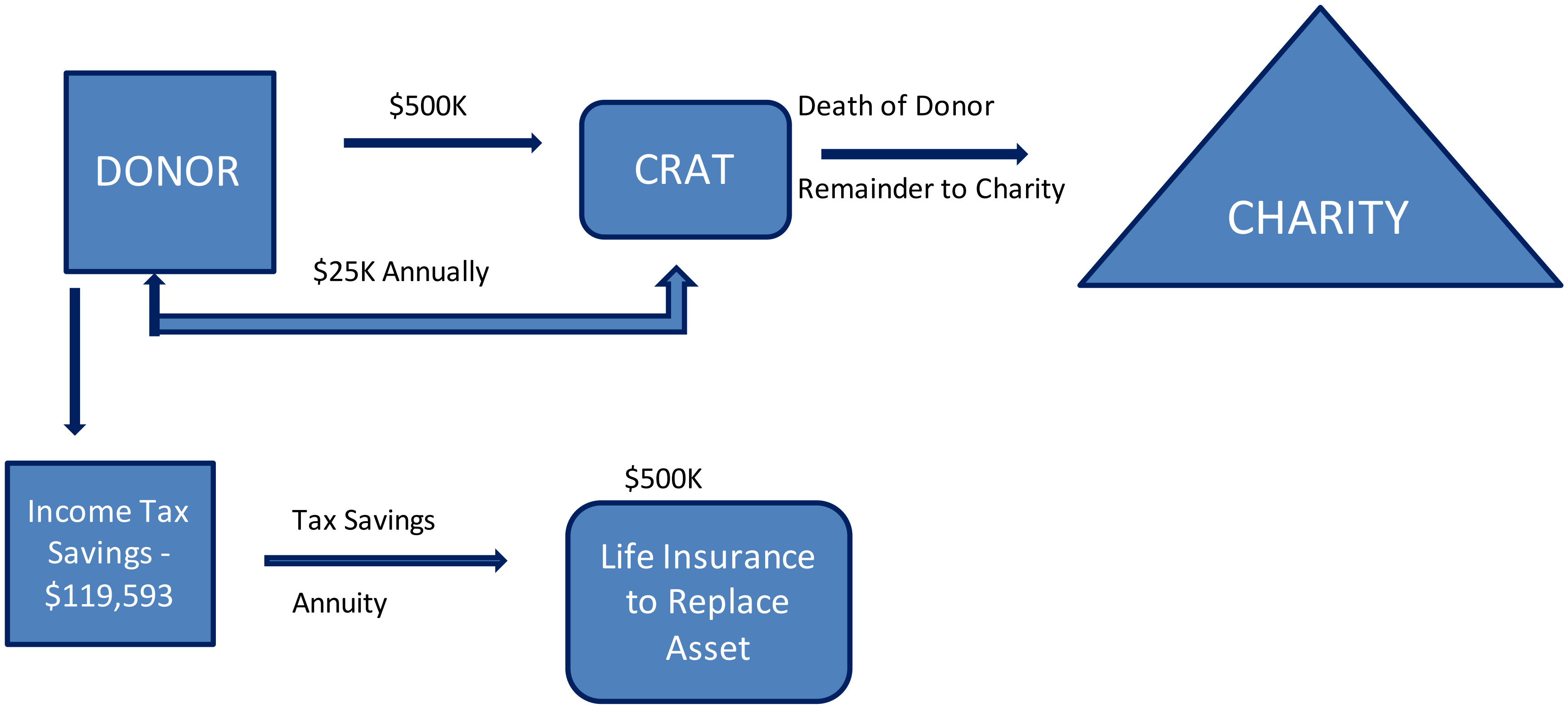
- It is suggested that every estate of a deceased married person should make a portability election. Making the election while the exemption is high should leave the surviving spouse with the full DSUE even if the exclusion decreases later. Reg 20.2010-2(c).
- Rev. Proc. 2017-34 allows an extension to file Form 706 until two years after a person's death to make a portability election if there was not a failure to file an otherwise required Form 706.

Planning

Planning 2021

- Making large gifts
- Funding Irrevocable Life Insurance Trusts with income producing assets, GRATS and sales to defective trusts
- Revising or revisiting trusts as IRA beneficiaries after SECURE
- Roth conversions in response to SECURE
- 100% charitable deduction for 2021 gifts to public charities
- CRTS as IRA beneficiaries

Charitable Remainder Trusts



Irrevocable Life Insurance Trusts (ILIT)

- Might want to consider pre-funding ILITS with cash or income producing property.
- The reason: if the exemption decreases (it is set to sunset 12/31/2025) and you have used all of your estate tax exemption and/or generation-skipping transfer tax exemption, the payment of the premium payments can generate a gift tax.
- The maximum gift tax rate is 40%.
- The donor generally pays the gift tax.

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Whatever your next move, we're here to help.

Amy Heim, CPA

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Wealth Update

Presented by: William Onorato, JD, MBA| RKL Wealth Management Senior Wealth Strategist

Legislative Update

2021 Proposals Impacting Estate and Gift Tax

Democratic Proposals

- The Ultra-Millionaire Tax Act (March 1, 2021)
- The For the 99.5% Act (March 25, 2021)
- The Sensible Taxation and Equity Promotion Act & H.R. 2286 (March 29, 2021)
- The American Jobs Plan (March 31, 2021)
- The American Housing and Economic Mobility Act (April 23, 2021)
- The American Families Plan (April 28, 2021)
- Biden Administration Budget Proposal (June 2, 2021)
- Treasury Department "Greenbook" (June 2, 2021)
- Build Back Better Act v1 (introduced in the House on September 13, 2021)
- Build Back Better Act v2 (PASSED by the House on November 19, 2021)
- **Build Back Better Act v3 (TBD – December 2021? First Q 2022? Not pass at all?)**

Republican Proposals

- The Death Tax Repeal Act of 2021 (March 9, 2021)
- The Estate Tax Reduction Act (May 13, 2021)

Evolution of Tax Proposals in 2021

	Various Proposals (through August 2021)	Build Back Better v1 (as introduced September 2021)	Build Back Better v2 (as passed November 2021)	Build Back Better v3 (TBD)
Estate tax exemptions	• Reduce estate tax exemptions to \$3.5 million at death • \$1 million lifetime exclusion • Rates as high as 65% • Retroactive to 1/1/2021	• Reduce estate and lifetime exemptions to \$5 million adjusted for inflation • Effective 1/1/2022	• No change	• **Most likely no change**
Step-up in basis	• Eliminate step-up in basis at death • Deemed realization event at death	• No change	• No change	• **Most likely no change**
Wealth Tax/Income Surtax	• 2% tax on assets greater than \$50 million • Additional 1% tax on assets greater than \$1 billion	• 3% surtax on income greater than \$5 million for individuals **(\$100,000 for estates and trusts)**	• 5% surtax on income greater than \$10 million for individuals **(\$200,000 for estates and trusts)** • Additional 3% surtax on income greater than \$25 million for individuals **(\$500,000 for estates and trusts)**	• **Will it stick?**
Grantor trust treatment	• Grantor trusts to be included in grantor's estate • Future contributions to grantor trusts to be included in grantor's estate	• Grantor trusts to be included in grantor's estate • Future contributions to grantor trusts to be included in grantor's estate	• No change	• **Most likely no change**
Valuation Discounts	• Eliminate valuation discounts on passive investments	• Eliminate discounts on passive investments	• No change	• **Most likely no change**

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Smaldino v. Commissioner, T.C. Memo 2021-17, November 10, 2021

Smaldino v. Commissioner, T.C. Memo 2021-17

1. The Smaldino case involved an all too familiar fact pattern. Husband delayed planning until he had a health scare. He then moved forward with the creation of a Dynasty Trust. In order to utilize his wife's unused exemptions, the plan was for him to gift interests in an LLC to his wife and then for her to gift the interests to the Dynasty Trust. Complicating the execution of the planning was that the planning was initiated in 2012 (gift occurred in 2013), when planners were in the midst of a similar wave of planning to what we had in 2021. As a result, shortcuts were taken, steps missed and formalities not followed with the transfer of the LLC interests from the husband to the wife and from the wife to the trust. The case was full of bad facts including among others:
    1. Mrs. Smaldino was never formally recognized as a member of the LLC;
    2. The operating agreement was not amended to reflect her ownership;
    3. The LLC tax return did not issue a K-1 to Mrs. Smaldino;
    4. Mrs. Smaldino transferred the interest in the LLC to the trust only one day after receiving the interest;
    5. The gift to Mrs. Smaldino was not listed on Mr. Smaldino's gift tax return; and
    6. Mrs. Smaldino testified that she made "a commitment, promise" to her husband that she would make the transfer.
2. The tax court ruled against the taxpayers and held that the transfer was in reality a gift from the husband to the Dynasty Trust and ignored the transfers involving Mrs. Smaldino. Therefore, Mr. Smaldino was deemed to have gifted the entire 49% interest in the LLC to the trust.

Lessons from *Smaldino*

1. Always follow the formalities of the transfer. Make sure that the transfers are fully reflected on an entity's books for tax, legal and economic purposes. Follow the formalities for an intra-family transfer as if the transfer involved an unrelated third-party.

2. Do not rush planning. Do not wait until there is an event occurring that forces planning to be done under time pressure.

3. Put some time between transfers. The more time the better.

4. A client's advisor team must be meticulous in ensuring that the planning is fully executed.

POLLING QUESTION #13

To be eligible for CPE, 12 polling questions must be answered.

Planning for 2022

Planning Environment for 2022

Given that significant changes to estate tax laws are unlikely, we still have a few years of favorable conditions for wealth transfer planning. This is not to say that changes are still not possible.

1. High estate tax exemptions are likely through end of 2025.

	2000	2017	2022	2026*
Single	$675,000	$5,490,000	**$12,060,000**	$5,000,000*
Married	$1,350,000	$10,980,000	**$24,120,000**	$10,000,000*

Historical Estate Tax Exemptions & Rates

- In only one year out of the past 10 years was the exemption at $3.5 million.
- The exemption has been $5 million or greater since 2010 AND greater than $11 million since 2018 – 13 years.
- It appears likely that the exemption will remain above $12 million through the end of 2025.

Year	Estate Tax Exemption	Top Estate Tax Rate
1997	$600,000	55%
1998	$625,000	55%
1999	$650,000	55%
2000	$675,000	55%
2001	$675,000	55%
2002	$1,000,000	50%
2003	$1,000,000	49%
2004	$1,500,000	48%
2005	$1,500,000	47%
2006	$2,000,000	46%
2007	$2,000,000	45%
2008	$2,000,000	45%
2009	$3,500,000	45%
2010	$5,000,000 or $0	35% or 0%
2011	$5,000,000	35%
2012	$5,120,000	35%
2013	$5,250,000	40%
2014	$5,340,000	40%
2015	$5,430,000	40%
2016	$5,450,000	40%
2017	$5,490,000	40%
2018	$11,180,000	40%
2019	$11,400,000	40%
2020	$11,580,000	40%
2021	$11,700,000	40%
2022	**$12,060,000**	**40%**

Planning Environment for 2022

2. A relatively low interest rate environment is likely to continue, but rates have been rising and are expected to continue to rise due to inflationary pressures.

AFR Rates					
	1990	**2000**	**2010**	**Jan. 2021**	**Dec. 2021**
Short term	8.82%	6.53%	0.74%	.14%	0.33%
Mid term	9.10%	6.51%	2.70%	.52%	1.26%
Long term	9.09%	6.39%	4.30%	1.35%	1.90%

7520 Rate				
1990	**2000**	**2010**	**Jan. 2021**	**Dec. 2021**
11.0%	8.0%	3.2%	0.6%	1.6%

[1]*See Rev. Rul. 2021-23; Rev. Rul. 2021-01; Rev. Rul.. 2010-18; Rev. Rul. 2000-32 and Rev. Rul. 90-52.*

Planning Environment for 2022

Assuming no unexpected changes in the estate tax laws, we will be looking at the perennial strategies:

- Gift of unused exemption amount to a Multi-Generational Trust/Spousal Lifetime Access Trust ("SLAT")
- Sale of assets to a Multi-Generational Trust
- Intra-family loans
- GRATs & CLATs

Caveat – Never Start with the Solution

It is critical that any wealth transfer strategy be reviewed in the context of the client's overall plan.

Protect and Grow Assets → Prepare Assets for Transfer to Recipients → Prepare Recipients to Receive

Financial Planning
- Cash flow analysis
- Budgeting
- Retirement planning
- Scenario planning
- Cash management
- Life insurance review

Investment Planning
- Asset allocation
- Asset location
- Risk policy
- Investment selection
- Performance measurement
- Monitoring
- Reporting

Income Tax Planning
- Personal income tax
- Business income tax
- Trust income tax

Estate Planning
- Wills and Revocable Trusts
- Irrevocable Trusts
- Asset protection
- Family entities

Business Planning
- Business valuation
- Business succession
- Family governance
- Pre-sale planning
- Acquisition/merger planning
- Strategic planning
- Retirement plan admin

Philanthropic Planning
- Individual philanthropy
- Family philanthropy
- Defining a mission and purpose
- Tax efficient giving

Legacy Planning
- Defining shared family values, culture and principles
- Family history
- Family education

Making a Large Gift in 2022

1. Clients should still consider utilizing the current $12 million exemptions to the fullest extent as soon as possible. The current high exemptions are a "use it or lose it" proposition. As a broad, general rule of thumb:

Net worth	Action
$0 - $15 million	No gift or possibly a smaller gift
$15 million - $25 million	Case-by case analysis
$25 million - $50 million	Use one exemption; *maybe* two if married
$50 million++	Use two exemptions if married

2. If a $12 million gift does not make sense, a smaller gift between $5 million to $12 million can still work to effectively remove future growth from a client's estate and provide some benefit from the higher exemptions.
3. A common strategy for married clients is to make a gift to a spousal lifetime access trust ("SLAT") where the non-donor spouse is a beneficiary of the trust.

POLLING QUESTION #14

To be eligible for CPE, 12 polling questions must be answered.

Spousal Lifetime Access Trust or SLAT

1. SLATs have been the strategy of choice for utilizing the high exemptions since 2012.

2. A SLAT is a multi-generational trust where the non-donor spouse is a beneficiary, thereby, providing potential access to the trust assets.

3. A SLAT is almost always a grantor trust for income tax purposes. This means that all items of income pass through to the grantor and are reported on the grantors personal income tax return. This allows the trust assets to grow income tax free while reducing the grantor’s estate gift tax free.

4. A SLAT can serve multiple purposes. For example, a SLAT can also own life insurance and serve as a life insurance trust or ILIT. One, this can avoid the need for multiple trusts. Two, if you have income producing property in the SLAT, the income can be used to pay the premiums thereby eliminating the need to use additional gift tax exemption and to file a gift tax return.

Tips for Establishing and Funding a SLAT

1. A gift to a SLAT should come only from the donor spouse. All assets gifted to the SLAT must be titled first in the donor spouse's name before being transferred to the SLAT. This means that gifts cannot come from jointly titled assets.

2. In light of the *Smaldino* case, a transfer of an asset to the donor spouse must reflect that the donor spouse actually had an ownership interest in the asset prior to transferring the asset to the SLAT.

3. A gift to a SLAT should not be split between spouses on the gift tax return. The presence of Crummey powers in the trust document can create headaches. Generally speaking, it is better if a SLAT does not contain Crummey powers.

4. The spouse/beneficiary can serve as a trustee of a SLAT provided the spouse's powers are sufficiently limited so as not to create estate tax inclusion issues.

Conclusion

1. While the scope of uncertainty around estate tax changes has shrunk considerably since the beginning of 2021, some uncertainty still exists.

2. Currently, it appears that favorable conditions for wealth transfer planning will continue for at least the next three years through the end of 2025. Stay tuned however.

3. Clients who have not utilized their estate tax exemptions should still consider doing so in 2022.

4. The past year of uncertainty has highlighted the need for clients to review their overall plans annually and be proactive. Given the political climate in Washington, we could be facing potential tax law changes on an ongoing basis in the years to come. It is critical to stay out in front of these changes and reduce their impact on clients plans.

5. It's best not to do planning when rushed and under time pressure.

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Thank You for Joining Us

Whatever your next move, we're here to help.

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