

2020 Federal Tax Law Update

WSBA Tax Section



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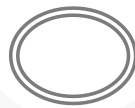
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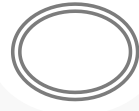
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AGENDA



- Cares Act
- PPP Loan Forgiveness
- Secure Act
- IRS COVID-19 Changes
- IRS Enforcement Priorities
- “Blue Wave” Planning Opportunities
- Miscellaneous Grab-bag

CARES Act



- Passed March 25, 2020 by the senate
- \$2.2 trillion dollar legislation
- Many tax-provisions included in the bill

Cares Act – Delayed Payment of Payroll Taxes



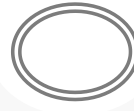
- Act Sec. 2302(a) - Employer may delay payment of social security taxes otherwise due between March 27, 2020 and January 1, 2021
 - Generally employers and self-employed individuals are required to remit payroll and SE taxes
 - Instead, 50% due by December 31, 2021 and the remaining 50% due by December 31, 2022
- Provision was initially ineligible for employers who receive a PPP loan; however, PPP Flexibility Act removed this requirement
- Cares Act Rules apply to employer's portion of payroll taxes
 - President separately created a mechanism to delay the payment of the employee's portion of payroll taxes (detailed later in presentation)

Cares Act – Employee Retention Credit



- CARES Act created a refundable payroll tax credit for 50% of wages paid by eligible employers (Act Sec. 2301(a))
 - “Eligible Employer” is an employer whose operations are partially or fully suspended because of government Covid-19 related order
 - “Wages” capped at first \$10,000 per employee
 - To qualify for credit, employer must show a 50% year over year reduction in gross quarterly receipts
 - Employer can potentially continue to qualify until gross receipts exceed 80% of comparable quarter in 2019
 - Employers who receive a PPP loan are **ineligible** for this credit

Cares Act – Modifications to Various Business-Tax Related Rules



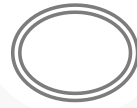
- Several Rules modified to lessen tax burden for select businesses:
 - Non-Corporate Taxpayer Loss Limitation (IRC Sec. 461(l)(1) rules modified to not apply in 2018, 2019, 2020 (Act Sec. 2304(a))
 - Prior Year Alternative Minimum Tax Credit – 100% of prior year AMT Credits may be claimed by corporate taxpayers in 2019 (Act Sec. 2305(a))
 - Business Interest Limitations (IRC Sec. 163(j)(10) modified such that business interest expense capped at 50% AGI (rather than 30% AGI)
 - ✦ Alternatively, Taxpayer can elect to use 2019 AGI when calculating 2020 limit (Act Sec. 2306(a))
 - Qualified Improvement Property Rule Changes – Correct TCJA such that QI is 15-year property and therefore bonus depreciation available (Act Sec. 2307)
- Goal to assist certain industries and businesses with prior year losses

Cares Act – Net Operating Loss Rule Changes



- NOLs arising in tax years 2018, 2019, and 2020 may be carried back five years (Act Sec. 2303(b)(1))
 - TCJA removed ability to carryback many types of NOLs; CARES Act reinstated that option
 - Election to forego five-year carryback period possible (and irrevocable)
- Suspension of 80 percent of taxable income limitation on the use of NOLs arising in tax years 2018, 2019, and 2020 (Act Sec. 2303(a)(1))
 - This allows corporate taxpayers to use NOLs to fully offset (instead of an 80 percent offset) taxable income in tax years 2018, 2019, and 2020.

Cares Act – Covid-Related Tax Credits



- 2020 Individual Recovery Rebates (i.e., stimulus checks) - IRC 6428(b)
 - Refundable \$1,200 tax credit (\$2,400 if MFJ) plus \$500 per qualifying child
 - \$150,000 - \$198,000 phaseout MFJ return; \$75,000 - \$99,000 phaseout individual return based on 2019 return (unless unfiled, then 2018)
- Tax Credits for Paid Sick Leave & Tax Credit for Paid Family Leave
 - Ability for employer to acquire advance refunds on these credits

Cares Act – Tax Relief for Individuals



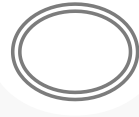
- **Temporary Suspension of Early Withdrawal Penalty for Retirement Accounts**
 - Early distributions of up to \$100,000 for Covid 19-related expenses exempt from 10% additional tax (exception to IRC Section 72(t)) (Act Sec. 2202(a)(1))
 - Distributions ratably taxed over a 3-year period if elected by the taxpayer (Act Sec. 2202(a)(3)(C))
 - Rollover Options – Allowed to rollover a Covid-19 related distribution during the 3-year period after the distribution (rather than typical 60-day rule)
- **Moreover, Retirement Plan loan limits increased temporarily to \$100,000 (Act Sec. 2202(b)(1))**
- **Waiver of Required Minimum Distributions**
 - Generally required under IRC Sec. 401(a)(9); however, 2020 distributions are exempt

Cares Act – Tax Relief for Individuals (contd.)



- Postponement of Filing Deadline to 7/15/2020 (extended returns still due 10/15/2020)
- Modified Charitable Contribution Limits to Increase AGI limit to 100% for 2020
 - Generally charitable deduction are limited to 60% AGI (IRC 170(b) but special exception for cash contributions in 2020 (Act Sec. 2205(a)(1))
- Added \$300 above-the-line deduction for charitable contributions (Act Sec. 2204(a))
- Up to \$5,250 Exclusion of Employer-Paid Student Loan Payments from Employee Income
 - “Eligible student loan repayments” added to the definition added to list of excludable payments under IRC Section 127

PPP Loan Forgiveness

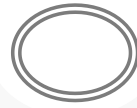


PPP Loan: Basics



- COVID-19 relief response.
- Section 1102 of the CARES Act created new lending program (PPP) under § 7(a) of the Small Business Act (15 USC § 636).
- Provided low-interest loans to certain small business (generally 500 or fewer employees) and self-employed individuals for purposes of covering payroll and other eligible expenses during the “covered period.”

PPP Loan Forgiveness: Basics



- Codified at 15 USC § 9005.
- CARES Act forgiveness provisions modified by the Paycheck Protection Program Flexibility Act (PPPFA), passed into law in early-June.
- Loan recipients are eligible for forgiveness in the amount of costs incurred/payments made during the covered period related to: 1) payroll; 2) interest on covered mortgage obligation (excludes prepayments) on real or personal property; 3) covered rent obligations; and 4) covered utility payments. CARES § 1106(b).
 - Forgiveness only available if loan proceeds were used at least 60% towards payroll. CARES § 1106(d)(8) (as amended by PPPFA § 3(b)(2)).
 - “Covered period” defined as beginning on the loan origination date and ending on the earlier of: 1) 24 weeks after origination date; or 2) December 31, 2020. CARES § 1106(a)(3) (as amended by PPPFA § 3(b)(1)).
 - ✦ Borrowers who received PPP loans prior to June 5th (date PPPFA enacted) may elect covered period to end eight weeks after origination date (as originally provided in CARES Act).
 - “Covered” for mortgage, rent, utility purposes are those existing before February 15, 2020.

Threshold Limitation on Forgiveness



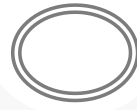
- Forgiveness only available if loan proceeds were used at least 60% towards payroll. CARES § 1106(d)(8) (as amended by PPPFA § 3(b)(2)).
 - Payroll costs includes Cash and Non-Cash Comp. (ER paid health insurance, retirement contributions, state & local employment tax). SBA Form 3508.
- May use 40% for payment of interest on a covered mortgage, rent, utility obligation.
 - Covered mortgage “shall not include any prepayment of or payment of principal on a covered mortgage obligation.” PPFA § 3(b)(8).

Reduction Based on Employee Count



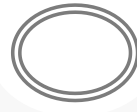
- Amount reduced by multiplying § 1106(b) amount by quotient obtained by dividing: (i) the average number of FTEs during the covered period of average number of full-time equivalent employees per month during the covered period, divided by average during Feb. 15, 2019 to June 30, 2019 or during Jan. 1, 2020 to Feb. 29, 2020. CARES § 1106(d)(2).
 - \$100,000 loan forgiveness amt. X (75 ees covered pd./100 ees prior pd.)=.75 = \$75,000 reduction
 - \$100,000 loan forgiveness amt. X (99 ees covered pd./100 ees prior pd. = .99 = \$99,000 reduction
- **BUT draft Senate Bill 3548 states that the reduction equals 1- quotient.**
 - ✦ \$100,000 loan forgiveness amt. X (75 ees covered pd./100 ees prior pd.)= 1- .75 = \$25,000 reduction
 - ✦ \$100,000 loan forgiveness amt. X (99 ees covered pd./100 ees prior pd. = 1-.99 = \$1,000 reduction
- **SBA Application is consistent with Draft Senate Bill**

Reduction Based on Employee Count-con't



- Borrower elects comparative period. CARES § 1106(d)(2)(A)(ii)(I).
- Provision cannot increase forgiveness amount—only reduce. CARES § 1106(d)(2)(A).
- Seasonal employers' comparative period is Feb. 15, 2019 to June 30, 2019. CARES § 1106(d)(2)(A)(ii)(II).

Reduction Based on Employee Count-con't



- **Exemption for Re-hires:** No reduction of forgiveness amount if full-time equivalent employees reduced from February 15, 2020 to 30 days after CARES Act passed (i.e., April 26th) and reduction was eliminated by June 30th. CARES § 1106(d)(5).
- **Safe harbor for Inability to Re-hire:** No reduction if a borrower is able to document:
 - a good faith inability to hire former employees, similarly qualified employees for available positions by December 31, 2020, or
 - an inability to return to the same level of business activity by December 31, 2020 due to compliance with federal COVID-19 safety guidelines (HHS, CDC, OSHA). CARES § 1106(d)(7) (as amended by PPPFA § 3(b)(2)).
 - What about restaurants/bars who can't get back to same level—do they still have to meet 60% of threshold wages?

Reduction Based on Wages



- Amount reduced by the amount of:
 - any reduction over 25% from an employee's pay compared to most recent pre-covered full quarter IF the employee did not receive wages during any pay period in 2019 at an annualized rate of more than \$100,000. CARES § 1106(d)(3).
 - ✦ Ex. Bonus in one pay period?
 - ✦ 60k salary (2.5k per ppd.), 3k bonus in 1 pay pd. → 5.5k in 1 ppd → annualized 143k
 - ✦ Less than 100k → cannot reduce more than 25% (protect low income EEs).
- Exceptions
 - IF wage/salary reduction is eliminated by June 30th. CARES § 1106(d)(5)(B)(ii).
- Example
 - \$100,000 loan, 1 employee reduced from 100k to 74k => reduction is \$26k
 - ✦ Forgiveness is capped at \$74,000.

Limitations on Forgivable Payroll Expenses



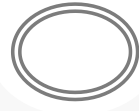
- Cash compensation capped at \$100,000 on an annualized basis per employee for the covered period. (5/20 SBA Form 3508, p.2.; 8/11 Forgiveness FAQs #8).
 - Ex. 24 weeks is 46.15% of year x 100k = \$46,153 forgivable
- Caps on Compensation of Owners—depends on entity type and covered period.
 - 8 week- \$15,385;
 - 24 week—\$20,833
 - ✦ Total amt. across all business in which an ownership stake is held.
 - ✦ Owners may elect how to allocate across the business.

Limitations on Payroll for Owners



- Entity Type (based on 24-week covered period)
 - C-Corporation: 2.5/12 of 2019 cash compensation; state and local employment taxes; employer contributions for health insurance; employer contributions to retirement plan (2.5/12 of 2019 contribution).
 - S-Corporation: Same as C-Corporation; however, employer health insurance contributions are not forgivable for employees with at least a 2% ownership interest (as well as contributions towards family members (pursuant to § 318 family attribution rules) of those owners)
 - Schedule C: 2.5/12 of 2019 net profit; state and local employment taxes, health insurance costs, and retirement contributions are not eligible for forgiveness
 - General Partners: 2.5/12 of 2019 net earnings subject to self-employment tax, multiplied by .9235; only eligible if payments to partners are made during applicable covered period; health insurance, state and local taxes, and retirement contributions are not eligible.
 - LLC Owners: Determined with reference to the rules that apply to how the business was organized for tax purposes in 2019.

Limitations on Payroll for Owners- con't



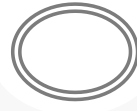
- De Minimis Ownership Exception: 5% threshold required to trigger special owner-employee limitations (C- and S-Corp. owners). SBA IFR (proposed Aug. 27, 2020) (to be codified at 13 CFR pt. 120)

Application Process



- SBA Form 3508, revised June 2020
- Documentation submitted with application
 - Proof of all payments (payroll, mortgage, rent, utilities)
 - Covered Period payroll
 - Prior Period/Reference Period FTE
- Documentation required to maintain
 - FTE reduction safeharbor

Tax Considerations of Forgiveness



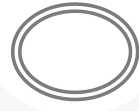
- “[A]ny amount which (but for subsection) would be includible in gross income of the eligible recipient by reason of forgiveness described in subsection (b) is excluded from gross income.” CARES § 1106(i).
 - No mention of non-deductibility of expenses paid with forgiven income.

Tax Considerations of Forgiveness



- Notice 2020-32: excluded income under CARES § 1106(i) results in a “class of exempt income” pursuant to Treas. Reg. § 1.265-1(b)(1), which operates to disallow those otherwise allowable deductions pursuant to § 265(a)(1).
 - The bipartisan Senate bill, the Small Business Expense Protection Act, pending in the Finance Committee provides “no deduction shall be denied or reduced, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income”—Stay tuned!
- IRS Announcement 2020-12 states that lenders should not file Form 1099-C with the IRS or provide payee statements to PPP loan forgiveness recipients.

Secure Act



- Enacted January 1, 2020
- Largest retirement reform act since 2006
- Goal to Strengthen Retirement Accounts across the Country

Secure Act – IRA & Other Retirement Acct Rules



- Age for required minimum distributions increased from 70.5 to 72 (unless turned 70.5 before end of 2019) – IRC Sec. 401(a)(9)(C)
 - Old Rule: Generally distributions from a traditional retirement account must start by April of year after taxpayer turns 70.5 (unless non-5% owner who hasn't retired)
- Individuals of all ages can now make contributions to a traditional IRA (assuming earned income requirement met) – Act Sec. 107(a)
 - Old Rule: Individuals age 70.5 or older before end of tax year ineligible for IRA contribution
 - However, \$100,000 Qualified Charitable Deduction limit reduced by IRA deduction allowed for taxpayer after age 70.5

Secure Act – IRA & Other Retirement Acct Rules (contd.)



- Elimination of “stretch IRAs” – post-death required minimum distribution rules overhauled as part of Secure Act (Secure Act Sec. 401(a)(1))
- New Rules: IRC Section 401(a)(9)
 - General Rule: Account balance must be distributed to beneficiaries within 10 years of death (for deaths occurring after 12/31/2019)
 - Exception: “Eligible Designated Beneficiaries” (EDB) – (a) surviving spouse, (b) minor child of the deceased, (c) chronically ill individual, (d) any other individual who isn’t more than 10 years younger than deceased
 - ✦ EDB can receive distributions over his or her lifespan; child beneficiary must receive distributions within 10 years of reaching age of majority
 - After death of the EDB, distributions must occur within 10 years
 - Therefore, many retirement account estate planning structures should be reconsidered

Secure Act – Qualified Plan Rule Changes



- **Part-Time Employees can now qualify for 401(k) plans**
 - Old law: employee eligible for plan if one-year of service and at least 1,000 hours
 - New law expands the rules so that an employee with at least 500 hours worked for 3 consecutive years may qualify for plan enrollment
- **New Exception to 10% Early Distribution Penalty: \$5,000 penalty-free withdrawals from certain retirement accounts for birth / adoption – IRC Section 72(t)(2)**
 - Distribution from retirement account Must be within 1 year of birth / adoption of child of person receiving distribution
 - Each spouse can receive up to \$5,000 in distributions for the same child
- **Select annuities meet the “prudent investor” retirement plan requirement**

Secure Act - Retirement Plan Admin Changes



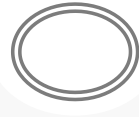
- **Small Employer Auto-Enrollment and Start-Up Costs Credits**
 - 45E Credit - \$5,000 max credit for start-up costs of a qualified plan
 - ✦ For employers with 100 or less employees
 - ✦ Credit equals greater of (a) \$500 or (b) lesser of (1) \$250 per each non-highly compensated employee who is eligible for the plan or (2) \$5,000
 - ✦ Start-Up Costs include: establishment of administration of the plan or employee education regarding the plan
 - ✦ Credit available for up to 3 years
 - 45T Credit - \$500 max credit for up to 3 years for the start-up costs associated with a new 401(k) plan or Simple IRA plan which includes automatic enrolment feature
 - ✦ For employers with 100 or less employees
- **Consolidated Form 5500 – simpler filing requirements for some groups of retirement plans**

Secure Act – Students



- Distributions from 529 Plans are tax-free if used for payment of up to \$10,000 of student loans- IRC Section 529(c)(9)(A)
 - Amount includes both principal and interest on student loans
 - 529 funds can be spent on either designated beneficiary or sibling of designated beneficiary of the 529 Plan
 - \$10,000 limit is lifetime limit per individual
- Distributions from 529 Plans are tax-free if used for books, fees, supplies, and equipment in apprenticeship programs – IRC Section 529(c)(8)
- Graduate student taxable stipends and non-tuition fellowships now qualify as “compensation” for purposes of contributing to an IRA (i.e., meeting necessary compensation rules to contribute to an IRA)

COVID-19 Changes

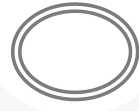


E-signatures



- 7/2019- Sect. 6061- Sec. shall develop procedures for digital or electronic signatures.
 - Shall publish guidance for procedures to allow e-signatures on POAs. 6061(b)(3)(B).
- Accept “images of signatures (scanned or photographed)” and digital signatures on documents related to determination or collection of tax liability.”
 - NHQ-01-0620-0002 (Lough Memo)
 - “digital signatures” include those that use encryption techniques, i.e., DocuSign.
 - Should include POAs/Form 2848
 - Expires 12/31/2020

E-Signatures



- Temporarily allow e-signatures on certain returns/forms. IR 2020-198 (8/28/20)
 - 3115, 8832, 8879 (e-file authorization) + 9 others.
 - Until 12/31/2020, then IRS will re-evaluate

Email



- IRS Employees are permitted to accept documents from taxpayers via email. Lough Memo
 - required steps: authenticate, advise, statement
- IRS Employees can send documents by email using SecureZip attachment or other encryption method.
 - IRS Counsel has MOU for TP/Rep. to sign.

Other Electronic Updates



- In May, IRS announced Amended Returns would be able to be filed electronically beginning in summer.
 - Only for 2019 and subsequent years
 - IRS receives on average 3 m. amended returns annually
- Tax Court conducting trials by Zoomgov.

Other Updates



- People 1st Initiative- IR 2020-59 Expired July 15
 - Collection activity and audits presumably resume
 - IA payments resume
- Changes related to travel disruptions- Rev. Proc. 2020-20 (substantial presence test to become residents of the US for tax purposes) and 2020-27 (foreign earned income exclusion).
- IRS reminds taxpayers that W-2 employees are not allowed the home office deduction even if they are working from home. IR 2020-220.

Enforcement Priorities

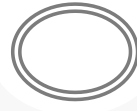


IRS Enforcement



- March 2020-Newly created Fraud Enforcement Office has new director from IRS CID. IR-2020-49
 - Increase cooperation between RA, RO, CID, external partners
- July 2020- Created Enterprise Digitalization and Case Management Office.
 - Modernizing systems and processes
 - Currently has 60 different, aging systems

IRS Enforcement



- Eric Hylton, former Deputy Chief of IRS CID is selected to lead SB/SE
 - Fmr. Chair of OECD Task Force
 - Fmr. ED of CI's Office of International Operations
- CI's National Coordinated Investigation Unit
 - Announced concept in 2018; official section in 2019
 - Use data analytics to identify non-compliance; coordinating national investigations, support, refer investigations to field.
 - Virtual currency, international, employment tax
- CI's Int'l Tax Enforcement Group

Enforcement Priorities



- **Syndicated Conservation Easement Cases.**
 - Invest in Pship, pship donates a conservation easement, pship inflates value of easement, partners claim charitable deduction.
 - After four TC wins, IRS announces settlement initiative for docketed cases. IR 2020-130 (6/25/2020).
 - In part lead to creation of Promoter Investigation Coordinator and the Office of Fraud Enforcement
 - Sept. 21 Updated Senate report: government needs to do more
 - ✦ 2018 deductions were \$9.2 billion (nearly \$2.5 billion increase)
 - ✦ 2018 participants were 16,900 (nearly 3,000 increase)
 - ✦ After IRS designated it as a listed/abusive transaction

Enforcement Priorities



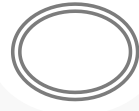
- **Employment Tax**
 - 70% of all revenue collected by IRS; 91 billion of gross tax gap
 - Injunctions and criminal prosecution
 - Top priority of DOJ
 - CI confirms majority of referrals from field RA/RO are employment tax cases
- **PPP Fraud**
- **High Net-Worth Exams**
 - LB&I announced hundreds of these audits will start by Sept. 30.
 - Enterprise approach—look at pass through entities, private foundations

LB&I Campaigns



- **TCJA Compliance Campaign**
 - Will study a pool of returns to identify transactions, restructuring issues as a result of 199A QBI deduction, and other compliance issues.
 - Share information w/in IRS, identify future issue-based campaigns, examinations.
- **Virtual Currency**
- **OVDP Declines/Withdrawals**
- **Captive Insurance**
- **S Corp. losses in excess of basis**

“Blue Wave” Planning Opportunities



Blue Wave Proposals – Income Tax Rate Changes



- Increase maximum individual income tax rate to 39.6% from 37.0%
- Impose 12.4% payroll tax on earned income above \$400,000.00
- Tax capital gain and dividends on incomes above \$1 million at ordinary income rates rather than long-term capital gain rates
- Raise the corporate tax rate to 28%

Example – Additional Tax on \$1M Wages (MFJ)



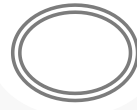
Current Law:

Income Tax on \$1M	Per 2020 Tax Bracket (MFJ)	\$334,427.00
Employer Social Security:	6.2% on first \$137,700	\$8,537.40
Employee Social Security:	6.2% on first \$137,700	\$8,537.40
Employer Medicare:	1.45% on all income	\$14,500.00
Employee Medicare:	1.45% on all income	\$14,500.00
Additional Medicare:	.9% on income after \$250,000	\$6,750.00
Total Payroll Tax:		\$52,824.80
Total Tax:		\$387,251.80

Biden Proposal:

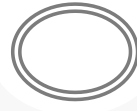
Income Tax on \$1M	2020 Tax Bracket but increase highest rate to 39.6%	\$346,948.60
Employer Social Security:	6.2% on first \$137,700; 6.2% on income after \$400,000	\$45,737.40
Employee Social Security:	6.2% on first \$137,700; 6.2% on income after \$400,000	\$45,737.40
Employer Medicare:	1.45% on all income	\$14,500.00
Employee Medicare:	1.45% on all income	\$14,500.00
Additional Medicare:	.9% on income after \$250,000	\$6,750.00
Total Payroll Tax:		\$127,224.80
Total Tax:		\$474,173.40

Blue Wave Tax Proposals – Misc. Income Tax Changes



- Eliminate \$10,000.00 cap on SALT deduction
- Limit tax benefit of itemized deductions to 28%
- Phase out QBI deduction on income over \$400,000.00
- Raise child tax credit to \$8,000 (1 child) or \$16,000.00 (2 or more) (phase out @ \$400,000)
- Restrict Like-Kind Exchanges to those with income under \$400,000.00
- Eliminate COD income attributable to student loan debt forgiveness
- \$15,000 tax credit for first time homebuyers

Blue Wave Tax Proposals – Estate Tax (and Related) Changes



- **Estate Tax Exemption:**
 - Reduce estate and gift tax exemption amount to pre-TCJA levels; or
 - Reduce estate and gift tax exemption to potentially lower amount (perhaps \$3.5M)
- **Step-Up at Death:**
 - Eliminate the step-up in basis upon death; or
 - Make death an income tax realization event

Blue Wave Tax Proposals – Planning Considerations



- Accelerate income and capital gain into 2020
- Consider Exercising Stock Options
- Close by year-end real estate transactions if looking to 1031 Exchange
- Close by year-end other large transactions (sale of business, etc.)
- Accelerate planned charitable giving into 2020
- Delay payment of property, income, and other state and local taxes until 2021

Blue Wave Tax Proposals – Planning Considerations

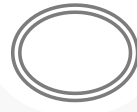


- Wealthy individuals should consider large gifts to use their extra lifetime exemption which might disappear in 2021
- Review all estate plan and trust documents to confirm goals are met given potential step-up in basis rule changes
- If a first-time homebuyer, hold off on the purchase of a house until after rule change.
- If eligible for discharge of student debt and discharge would be taxable under current law, delay forgiveness of debt.

Grab Bag of Developments



Penalty Approval



- IRC 6571- requires written manager/immediate supervisor approval prior to the initial determination to assert penalty.
- *Belair Woods, LLC v. Comm’r*, 154 TC 1 (Jan. 6 2020).
 - Supervisor approval must be before 1) SNOD or 2) IRS formally communicates to the TP determination to assert the penalty and notifies of right to appeal.

Penalty Approval Con't



- *Oropeza v. Comm’r*, TC Memo 2020-110 (July 16, 2020)
 - RAR issued with 40% penalty (trans. lacking economic substance)
 - Approval for 40% and 20% penalty obtained
 - Statutory Notice of Deficiency issued asserting 40% penalty and as an alternative, 20% penalty.
 - 40% penalty did not comply with 6571; 20% penalty did
- *Thompson v. Comm’r*, 155 TC 5 (Aug. 31, 2020)
 - RA Offer to settle exam with a penalty at a reduced rate, but did not identify an underpayment amount or tax period. SNOD followed. TPs argued the offer to settle was the initial determination, but TC disagreed because the offer was not an initial determination.

State Tax Consequences



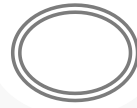
- **COVID-19 Telecommuting**
 - Could create nexus in states for companies with telecommuting employees.
 - Some states have issued specific guidance
 - Some states have stated they will not assert nexus
 - Mostly “nexus as usual”

Presidential Payroll Tax Deferral



- Memorandum permitted employers to defer payroll tax withholding and payment for certain employees.
 - Gross pay less than \$4,000 bi-weekly
 - Sept. 1 to Dec. 31
- IRS issued Notice 2020-65
 - Employee portion of Social Security tax (6.2%)
 - Employers are not required to defer the taxes
 - If deferred, must be paid ratably between 1/1 and 4/30/21

Presidential Payroll Deferral con't



- IRS issues draft 941 to report deferral on 8/28
- IRS September Conference Call
 - confirms ER responsible for tax if EE leaves
 - ER cannot withhold *and* defer payment
 - Confirms decision rests with ER as “affected taxpayer.”
 - IRS did not comment on effect of future forgiveness of the deferred tax; i.e., on EE/ERs who did not defer.
 - IRS does not expect to issue any more guidance, except with respect to W2 guidance. There is a hotline.
 - If ER pays EEs deferred tax, reportable as income to EE on W2

163 Bus. Interest Exp. Deduction



- Rev. Proc. 2020-22 (April 10, 2020) re: Elections
- Final Regulations published in FR July 28, 2020
 - Re-published IRS.gov 9/14/2020 with small changes
 - Extensive, covering many topics (382 pages)
- Website FAQs re: Small Business Exemption under 163(j) and 448(c) gross receipts test and aggregation rules. July 30, 2020

Disaster Relief



- Oregon wildfire victims. IR 2020-215 (9/17/20)
 - Extensions of time to file and pay taxes due *after* Sept. 7th until 1/15/2021.
 - ✦ Clackamas, Douglas, Jackson, Klamath, Lane, Lincoln, Linn and Marion
 - ALSO applies to any area designated by FEMA as qualifying for individual assistance will automatically receive the same filing and payment relief.
 - Applies to individuals residing outside the disaster area but who are affected (records reside in affected area, workers assisting in affected areas)
- California wildfires - <https://www.irs.gov/newsroom/tax-help-for-california-wildfire-victims>

5th Am. Act of Production



- United States v. Fridman, Dkt.No. 18-3530-cv (2nd Cir. Sept. 9, 2020).
 - Summons issued to TP as individual and as Trustee of trusts
 - TP claimed act of production privilege
 - Gov't argued 2 exceptions: collective entity doctrine and foregone conclusion.
 - Prior cases establish corporation is a collective entity (no privilege), but sole proprietorship is not (privilege).
 - Court held that a Trust was recognized as an entity separate from its individual members/Trustee.
 - Court also held that foregone conclusion applied based on previously submitted materials (existence, location, authenticity of documents)