Tax Planning Potpourri

MODERATORS:

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Panelists

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Agenda

- Tax reform updates
- Year-end planning considerations
- Employee Retention Credit
- Pass-Thru Entity Tax Elections
- Municipal Withholding Tax Considerations

Tax Reform Updates & Year-End Planning Considerations

PRESENTERS:

Angel Rice & Stephanie Truong

Current Congressional Make-up

- Democrats currently control both houses of Congress in addition to the presidency with the confirmation of President Biden earlier this year
  - The Democratic majority in the house is 222 to 211
  - Vice President Harris serves as the tie-breaker in the Senate which is currently split 50 Democratic members and 50 Republican members.
- The Democrats have been negotiating within their own party regarding their legislative proposals
  - Progressives
  - Moderates

Infrastructure Investment and Jobs Act (IIJA)

- Originally passed by the Senate back in August 2021.
- Passed by the House on November 5, 2021. President Biden plans to sign the bill into law the week of Nov. 15th.
- Bipartisan effort that focuses on the “hard” infrastructure items setting aside monies for:
  - Roads and bridges
  - Energy and power
  - Broadband internet access
  - Transit systems
  - Water Infrastructure

Infrastructure Investment and Jobs Act (cont.)

- Tax Provisions
  - Crypto asset information reporting
    - Expands the definition of who is considered a broker and responsible for information reporting on Form 1099-B
    - The Act also expands IRC Section 6050I(a) to treat digital assets as cash for purposes or reporting to the IRS on Form 8300
    - The new reporting requirements would apply to digital asset transactions occurring on or after 1/1/23.
  - Employee Retention Credit (ERC)
    - The ERC will end early making wages paid after 9/30/21 ineligible for the credit (except for wages paid by an eligible recovery startup business)

Reconciliation

- Allows Congress to pass a bill with a simple majority vote in the Senate as opposed to the regular 60 votes needed to pass legislation.
- It can only be used once in a fiscal year. 2021 has been unique in that Congress has had the opportunity to use it twice.
  - Used it once to pass the American Rescue Plan back in March of 2021
  - Using it again as the mechanism to advance the Build Back Better Act
- Limited to budgetary provisions (debt, deficit, spending)
  - Byrd rule

Build Back Better Reconciliation Bill

- Non-tax related provisions in the bill (some but not all):
  - Universal pre-K
  - Childcare
  - Paid family and sick leave
  - Home health care
  - Affordable Care Act Subsidies
  - Medicare expansion
  - Climate Change
  - Affordable housing

Build Back Better Reconciliation Bill (cont.)

- Business tax related provisions in the bill
  - New 15% corporate book income-based minimum tax on large corps
  - New 1% tax on corporate stock repurchases
  - International provisions
    - Limitations on interest deductions for international financial reporting groups
    - Modifications of inbound/outbound provisions including BEAT, GILTI, FDII and Subpart F income

Business Year-End Planning Items

- Accelerate deductions, postpone income
- Accelerated Depreciation
  - Bonus depreciation
    - Still 100% through 12/31/22. Beginning 1/1/23 the % will decrease to 80%.
  - Section 179
    - 2021 Investment Threshold is $2,620,000
    - 2021 deduction limit is $1,050,000
- ERC eligibility
- PPP loan forgiveness applications
  - Due 10 months from the end of the covered period

Poll Question #1

American Families Plan

- Announced April 28, 2021
- Increase top income tax rate from 37% to 39.6% for income in excess of $400,000 ($450,000 for joint filers)
- Eliminate preferential long-term capital gains and qualified dividends tax rate for households with income over $1 million
- Eliminate basis step-ups in excess of $1 million ($2.5 million for a married couple)
- Eliminate like-kind exchanges of real property for gains greater than $500,000
- Eliminating carried interest

Build Back Better Act

- Introduced September 14, 2021
- Increase top income tax rate from 37% to 39.6% for income in excess of $400,000 ($450,000 for joint filers)
- New 3% surcharge on modified gross adjusted income above $5 million
- Increase top capital gains tax rate from 20% to 25%, and adjust top capital gains tax bracket to $400,000
- Extend holding period for carried interest from three to five years
- Limited the maximum value of 199A deduction to $400,000 ($500,000 for joint filers)
- Reduce estate tax exemption to $6,020,000 beginning in 2022

Billionaires Income Tax

- Proposed October 27, 2021
- Applies to taxpayers with more than $100 million in annual income or more than $1 billion in assets for three consecutive years
- Tradable assets will be marked to market each year
  - Pay tax on gains or deduct losses, whether or not assets are sold
- Deferral recapture tax on non-tradable assets
  - Allocate equal amount of gain to each year in holding period
  - Determine tax that would have been owed on the gain in each year
  - Assess interest on unpaid tax for the deferral period
  - Interest rate is short-term federal rate plus one percentage point
  - No interest accrues prior to the date of enactment or the first tax year subject to Billionaires Income Tax, whichever is later

Build Back Better Act

- Updated October 28 and November 3, 2021
- **New surtax on multi-millionaires and billionaires**
- **New surtax on trusts and estates**
- **Expanding application of 3.8% Medicare tax**
- **Increase of the state and local tax deduction cap**
- Limits on
  - Section 1202 Gain Exclusions
  - Excess business losses
  - IRA contributions and accelerate RMD when account balances reach $10 million
- Ten-year expansion of the Clean Energy Tax Credits
- One-year extension of
  - The expanded Child Tax Credit, and making the credit fully refundable permanent
  - The expanded Earned Income Tax Credit for childless workers
- Increased tax enforcement efforts for taxpayers making over $400,000

Build Back Better Act (cont.)

- New surtax on multi-millionaires and billionaires
  - 5% on income over $10 million
  - Additional 3% on income over $25 million
  - Applicable to all types of income
- Year-End Planning
  - Accelerate Income and Gain Recognition
  - Installment Sales
  - Like-Kind Exchanges
  - Opportunity Zones
  - Non-Qualified Plans and Multiple-Year Payout

Build Back Better Act (cont.)

- New surtax on trusts and estates
  - 5% on income over $200,000
  - Additional 3% on income over $500,000
  - Applicable to all types of income
- Year-End Planning
  - Accelerate Income and Gain Recognition
  - Income Distribution
  - Capital Loss Harvesting in Future Years
  - Estate Planning Review

Build Back Better Act (cont.)

- Expanding application of 3.8% Medicare tax
  - For taxpayers making over $400,000 ($500,000 for joint filers)
  - Applicable to all active trade or business income
- Year-End Planning
  - Accelerate Income and Gain Recognition
  - Retirement Plan Contributions

Build Back Better Act (cont.)

- Increase of the state and local tax deduction cap
  - From $10,000 to $80,000 through 2030
- Year-End Planning
  - Defer state and local quarterly estimated tax payments
  - Defer real estate property tax payments

Poll Question #2

Employee Retention Credit

PRESENTER:

Jeff McMichael

Key Concepts

- Eligibility requires full or partial suspension due to government shutdown:
  - A Full of partial cease of operations mandated by government order
    - Ex. Employer that was required to close workplace, but continued operations through remote working does not meet this requirement
    - Ex. A business with customers affected by an order are not considered to have ceased operations for this reason alone
  - Generally difficult for essential businesses to qualify if they remained operational, unless:
    - The severity of the impact will have to be analyzed
    - There may be a consideration that a business was partially suspended depending on the facts and circumstances

How Did We Get Here?

- Credit was first implemented in the Coronavirus Aid, Relief and Economic Security Act (CARES Act) in 2020
  - Stimulus provided to employers to continue to pay wages during the economic uncertainty caused by COVID-19
  - Qualifying factors:
    - Greater than 50% reduction in gross receipts or governmental shutdown
    - Originally entities that received a PPP loan were excluded
  - 2020 credit was limited to the following amounts:
    - $10,000 max of qualified wages per employee for the period 03/13/2020 – 12/31/2020
    - Entitled to a tax credit of 50% of qualified wages

Legislation Post CARES Act Enactment

- The Consolidated Appropriations Act, 2021, modified and expanded the Employee Retention Credit (ERC), with key changes applying retroactively to 2020, including:
  - Making PPP loan recipients eligible for the credit in 2020 and 2021
  - Expanding the list of eligible businesses in 2021 to include colleges, universities, hospitals and medical care providers
  - Increasing the credit rate from 50% to 70% of qualified wages (maximum credit $7,000 per employee per quarter for 2021)
  - Increasing the number of full-time employees from 100 to 500 for eligibility in 2021
  - Expanding the timeframe to claim the credit to June 30, 2021; note that the American Rescue Plan Act, 2021 extended this timeframe to December 31, 2021***
    - The Infrastructure Investment and Jobs Act creates an early sunset of the Employee Retention Credit (ERC), removing it from business taxpayers' toolkit as of September 30, 2021.

Mechanics to Claim Credit

- Employers report qualified wages on their quarterly payroll return
- Employers share of social security tax due with the return will be reduced by the amount of the credit

Poll Question #3

ERC After the Infrastructure Bill

- The Infrastructure Investment and Jobs Act ended the Employee Retention Credit as of September 30, 2021.
  - Absent further Congressional action, the ERC will not be applicable in the 4th Quarter of 2021 and beyond
  - There is still opportunity to potentially amend and avail your business of this credit if the business has not done so for the period of March 2020 through September 30, 2021.
  - Further, we are still awaiting guidance as to treatment of entities that have been proactive and already taken action on the 4th quarter of 2021

State and Local Update:

Pass-Thru Entity Tax Elections & Municipal Withholding Tax Considerations

PRESENTER:

Patrick Walsh

Pass-Thru Entity Tax Elections (PTET)

PTET – Background

- 2018-2025
  - TCJA and the $10,000 state and local tax deduction cap
- 2018-2020
  - 7 States react with a PTET (CT, LA, MD, NJ, OK, RI, WI)
- 2020
  - IRS Notice 2020-75 provides guidance on State PTET
- Present
  - 13 States offer PTET option (AL, AR, AZ, CA, CO, GA, ID, IL, MA, MN, NY, OR, SC)
  - Build Back Better Act’s increase to $10,000 cap to consider

PTET – General Formula

- Tax burden placed on entity vs. the owner
  - Creates federal deduction for the entity vs. distribution to owners (itemized deduction)
  - Credit received by owner to offset owner's partial state obligation
  - May eliminate owner state filing obligation
- Primarily a federal tax savings opportunity
  - Net benefit received dependent on entity state filings and owner's residency
  - Reduced by state obligations
    - Can lead to additional state filings, state income, state tax payments
    - Entity restructuring to consider

PTET – Considerations Before Electing

- Federal considerations
  - Notice reliance and the Build Back Better Act
  - PTET an entity election or owner-by-owner election?
  - Will PTET tax create an ordinary deduction = ordinary credit by the state?
  - What planning or restructuring required?
- State considerations
  - Entity and owner state filing requirements likely to change
  - All or nothing owner selection?
  - Tax imposed on resident owner's total or apportioned income?
  - Credit to cover full or partial state liability for owner?

PTET – 2021 New Elections

State Specifics	California	Illinois	New York
Election Date	Timely Filed Return	Timely Filed Return	10/15/2021
Tax Rate	9.3%	4.95%	6.85-10.9%
Highest Individual Rate	12.3%	4.95%	10.9%
Election Type	Owner-by-Owner (for those permitted)	All or Nothing (for those permitted)	All or Nothing (for those permitted)
Nonresident Composite	Prohibited	Similar Treatment	Prohibited
Credit Details	Nonrefundable Paid on Resident Total Income	Refundable Paid on Resident Appt. Income	Refundable Paid on Resident Total Income

Poll Question #4

Municipal Withholding Tax Considerations

Municipal Withholding Tax – Background

- Pre-COVID
  - “20-day rule” or the “occasional entrant rule”
- During COVID (2020-2021)
  - Cities rely on HB 197, Sec. 29 emergency order concerning employee withholding
    - All days working at remote locations are treated as being performed at the employee’s principal place of work
  - *The Buckeye Institute* Cases ongoing
  - HB 110 extends emergency order until 12/31/21 and comments on employee refunds
- 2022
  - Return to Pre-COVID rules?

Municipal Withholding Tax Considerations

Individual/Employee

- Human Resources
- Payroll Taxes/Benefits
- Employee's Filing Obligations

Business

- Nexus
- Sales/Use Tax
- Income Tax
- Nexus
- Property Tax
- Credits & Incentives

Questions?