About the Washington Tax Brief

Webcast series to update you on:

• The regulatory and political environment for tax issues

• AICPA’s advocacy efforts to:
  • protect your professional interests
  • support sound tax policy
  • promote effective tax administration

• Open to all AICPA members

• Open to all state society staff and committee members
Topics for Today

1. Legislative Outlook
2. Advocating for AICPA Priorities
3. Hot Topics
4. Questions
Legislative Outlook
117th Congress – Slim Majority for Democrats in House

- Democrats have **220** seats to Republican’s **211** – 218 needed for majority control

- Speaker Pelosi will only have a few votes to spare, so the party will have to show strong cohesion to pass Biden’s agenda, as well as succeed on procedural votes.
Committee Outlook: House Ways and Means and Senate Finance

- HWM Chairman Richard Neal, D-MA
- Ranking Member Kevin Brady, R-TX
- SFC Chairman Ron Wyden, D-OR
- Ranking Member Mike Crapo, R-ID

Actions & Possible Plans:
- **COVID Relief/Stimulus - American Rescue Plan**
- Biden tax plan for addressing expiring TCJA provisions
- Modifications to SECURE Act, other retirement issues
- Infrastructure
President Biden’s American Rescue Plan ($1.9 trillion)

Child Dependent Care credit ($4,000/child, $8,000 max family)

Child tax credit ($3,000/child, $3,600 under age 6)

Advance Child Tax Credit Payments

EITC ($1,502 childless, under $27,380 AGI)
American Families Plan

Total $1.8 Trillion Plan

Tax Benefits: ($800 B)
- Expand Advanced Premium Tax Credits
- Expand Child Tax Credit
- Expand Child and Dependent Care tax Credit
- Expand EITC

Tax Administration:
- Allow IRS authority to regulate paid tax preparers
- Require financial institutions to report information on account flows so investment earnings are subject to the same reporting as wages
- Increase budget for IRS Tax enforcement targeted at those with incomes above $400,000 a year
American Families Plan

Total $1.8 Trillion Plan
• Fully paid for over 15 years (with offsets)

Offsets:
• Increase top income tax rate from 37% to 39.6%
• End the preferential rate for capital gains for households making over $1 million a year (making the rate to 39.6%)
• Eliminate Step-up-in-basis (for gains in excess of $1 million/$2.5 married couples), unless gains donated to charity
• Eliminate carried interest tax expenditure
• Address Like Kind Exchanges (Section 1031) for gains greater than $500,000
• Address gaps in the 3.8% Medicare tax on earnings
Over $2 Trillion Infrastructure Plan; $600 Billion Bipartisan “Handshake” Agreement

1. **Corporate Rate** – Increased to 28% rate from 21%

2. **GILTI** – Increased to 21% – Biden wants to raise the minimum tax on foreign profits to 21%, pushing the U.S. closer to the pre-2017 system.

3. **QBAI** – Eliminated - This is a 10% deduction some companies get for having tangible assets overseas. Biden would require companies to calculate the tax on a country-by-country basis instead of averaging across their global operations, which would tend to increase their bills.

4. **FDII** – Eliminated – Biden wants to eliminate the deduction for foreign-derived intangible income, which amounts to a tax cut for certain intellectual property, for what his proposal calls “more effective” investments for research and development. Democrats and administration officials say that this break provides an incentive to build factories abroad.
5. **Book Income** – 15% minimum tax established - In a response to complaints that some companies find legal ways to pay little or no tax, Biden wants to add a 15% minimum tax on the financial-statement income of large corporations.

6. **Fossil Fuels Tax Credits** – Biden says he would like to “eliminate all these special preferences” but is not specific in which ones.

7. **Onshoring Tax Credit / Anti-Inversions** – Biden wants to provide a tax credit for certain onshoring activity and deny expense deductions on jobs that were offshored.

8. **Global Minimum Tax** – “President Biden is also proposing to encourage other countries to adopt strong minimum taxes on corporations, just like the United States, so that foreign corporations aren’t advantaged and foreign countries can’t try to get a competitive edge by serving as tax havens.”

9. **More Tax Enforcement** – Provide more funding and resources to the IRS to increase corporate tax audits and compliance.
Mobile Workforce & COVID-19

• Long history of pushing legislation on workforce mobility

• Remote work and volunteer arrangements due to COVID-19 have re-energized issue

• Amendment no. 52 to the Fiscal Year 2021 Budget Resolution passed Senate by unanimous positive voice vote on 2/4/21

• Senators Thune and Brown to introduce updated mobile workforce bill to address remote worker tax issues
Possible Biden Administration Changes:

- SALT limitation repeal
- Retirement / pension enhancements
- Addressing IRS funding shortfalls
Advocating for AICPA Priorities
Taxpayer Services

2020 Tax Year: A Survey on Tax Practitioners’ Experience with the IRS
Overall satisfaction with the quality of taxpayer services from the IRS

- VERY SATISFIED: 5% (2015), 6% (2016), 6% (2017), 5% (2018), 6% (2019), 4% (2020)
Practitioners experiencing an IRS “courtesy disconnect” during 2020 filing season

- Courtesy Disconnect, 69%
- No Time to Stay on Hold, 23%
- IRS Answered, 8%
On the practitioner priority hotline, how often was the IRS able to answer the questions without transferring to another agent or identifying the question as “out of scope”?

- 12% never
- 20% rarely
- 38% sometimes
- 38% most of the time
- 26% always

Yearly data from 2015 to 2020.
How long did it take for the IRS to provide a “substantive response” to correspondence (as opposed to a computer-generated letter acknowledgement letter)?

- **< 30 DAYS**: 4% (2015), 3% (2016), 3% (2017), 5% (2018), 2% (2019), 1% (2020)
- **31-45 DAYS**: 11% (2015), 14% (2016), 12% (2017), 12% (2018), 7% (2019), 2% (2020)
- **46-60 DAYS**: 18% (2015), 21% (2016), 22% (2017), 22% (2018), 14% (2019), 4% (2020)
- **OVER 90 DAYS**: 44% (2015), 38% (2016), 38% (2017), 32% (2018), 46% (2019), 46% (2020)
What changes at the IRS would make the biggest impact on your practice?

- Written Communications
- Telephone Communications
- E-Services & Other Technology
- Issuance of Forms, Guidance
- Technical Assistance
- Other

Year: 2016, 2017, 2018, 2019, 2020

- Written Communications: 36%, 41%, 40%, 40%, 43%
- Telephone Communications: 33%, 27%, 22%, 23%, 22%
- E-Services & Other Technology: 19%, 18%, 21%, 18%, 21%
- Issuance of Forms, Guidance: 2%, 1%, 6%, 7%, 4%
- Technical Assistance: 8%, 6%, 5%, 5%, 3%
- Other: 2%, 7%, 6%, 7%, 7%
Due to COVID-19 crisis, how helpful was the May 17 postponement for the federal income tax filing and payment?

- Extremely helpful: 21%
- Somewhat helpful: 32%
- Neither helpful nor unhelpful: 13%
- Somewhat unhelpful: 14%
- Extremely unhelpful: 20%

2020
Do you agree that the IRS is currently a “modern-functioning, evolutionary and respected federal agency for the 21st century”?

- Agree, 8%
- Neutral, 6%
- Not Sure, 1%
- Disagree, 85%
Overall Impressions of Survey

The satisfaction with the quality of the service dropped to the lowest level in over 6 years.

The biggest concerns involve:

• Inability to connect with the IRS
• The lack of IRS’s response to written communications
• Workload compression due to COVID, laws and regulations
• The IRS is not on the right path to becoming a modern-functioning, evolutionary and respected federal agency
IRS Resources

IRS Operations

Local Taxpayer Advocate
• https://www.irs.gov/advocate/local-taxpayer-advocate
Penalty Relief –
Short Term Solution
to IRS Services
IRS Service Levels and Penalty Relief

- 8.3 million returns unprocessed at the end of 2020
- 1200% increase in paper filed returns carryover to the 2021 filing season

As of March 5\textsuperscript{th}:
- 46 million total attempts to contact IRS by phone
- 7.6 million answered with automation
- 4.4 million answered by human
Penalty Relief: Reducing the Need to Contact IRS

- Underpayment and late payment penalty relief for 2020
- Reasonable cause and First Time Abate adjustments
- Delay compliance actions
- Align account holds with mail delays
Taxpayer First Act – Long Term Solution to IRS Services
Taxpayer First Act Report to Congress

• 3 Main components:
  • Taxpayer experience strategy
    • Expanded digital services
  • Training strategy
    • IRS university
  • Organizational redesign strategy
    • Third-party relationships office
• Phased approach for implementation
• Cost: $2.18B + $1.9B for IT Infrastructure = $4.08B
AICPA Applauds Panetta & Rice Proposal

PANETTA –RICE BILL

• Maintains PTIN Requirement
  • Has exception for supervised non-signing preparers

• Grants IRS authority to revoke PTIN

• Reinstates Registered Tax Return Preparer (RTRP) Program
  • Exception for CPAs, EAs, Attorneys and supervised non-signing preparers
  • Basic Form 1040 test
  • 15 hours of annual CE
  • Limited practice rights before the IRS
  • Compliance and background check
  • Compliance with ethical standards of Circular 230

• GAO Study on IRS Exchange of Information with State Taxing Authorities
Mitigation of Market Place Confusion

RTRPs subject to advertising requirements to mitigate marketplace confusion

Unlicensed or non-credentialed preparers advertising the RTRP program should display or broadcast a statement that:

IRS does not endorse any preparer

Directs them to the IRS website where the differences between types of preparers and their qualifications are explained
Employee Retention Credit

- Created by Coronavirus Aid, Relief, and Economic Security Act in March 2020
- Set to expire December 31, 2020
- IRS Notice 2021-20: authoritative guidance on wages paid March 13 – December 31, 2020
  - Interplay of qualified wages with wages reported on PPP loan forgiveness applications
  - Form 941 / Form 941-X filing rules for PPP loan borrowers
- Taxpayer Certainty and Disaster Relief Act in December 2020
  - Enhanced rules and extended credit to June 30, 2021
    - Rules on the election to use alterative quarter to calculate gross receipts
- American Rescue Plan Act in March 2021
  - Enhanced rules and extended credit to December 31, 2021
  - Guidance pending on wages paid July 1, 2021 – December 31, 2021
Employee Retention Credit: Guidance Pending

• Clarification on wages paid July 1, 2021 – December 31, 2021
• Clarification on whether qualified wages include wages paid to S corporation owners and their actively employed spouses if all other requirements of the credit are met
• Clarification on if PPP loan forgiveness proceeds are included in the gross receipts test
Hot Topics

- Virtual Currency Task Force
- Disaster Relief
- Passthrough SALT Workaround Allowed, IRS Notice 2020-75
- Tax Capital Reporting
- Passthrough PPP Loan Forgiveness/Basis
Hot Topics

Passthroughs – PPP Deductibility/Loan Forgiveness Basis Impact

- Significant uncertainty regarding:
  - Basis & at-risk implications of deducting PPP expenses
  - Loan forgiveness timing and the accrual of tax-exempt income, which impacts basis for partners and S corporation shareholders
  - PPP expense deductibility and whether that impacts AAA or OAA, and the interaction of the accrued tax-exempt income, for S corporations
  - Reporting of these items on the returns themselves
    - 2020 Partnership Form 1065, Page 2, Schedule B, Question 6
    - 2020 S Corporation Form 1120-S, Page 3 Schedule B, Question 12
- The IRS and Treasury Department are keenly aware of these issues as well, and are working through the mechanics and impending future guidance
- AICPA advocacy has raised these issues to IRS and Treasury Department (March 15, 2021)
- We do not have answers on how to address these uncertainties, nor a timeline on IRS / Treasury guidance which we are awaiting, as are all taxpayers and practitioners → definitive guidance will be needed in order to answer these difficult questions
• IRS issued Notice 2020-43 describing proposed Tax Capital Reporting requirement
• AICPA commented on proposed rules, and had major successes in modifying the proposals contained in Notice 2020-43
• Form 1065 instructions contain rules on complying and calculating the initial partner(s)’ Tax Capital accounts
  – Must use Transactional Method (Tax Basis Method) going forwards
  – 4 methods to compute opening balances for 2020
    • Transactional Method (Tax Basis Method)
    • Modified Outside Basis (MOB method)
    • Modified Previously Taxed Capital (MPTC method)
    • Section 704(b) (Section 704(b) method)
• IRS granted penalty leniency in Notice 2021-13 regarding the new reporting requirement, and taxpayers (and practitioners) must use “ordinary and prudent business care” in calculating and reporting the opening balances
State pass-through entity level taxes

- Applies to S corporations, partnerships, and limited liability companies taxed federally as partnerships or S corporations
- Shifts state tax on business income from owners to entity
- Allows entity to federally deduct as an expense from business income the entity’s state income taxes paid in carrying on a trade or business
- Owners receive a credit against state personal income tax for their distributive or pro rata share of the state entity tax paid at entity level

IRS Notice 2020-75 provides federal deduction for state PTE-level taxes paid, deducted in computing its non-separately stated taxable income or loss, not in owners’ SALT cap limit, even if state provides a corresponding or offsetting, owner-level tax benefit, such as a full or partial credit, deduction, or exclusion. (11/9/20 issued, retroactive to enacted or 2018)

- Main Street Employers Coalition
- Model act
- EY study on TCJA tax impact on business income of C and S corporations
- AICPA position paper on state pass-through entity-level tax implementation issues
- AICPA state pass-through entity-level tax implementation issues one pager
- MTC potential project on state taxation of passthrough income
States Adopting, Proposing, or Considering a PTE Tax

As of April 2, 2021

- **There are 41 states that tax pass-throughs at the owner level.**

- States that in 2021 proposed a bill to adopt, but did not yet enact, a PTE tax ():
  - 9 enacted a PTE tax since TCJA SALT deduction limitation (AL, AR, CT*, LA, MD, NJ, OK, RI, WI)
  - 2 states with historical PTE income Tax (TN and NH)
  - 6 states proposed a bill to adopt, but did not enact a PTE tax yet (CA, GA, MA, MN, NC, NY)

* Mandatory

** States that tax pass-throughs at the owner level.
IRS
Disaster Relief

IRS Tax Extension
FEMA
Limitation to "Federally-Declared" Disasters
Penalty Waivers
Tax Disaster Relief
Filing Relief for Natural Disasters Act
H.R. 3574 – Judy Chu (D-CA) & John Katko (R-NY)

Trigger: Official state declared disaster declaration

Authority to issue tax deadline extensions
• AICPA Virtual Currency Tax Task Force submitted February 2020 comment letter on Form 1040 question; Drafting new letter to reiterate unaddressed items and include concerns on 2020 Form 1040 instructions.

• “Regardless of the label applied, if a particular asset has the characteristics of virtual currency, it will be treated as virtual currency for Federal income tax purposes.”

• According to the 2020 Form 1040 instructions, a transaction involving virtual currency includes (but is not limited to):
  • The receipt or transfer of virtual currency for free (without providing any consideration), including from an airdrop or hard fork;
  • An exchange of virtual currency for goods or services;
  • A sale of virtual currency;
  • An exchange of virtual currency for other property, including for another virtual currency; and
  • A disposition of a financial interest in virtual currency.
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Navigating unchartered waters together
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Jun 24, 2021 + 2 more

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Navigating unchartered waters together
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October 6, 2021

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