2021 Year-End Tax Planning Webinar

November 16, 2021

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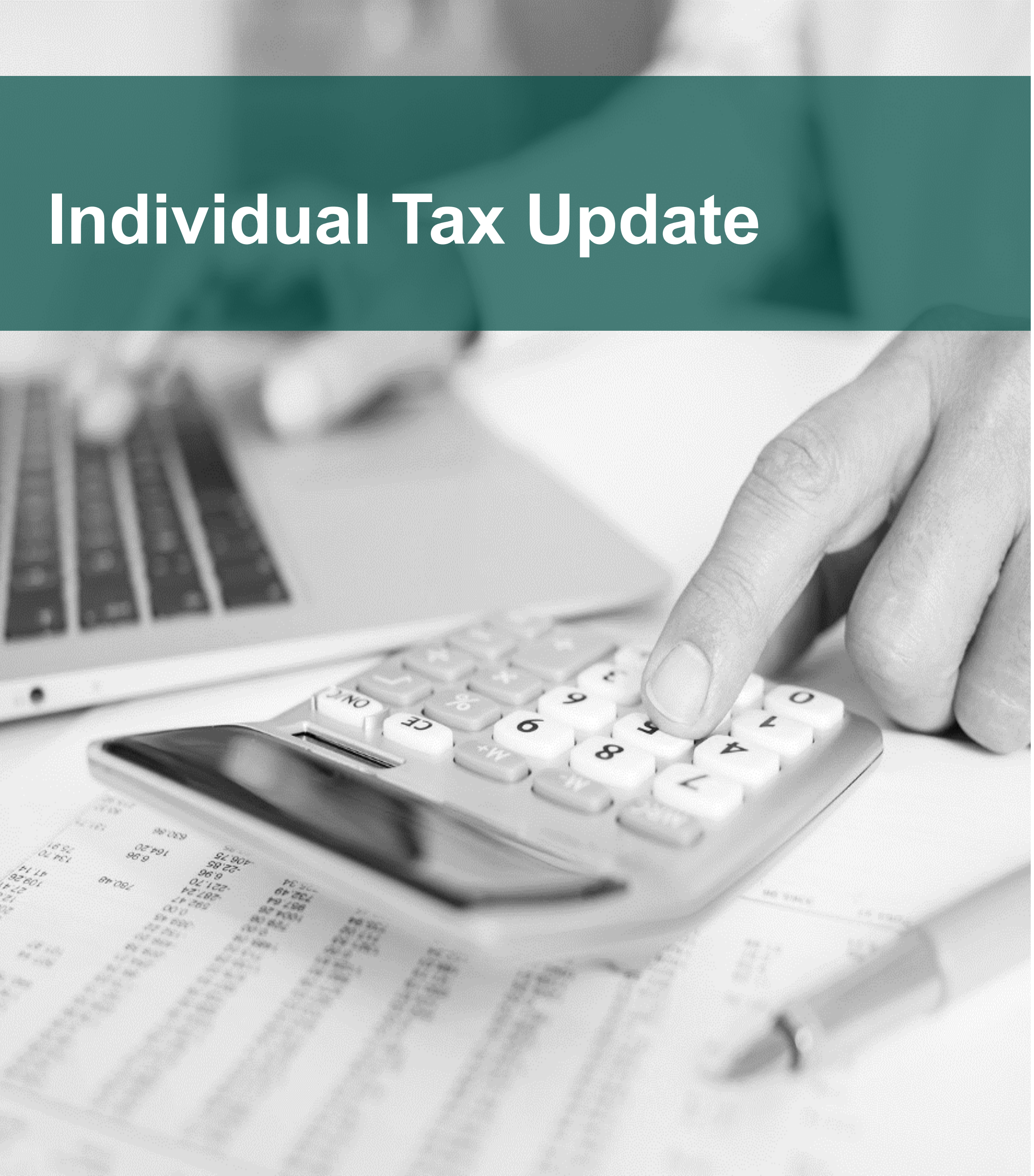

Individual Tax Update

Andrew R. Berger,
Director,
Tax Strategies

Michael R. Viens,
Director,
Tax Strategies

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Agenda

1. Discuss tax proposals related to individuals
2. Discuss year-end planning ideas for individuals
3. Discuss tax proposals related to retirement accounts
4. Discuss year-end planning ideas for individuals' retirement accounts

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POLLING QUESTION

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Individual income tax rates

Current Law	Proposed Changes as of Sept 15, 2021	Proposed Changes as of October 28, 2021
• Top marginal tax rate is 37%	• Top marginal tax rate would be raised to 39.6% • Eff. for tax years after 12/31/2021	• <u>No changes</u> proposed

Planning observation: An increase in income tax rates means that tax deductions are more valuable in the future

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Capital Gains Rate

Current Law	Proposed Changes as of Sept 15, 2021	Proposed Changes as of October 28, 2021
• Long-term capital gains are taxed at rates of 0%, 15% and 20%, depending on the taxpayer's income	• The top long-term capital gains rate would be increased to 25% • Eff. after 9/13/21 unless a binding contract was in place before 9/13/21	• No changes proposed

Planning observation: An increase in income tax rates means that tax deductions are more valuable in the future

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State and Local Tax "SALT" Cap

Current Law	Proposed Changes as of Sept 15, 2021	Proposed Changes as of October 28, 2021
• Capped at $10,000 per year	• No changes proposed	• Cap increased to $80,000 • Eff. for tax year 12/31/2021

Planning observation: Estimated tax payments *may* provide a benefit if paid by 12/31/2021

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Net Investment Income Tax

Current Law	Proposed Changes as of Sept 15, 2021	Proposed Changes as of October 28, 2021
• A 3.8% tax is imposed on the lesser of net investment income or the excess of MAGI over a threshold amount ($250,000 for married joint filers; $200,000 for single filers • Active trade or business income <u>NOT</u> subject to 3.8% NIIT	• Expand the application of the net investment income tax of high-income individuals (MAGI over $500,000 for joint filers) and expand the definition of net investment income subject to tax. • <u>ALL</u> trade or business <u>now</u> subject to 3.8% NIIT • Eff. for tax years after 12/31/2021	• Expand the application of the net investment income tax of high-income individuals (MAGI over $500,000 for joint filers) and expand the definition of net investment income subject to tax. • <u>ALL</u> trade or business <u>now</u> subject to 3.8% NIIT • Eff. for tax years after 12/31/2021

Planning observation: Pass-through businesses should closely monitor this change and consider pulling income into 2021 to the extent possible

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Surcharge on High-Income Individuals, Estates and Trusts

Current Law	Proposed Changes as of Sept 15, 2021	Proposed Changes as of October 28, 2021
• No provision	• The proposal would impose a 3% tax on modified adjusted gross income (MAGI) that exceeds $100,000 for estates or trusts and $5 million for individuals ($2.5 million for married individuals filing separately) • Eff. for tax years after 12/31/2021	• The proposal would impose a 5% surcharge on MAGI that exceeds $200,000 for estates and trusts and $10 million for individuals; an additional 3% surcharge would further be imposed on MAGI in excess of $500,000 for estate and trusts and $25 million for individuals. • Eff. for tax years after 12/31/2021

Planning observation: Trusts and estates may find it advantageous to distribute their income to individual beneficiaries (if permitted)

	5% Surcharge	8% Surcharge
Individuals	$10,000,000	$25,000,000
Estates or Trusts	$200,000	$500,000

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Recap – What's In?

- Expansion of the net investment income tax
    - Now applies to all trade or business income
- 5% and 8% surcharge on high income earners
- Increase state and local tax deduction limits
- Restrictions on retirement accounts

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Recap – What's Out?

- NO increased ordinary income, long-term capital gain or dividend tax rates
- NO modification to carried interest income rules
- NO modification to step up in basis provisions
- NO limitations on qualified business income (20% QBI) deduction

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Tax Planning Strategies

- It depends!
- If rates increase
  - Convert traditional IRA into a Roth IRA
  - Defer your charitable contributions until 2022
  - Pull income into 2021 to the extent possible
- If rates are unchanged
  - Deferral income until 2022
  - Accelerate expenses into 2021
    - Reminder – For 2021 only, cash contributions to a public charity are deductible up to 100% of your AGI
- Pay state taxes by 12/31/2021

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Build Back Better Act – Retirement Plans

- Focus of changes on retirement plan balances of wealthy individuals
  - Provisions originally contained in legislation proposed by House Ways & Means Committee in September
  - Subsequently taken out by Biden administration
  - Recently put back in proposed legislation

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BBB Act – New Minimum Distribution Requirements

- Create required minimum distributions for retirement accounts of more than $10 million. Effective for taxable year beginning after December 31, 2028.
- Prohibit new contributions to large accounts. Effective for taxable years beginning after December 31, 2028.
- Eliminate “backdoor Roth” loopholes. Some provisions effective for taxable years beginning after December 31, 2021 and others not effective until taxable years beginning after December 31, 2031.

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BBB Act – New Minimum Distribution Requirements

- New form of Required Minimum Distribution or “RMD”.
- Provisions would apply if the value of individual retirement accounts, 401(k) plans and other retirement accounts exceed $10 million.
- Current law requires withdrawals from certain retirement accounts based on age and for Committee inherited IRAs and 401(k) plans.

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BBB Act – New Minimum Distribution Requirements

- The formula is complex, based on factors like account size and type of account (pretax or Roth).
- General concept: accountholders must withdraw 50% of the amount by which prior year total value exceeded $10 million.
- Larger accounts must also draw down 100% from Roth accounts up to lesser of total value over $20 million or Roth balances.
- The distributions would only be required for individuals whose income exceeds $400,000 ($450,000 for married taxpayers filing jointly and $425,000 for heads of household).
- Distributions would not be subject to 10% early withdrawal penalty.
- $10 million and $20 million thresholds to be indexed for inflation after 2029.

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BBB Act – Restriction on New Contributions to Retirement Plans

- New provisions would prohibit individuals from making more contributions to a Roth IRA or traditional IRA if the total value of their combined retirement accounts (including workplace plans) exceeds $10 million.
- The provisions will apply to taxpayers once income is over $400,000 ($450,000 for married couples and $425,000 for heads of household).
- A new annual IRS information reporting requirement would be imposed on employer defined contribution plan accounts with aggregate balances exceeding $2.5 million.

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BBB Act – Backdoor Roth Provisions

- Basic strategy involves an investor contributing money to a non-Roth account and then converting it to a Roth IRA.
- Neither investment growth nor account withdrawals are taxable if funds are pulled out after age 59½, and
- There are no required minimum distributions starting at 72, as there are with traditional retirement accounts.

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BBB Act – Backdoor Roth Provisions

- Current law disallows any contributions to Roth accounts for single taxpayers whose annual income exceeds $140,000 ($208,000 for married couples filing a joint tax return).
- Individuals who are subject to caps are currently permitted to convert funds in a pre-tax IRA — which doesn't have an income limit — to a Roth IRA.
- Individual must pay income tax on the converted funds.
- Such pre-tax IRAs may hold a substantial sum of money from a 401(k) plan whose funds were rolled over.

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BBB Act – Backdoor Roth Provisions

- New provisions would prohibit any after-tax contributions in 401(k) and other workplace plans and IRAs from being converted to Roth savings. This rule would apply to all income levels starting after December 31, 2021.
- Individuals would be unable to convert pre-tax to Roth savings in IRAs and workplace retirement plans if their taxable income exceeds $400,000 ($450,000 for married couples or $425,000 for heads of household). These provisions would start after December 31, 2031.

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Tax Planning Strategies

- Keep in mind that the effective dates for most of retirement plan provisions do not occur until taxable years beginning after December 31, 2028.
- Look for development of new variations or uses of insurance vehicles to achieve tax deferral of investment gains for assets that would otherwise be held in a qualified retirement plan but for future impact of new $10 million RMD requirements.
- Consider converting after-tax contributions in 401(k) and other workplace plans and IRAs to Roth savings by December 31, 2021 to avoid change in provisions allowing such transfers going forward.

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Questions?

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Contact the Presenter

Andrew R. Berger
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Andrew provides a variety of practical tax strategies & services including tax compliance, tax planning and tax research for corporations, multi-state companies, partnerships, trusts and high-net-worth individuals. Andrew has a diversified range of experience providing tax services to a variety of real estate, distribution, manufacturing and professional services industries. He also is actively involved with the firm's Employee Stock Ownership Plan (ESOP) Group.

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Contact the Presenter

Michael R. Viens
Director, Tax Strategies
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Mike has a diversified range of experience providing tax strategies and business advisory services to a variety of businesses, including both public and privately-held companies as well as their owners, key executives, and high-net-worth individuals.

Mike's tax background includes assisting corporate, partnership/limited liability companies, and trust entities as well as individuals in connection with tax filings, examinations, and federal, state, and local tax planning. Mike's business advisory background includes assisting clients with formation of businesses, raising capital, credit relationships, and executive compensation, as well as the sale, merger, and other transfers of ownership interests.

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Our next session will resume at 9:30am.

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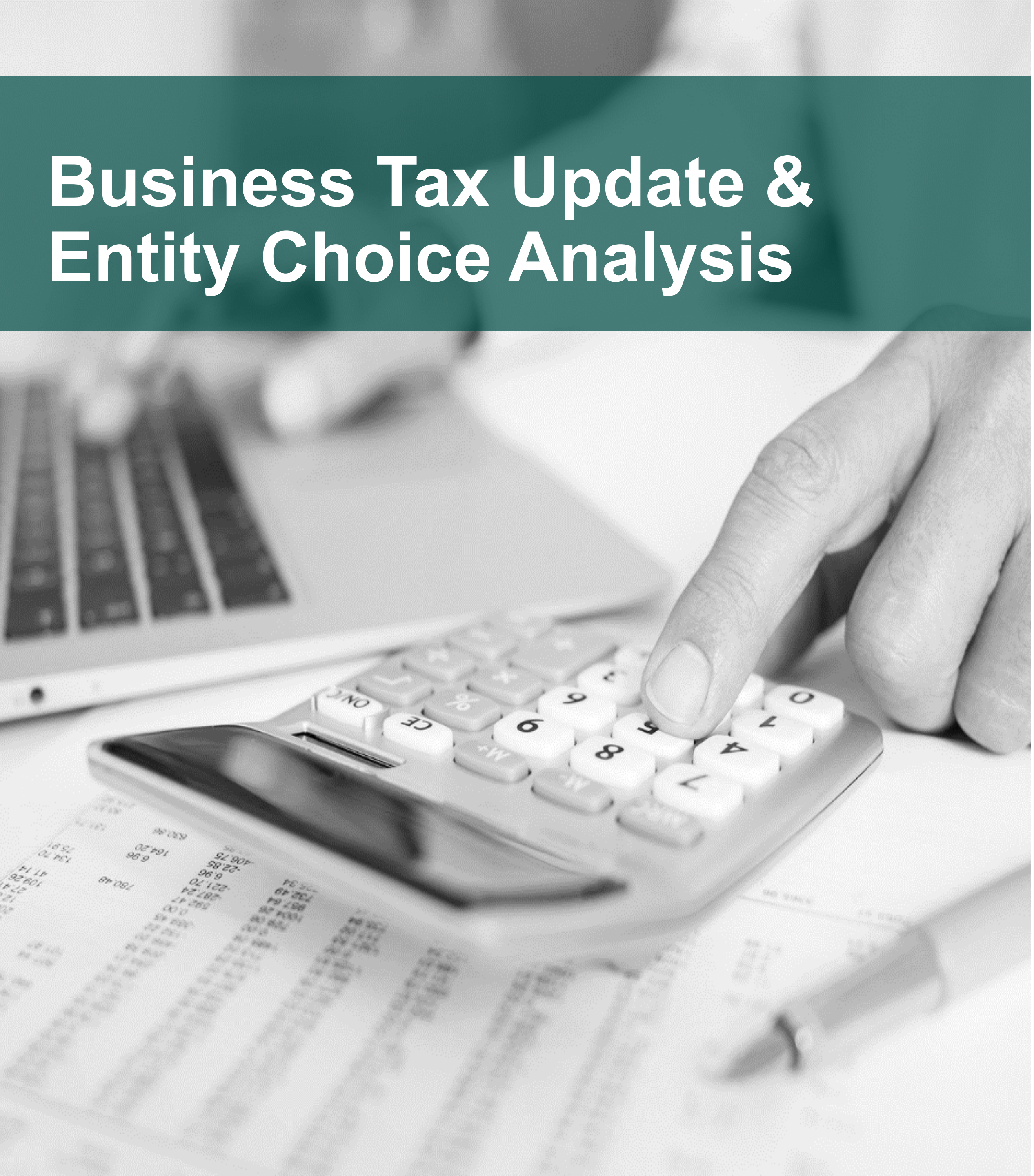
Business Tax Update & Entity Choice Analysis



Lisa G. Pileggi,
Director-in-Charge,
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Agenda

1. Address tax proposals on pass-through and taxable entities
2. Re-evaluation of entity choice (S versus C Corporation)
3. Year-end planning ideas in an uncertain environment

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Qualified Business Income “QBI”

Current Law	Proposed Changes as of Sept 15, 2021	Proposed Changes as of October 28, 2021
• Individuals and Trusts can deduct 20% of qualified business income from partnership, S Corporation or sole proprietorship • No cap on deduction	• Would impose dollar limitation on the deduction for high earners • Deduction limited to \$500,000 MFJ, \$400,000 Single, and \$10,000 for Estates / Trusts • Effective for tax years after 12/31/2021	• <u>No changes</u> proposed

QBI Deduction is scheduled to sunset for tax years beginning after 2025.

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Excess Business Losses "EBL"

Current Law	Proposed Changes as of Sept 15, 2021	Proposed Changes as of October 28, 2021
• EBLs in excess of $500,000 MFJ ($250,000 all others) are disallowed and treated as NOL in following year. • Provision set to expire on 12/31/2026	• Proposal would make the temporary provision permanent • Modify how EBL is treated in the following tax year • Effective for tax years after 12/31/2020	• Same as the initial proposal • Adds than any excess EBLs held by an estate or trust upon termination will be an allowable deduction to beneficiaries

EBL limits the amount of business losses that can offset non-business income.

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Corporate Tax Rates

Current Law	Proposed Changes as of Sept 15, 2021	Proposed Changes as of October 28, 2021
• Flat 21% Rate	• Change to tiered rate: **18%** on incomes up to $400,000 **21%** on incomes between $400,000 and $5 million **26.5%** on incomes over $5 million	• No change to corporate tax rate

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Minimum Tax on Book Earnings

Current Law	Proposed Changes as of Sept 15, 2021	Proposed Changes as of October 28, 2021
• Corporate AMT was eliminated by the Tax Cuts and Jobs Act of 2017	• No changes	• 15% of book profits reduced by foreign tax credits • Applicable to companies with incomes greater than $1 billion • Applicable for taxable years beg. after December 31, 2022

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Amortization of R&E Expenditures

Current Law	Proposed Changes as of Sept 15, 2021	Proposed Changes as of October 28, 2021
• Required to be capitalized and amortized for tax years beginning after 2021 (2022 for Calendar Year) • For tax years prior to 2022, Taxpayers can elect to deduct R&E expenditures in the year paid/incurred	• Not addressed	• Delay of requirement to capitalize and amortize to tax years beginning after 12/31/2025 (2026 for calendar year)

Amortization (if required)
US research: 5 years
Foreign research: 15 years

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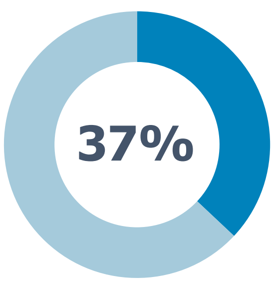
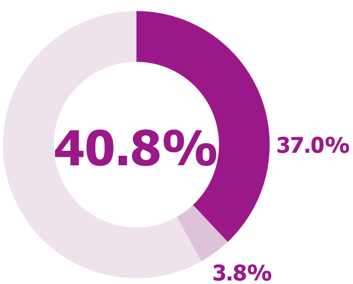
Impact on Pass-Through Businesses

- Review of possible changes to individual tax scenarios:
  - Expansion of 3.8% net investment income tax applicable to active businesses income
  - Surtax on high-income individuals, estates and trusts (5-8%)
  - Expansion of deduction for state and local income taxes paid – limited to $80,000
  - Modified rules for excess business losses



37% top Federal income tax rate



Combined 40.8% Federal income tax rate + Possible surcharge 5-8%

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Consideration S Versus C Corporation

- Income tax projections (Federal and state)
- Amount of earnings distributed from company
- Exit strategy of the current owners
- Accumulated previously taxed S Corp earnings
- State and local taxes

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Other Proposals

- International reforms
  - Changes to foreign tax credit system
  - 15% minimum tax on foreign profits (i.e. GILTI)
  - Reduce the deduction for Foreign-Derived Intangible Income for tax years after 12/31/2022
- Modify, extend, and create a variety of tax credits for green energy and other efforts primarily through 2031 or 2033
  - Enhancement of existing home energy and efficiency tax credits

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S Corporation Tax-Free Conversion to LLC

- Under current law, conversion of an S Corporation to a partnership is a taxable event
- Tax proposal would allow "eligible S Corporation" to convert to partnership tax-free
- Eligible S Corporation is a corporation that has been an S Corporation at all times since May 13, 1996
- Conversion must take place in the two years prior beginning on December 31, 2021

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Partnership Tax Reform on the Horizon?

- Sen. Wyden introduced discussion draft that would revise the treatment of partnerships and partners
- Partnership tax rules are too complicated for the IRS to enforce
- Several proposed revisions, affecting:
  - Allocation methods for income and losses, built-in gain and loses
  - Step-up in basis rules

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Tax Planning in an Uncertain Environment

- The current tax environment is especially uncertain, with all but one exception…tax rates are more likely to increase.
- When rates are expected to increase, it is prudent to identify situations where it is possible to **accelerate income** and **defer deductions.**

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Tax Planning in an Uncertain Environment

Income Acceleration

- **Advance payments** are usually recognized using the one-year deferral method or the full-inclusion method.
- **Installment sale**: If proceeds associated with a sale occurring in 2021 are expected to be received in future tax year(s), can elect to pay tax on the total gain in 2021.
- Change from overall cash to accrual method of accounting.

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Tax Planning in an Uncertain Environment

Deduction Deferral

- **Accrued Compensation** (i.e. bonuses) are typically deductible if paid within 2.5 months after year end. If payment is delayed, the deduction would be deferred to the following tax year.
- **Depreciation**: Taxpayers may elect to forgo bonus depreciation or immediate expensing for fixed assets.
- **Capitalization** of research and experimental expenditures.
- **Related party payments**: Certain related party liabilities are typically not deducted until the payment is made or recognized as income by the related party.

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Questions?

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Contact the Presenter

Lisa G. Pileggi
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Lisa is a trusted advisor to her clients, providing tax and business advisory services for a broad range of privately-held businesses including real estate developers and investors, construction contractors, manufacturers, and distributors. Lisa specializes in educating her clients, helping them maneuver their evolving business needs and become comfortable with the unknown. She helps her clients navigate various business cycles (i.e., growth, maturity, and exit), advising them on the corporate and individual tax-related implications of M&A transactions, succession planning, and changing tax laws. She has also assisted taxpayers in audits with the Internal Revenue Service and various states.

As the Director-in-Charge of Kreischer Miller's Tax Strategies practice, Lisa provides strategic leadership and management of the group, including recruiting, training, team member development, and serving as a resource on technical matters.

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Break

Our next session will resume at 10:25am.

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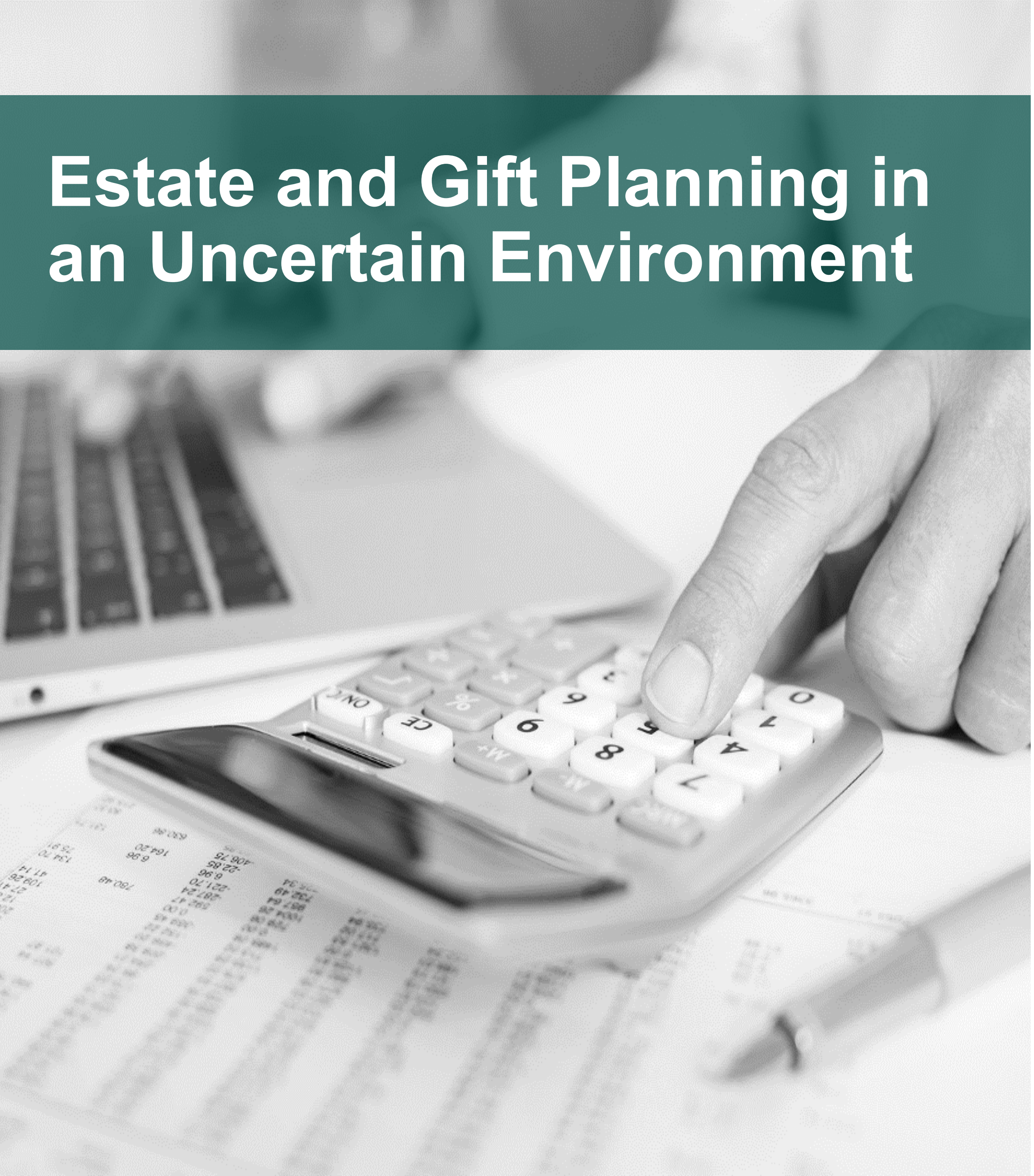
Estate and Gift Planning in an Uncertain Environment



Richard J. Nelson, Director, Tax Strategies

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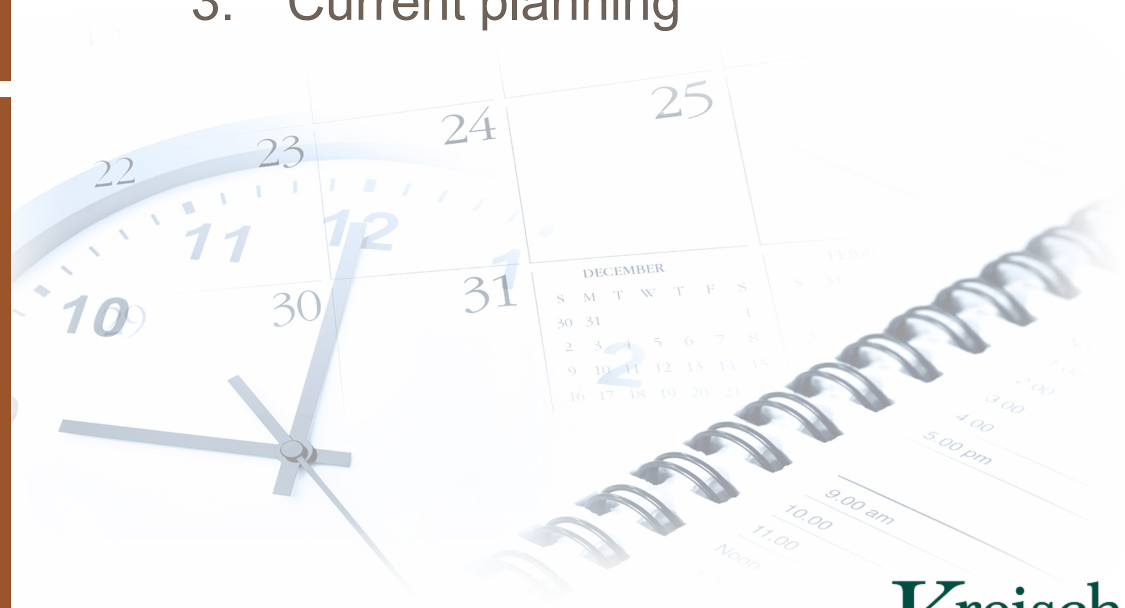
Agenda

1. Year in review
2. Current proposals regarding estates and trusts
3. Current planning



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2021

- A year of uncertainty in planning for your estate
- Multiple governmental proposals
- We saw old proposals that have been debated over the years
- We saw new proposals that we have not seen before

Various Proposals

We saw a variety of proposals during the year which would have significantly affected estate and gift taxes. Some of the proposals included:

- A reduction of the lifetime exemption for estates and gifts
- An elimination the step-up-in basis at death
- Imposing an income tax on the transfer of assets to trusts and at death
- Eliminate discounts on transfers of businesses

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Latest Proposal

- The latest proposal was released on Thursday October 28th
- What provisions were included in the Build Back Better Act?

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Only Change is in Trust Tax Rate

- Surcharge to trust income:
  - 5% surcharge on modified adjusted gross income in excess of $200,000
  - 3% surcharge on modified adjusted gross income in excess of $500,000

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Questions

Are they really out?

Should we breathe a sigh of relief?

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What's Next

- The October 28th bill was proposed by the House. It has not yet been voted on.
- If it passes the House, it then goes to the Senate, where there may be further changes.
- Since the final bill voted on by both the House and the Senate must be the same, any changes by the Senate go back to the House.
- Once the bill is passed by both the House and the Senate, it then goes to the president.

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Estate Tax Exclusion Amount

Value of assets excluded from the calculation of the estate tax upon your death.

Current Law:

- $11,700,000 per person

Proposal:

- $6,030,000 ($5 million indexed for inflation)

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Eliminate the "Step-Up"

Current Law:

- Assets stepped up to fair market value at date of death
- Unrealized gains are not taxed for income tax purposes
- Beneficiaries receive assets with increased basis
- If sold immediately after death-no gain or loss on sale

Proposal:

- Tax unrealized gains at death for income tax purposes

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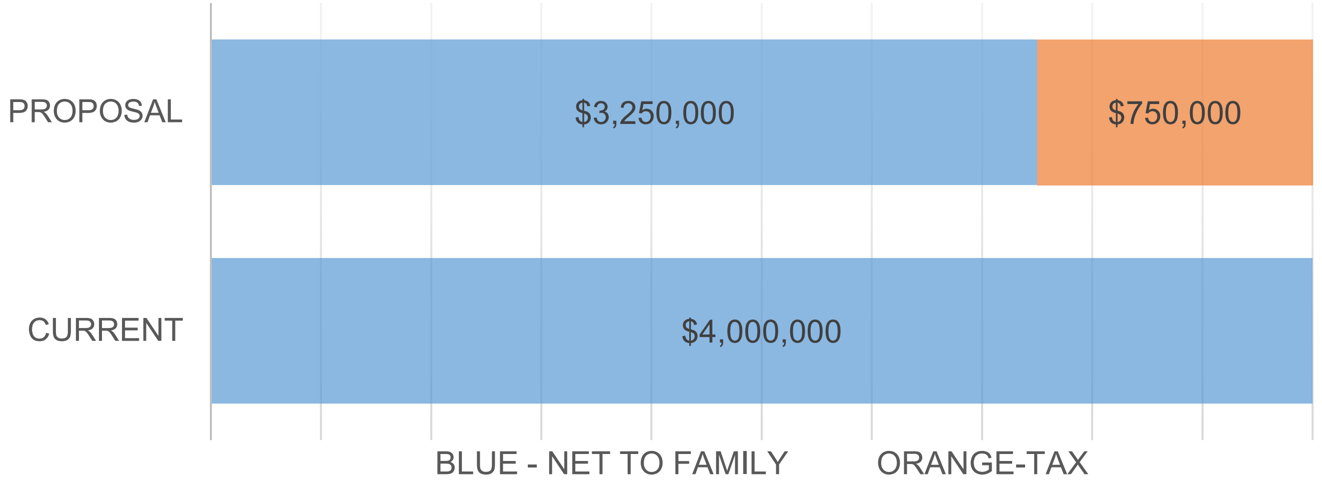
Step-Up-Basis Example

- An individual dies with an asset valued at $4 Million. They have a basis of $1 Million and gains are taxed at 25% for income tax purposes.



Gifts

Current:

- No income taxes imposed on unrealized gain when gifted
- Carryover basis on gifts

Proposal:

- Unrealized gains would be taxed at gift
- Carryover basis on gifts would be eliminated

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Trusts

<u>Grantor Trusts</u>

- **Current Law:**
  - No income tax when assets transferred to trust
  - No income tax when distributions are made
  - No income tax when included in grantor's estate
- **Proposal:**
  - No income tax when assets transferred to trust
  - Income tax imposed when distributions are made
  - Income tax imposed when included in grantor's estate
  - Income tax imposed if grantor trust status is turned off

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Trusts

Non-Grantor Trusts

- **Current Law:**
  - No income tax when assets transferred to trust
  - No income tax when distributions are made
- **Proposal:**
  - Income tax imposed when assets transferred to trust
  - Income tax imposed when distributions are made

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What Do We Know?

- We know what the law is today
- We know that the current exemption of $11.7 million automatically reverts back to $5.49 million in 2026
- We know that the IRS has officially said that there will not be a claw back if the lifetime exemption drops below the current amount
- We know that a change can occur at anytime and may be retroactive to the beginning of the year
- We know that there is still time to gift before the end of the year

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What Should You Do

- Make lifetime exemption gifts to take advantage of the $11.7 million exemption
- If you were considering gifting, consider doing it soon
- Be aware of possible legislation and the impact on your current estate plan and existing trusts

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Benefits of a Trust

- Protect beneficiaries from themselves by providing financial oversight and spendthrift protection
- Provide for post-death contingencies
- Minimize gift and estate taxes
- Extend control of the grantor over beneficiaries even after grantor's death
- Asset protection from creditors
- Properly structured can be protected from spouses of children in divorce
- Provide for surviving spouse while protecting the remainder for children of a prior marriage
- Ensuring that beneficiaries with special needs will be taken care of

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Spousal Lifetime Access Trust (SLAT)

What if you want to use up your exemption but you want the ability to get the money back if you need it. Consider a SLAT.

- Locks in gifts up to exemption of $11.7 million
- Avoids estate tax on assets and appreciation upon the death of both spouses
- Income and principal can be paid to the beneficiary spouse (grantor spouse indirectly)

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Spousal Lifetime Access Trust (SLAT)

- Married couple
- Spouse (A) with assets in their own name transfer assets to the trust for the benefit of the other spouse (B) and children
- Permits spouse (B) to have access to the income
- Must name an independent trustee
- Trust is attractive because of the control of the cash flow
- Grantor trust. Grantor pays tax on the income
- May also create a SLAT for each spouse
    - Cannot be identical
    - Must avoid the Reciprocal Trust Doctrine

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Spousal Lifetime Access Trust (SLAT)

Disadvantages

- Beneficiary spouse dies first
- Beneficiary spouse divorces you

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Qualified Personal Residence Trust (QPRT)

- A QPRT allows you to remove your home from your estate to reduce gift taxes.
- Irrevocable trust in which grantor retains right to occupy trust property as a personal residence for a term of years. Must pay rent after the term is up. This further reduces your estate.
- If you die before the term is up, it's included in your estate.
- Remainder to family members.
- The owner/grantor makes a taxable gift equal to only the remainder interest in the trust.
- Appropriate for transferring a residence that is likely to appreciate.

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GRAT (Grantor Retained Annuity Trust)

- What is a GRAT?
  - Opportunity to transfer appreciating assets to the next generation with little to no gift or estate tax consequences.
  - Grantor contributes assets with expected appreciation to a fixed term irrevocable trust. Term is usually two to ten years.
  - Grantor receives the right to an annuity stream of payments during term. Partial payment of principal and interest.
  - For GRAT to be successful the trust assets must appreciate more than the value of the interest payments.
  - Take advantage of expected appreciation (“estate freeze”).
  - At the end of the term the trust beneficiary receives the remaining assets.
  - Potentially little to no gift tax consequences.

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What Assets Should Be Considered

- Assets expected to appreciate and are easily valued
  - Publicly traded stock
  - Partnership interests
  - Private company stock with upcoming liquidity event
  - S Corporation stock

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GRATs (continued)

GRAT

- Let's say we have a two year "zeroed out GRAT".
- This means that the GRAT pays back the full value of the assets transferred and the minimum required interest rate in two years.
- The IRS's defined rate of return for a GRAT created in November 2021 is 1.4%.
- This means that if the GRAT's assets appreciate in value greater than 1.4%, that appreciation passes on to the beneficiaries of the trust.
- There is no reduction in your estate or gift tax exemption.
- Growth in assets is tax free gift to the trust.

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Questions?

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Contact the Presenter

Richard J. Nelson
Director, Tax Strategies
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Rich Nelson has extensive experience providing domestic and international tax planning and services to a variety of middle market companies and entrepreneurial businesses in a number of industries including manufacturing, distribution, real estate, financial, and professional services. He also has significant experience and expertise with high-net-worth individuals, investment companies and pass-through entities and has been involved in federal, state, and local tax audits, settlements, and appeals.

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Our next session will resume at 11:05am.

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Incentives and Credits for Your Business

Carlo Ferri, Director, Tax Strategies

Brian Kitchen, Director, Tax Strategies

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Agenda

1. Employee Retention Credit
2. Worker Opportunity Tax Credit

Employee Retention Tax Credit

Employee Retention Tax Credit

- The Employee Retention Credit (ERC) is a **fully refundable payroll tax** credit for employers equal to 50 percent **(2020)** or 70 percent **(2021)** of **qualified wages** (up to a $10,000 cap) that **Eligible Employers** pay their employees.
- Businesses qualify based on a significant decline in gross receipts or full/partial shutdown of their business.
- The credit is based on wages paid after March 12, 2020, and before September 30, 2021.
- The maximum credit amount with respect to **EACH EMPLOYEE** is $5,000 **per year** **(2020)** or $7,000 **per quarter** **(2021)**.
- For-profit and tax-exempt organizations qualify.

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Summary – What Every Business Needs to Evaluate

1. Did your business experience a 50% reduction in gross receipts in any quarter of 2020 compared to the same quarter in 2019?
2. Was your business required to be partially or fully shut down under a state or local order at any time from March 12 to the present?
3. How many full-time employees did your business have in 2019?
4. Did your business experience a 20% reduction in gross receipts in the 4th quarter of 2020 compared to the 4th quarter of 2019?
5. Did your business have a 20% reduction in gross receipts in the 1st , 2nd, or 3rd quarter of 2021 compared to the same quarters of 2019, respectively?

Aggregation rules apply to commonly owned businesses (revenue decline, operations suspension and total number of employees)

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2021 Enhancements

- Revise definition of significant decline in gross receipts
  - **20% reduction for 2021 vs 50% reduction for 2020**
- Credit increased to **70% for 2021 vs 50% for 2020**
- Qualified wages per employee increased
  - **$10,000 per quarter for 2021 vs $10,000 per year for 2020**
- Revise definition of qualified wages
  - **500 employees for 2021 vs 100 employees for 2020**
- Election to use prior quarter gross receipts to determine eligibility

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2021 Employee Retention Credit – Other Considerations

- Wages used in Paycheck Protection Program (PPP) loan forgiveness cannot also be claimed for ERC
- Health insurance costs, including self-insurance, are eligible expenses for ERC
- ERC reduces eligible wages for R&D credit purposes
- ERC is taxable income in the year the wages are earned not when the cash is received from the IRS

ERC is taxable income in the year the wages are earned not when the cash is received from the IRS

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Work Opportunity Tax Credit

Work Opportunity Tax Credit

- “WOTC”
- Federal tax credit
- Available for employees who begin work before 2026
- Calculated using qualified wages of targeted group employees

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Work Opportunity Tax Credit

Target Group	Maximum Credit per Target Group Employee
Food Stamp (SNAP) Recipient	$2,400
Long Term TANF Recipient	$9,000
Designated Community Resident	$2,400
Supplemental Income Recipient	$2,400
Unemployment Benefits Recipient	$2,400
Veteran	$9,600
Ex-Felon	$2,400
Vocational Rehab Referral	$2,400
Summer Youth	$1,600

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Work Opportunity Tax Credit - Calculation

- Targeted group employee who works MORE than 400 hours:
  - Qualified first-year wages * 40% = Credit Amount (maximum applies)
- Targeted group employee who works MORE than 120 hours but LESS than 400 hours:
  - Qualified first-year wages * 25% = Credit Amount (maximum applies)
- Unused credits can be carried back 1 year or carried forward 20 years

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Work Opportunity Tax Credit

Qualifying wages do NOT include:	Cannot use wages for an employee who:
- Payments from a federally funded on-the-job training program - Wages for services of replacement employees during a strike or lockout - Wages used to claim the ERC - Wages used to claim credit for qualified sick and family leave wages	- Worked less than 120 hours - Previously worked for the employer - Are tax dependents of the employer - Are relatives of the employer - Received more than half of their wages from outside of the trade or business (household employees)

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Work Opportunity Tax Credit

- Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit
  - Must be submitted to the State Workforce Agency by the 28th calendar day after the date the individual begins work
- Employers are permitted to use screener questions
- Potentially additional state paperwork depending on the state

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Work Opportunity Tax Credit

- Can claim this credit along with other employment-related credits
  - However, cannot "double dip" by using the same qualified wages in both the ERC and WOTC, for example
- Employer's deduction for wages is reduced by the amount of the WOTC
- Timing and execution is key

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Questions?

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Contact the Presenter

Carlo R. Ferri
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Carlo has extensive experience providing tax and business advisory services for privately-held companies in various industries including manufacturing, distribution, and construction. He helps these companies, including their owners and key executives through the various cycles (i.e. growth, maturity, exit) of their business related to corporate and individual tax matters, as well as representing them in front of the IRS.

As the Construction Industry Group Co-Leader, he specializes in tax compliance and strategic planning for the construction industry. Carlo has been actively involved in advising clients with tax strategies on the new Tangible Property Regulation and Cost Segregation Services along with solar and other alternative energy projects.

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Contact the Presenter

Brian D. Kitchen
Director, Tax Strategies
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Brian has a wide range of experience providing domestic and international tax planning and compliance services to a variety of middle market companies and entrepreneurial businesses in a number of industries, including manufacturing, distribution, media, real estate, financial, and professional services. He has also assisted companies with business transactions, including mergers, acquisitions, and transition planning. He has significant experience in federal, state, and local tax audits, settlements, and appeals.

As an advisor to his clients, Brian uses his experience to ensure all tax incentives are being considered, including federal and state research and development tax credits, utility sales tax exemptions, and, for domestic manufacturing clients with significant exports, the Interest Charge Domestic International Sales Corporation.

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Our next session will resume at 11:40am.

SALT Update

Thomas Frascella,
Director,
Tax Strategies,
State and Local Tax
Group Leader

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Agenda

1. State of the States
2. Income tax developments due to COVID
3. Sales tax three years after Wayfair
4. How to plan for and mitigate risk
5. What's ahead

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State of the States

- State Revenues
  - FY 2021 most states overcame early pandemic losses and project budget surpluses
  - FY 2022 states are in a better fiscal position than expected but many are projecting deficits
- State Spending – Where does the money come from?
  - Income Taxes (including personal and corporate level taxes) 38% – 52%
  - Sales Taxes 27% – 33%
  - Miscellaneous Taxes 8% – 10%
- States are becoming more aggressive
  - What does that mean to me?
    - Challenges to traditional income tax nexus protections – MTC guidance issued that broadens scope of unprotected activity
    - Pursuit of remote sellers through physical presence – CA Stricter residency audits

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Income Tax Developments Due to COVID

- Nexus
- Apportionment
- Telecommuting and Employer Withholding
- Federal Conformity
- Multistate Tax Commission

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Income Tax Developments Due to COVID

- Nexus
  - Single employee in a state can create nexus
  - Temporary relief from state telecommuting rules due to COVID are ended or ending
  - Practical considerations due to employees working remotely
    - Temporary vs. Permanent
    - Detection risks need to be addressed
- Apportionment
- Telecommuting and Employer Withholding
- Federal Conformity
- Audit and Planning Considerations

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Income Tax Developments Due to COVID

- Apportionment
  - Payroll factor may become more relevant to businesses
  - Sales factor considerations need to be considered
- Sales factor considerations
  - Mostly affects service based businesses
  - Cost of performance vs. market based sourcing
  - Many states have implemented single factor apportionment
  - Need to consider a states basis for sourcing sales from services
    - For example, some states will look to where the benefit is received while others will look to where the service is performed
- Allocation of non-business income

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Income Tax Developments Due to COVID

- Telecommuting and Employer Withholding
  - General rule is that employers should withhold taxes in the state where the work is performed
  - Exceptions to the general rule
    - State reciprocity
    - Convenience of the employer rule – CT, DE, PA and NY
    - Temporary exemptions, i.e. COVID
    - Withholding thresholds
    - Rate arbitrage
- Considerations
  - Federal legislation introduced in 2021, but I am not hopeful
  - Educate managers and employees about withholding policy
  - Track employee work locations and determine if there is another office where the employee can be transferred
  - Nexus study
  - Documentation

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Income Tax Developments Due to COVID

- Federal conformity

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Income Tax Developments

- Multistate Tax Commission
  - Updated its Statement on P.L. 86-272
  - MTC's 4th revision, adopted in August of 2021
  - Number of sections were modified
  - Most important modification was the addition of Section C – "Activities Conducted via the Internet"
  - Section C identifies, among other items, unprotected activities to be:
    - Providing post sale assistance to customers through electronic chat on businesses website
    - Placing cookies on in state customer computers to gather information customer search information
    - Remotely fixing or upgrading previously purchased product by transmitting code or other electronic instructions to those products
    - Offering and selling extended warranties to in-state customers
    - Contracting with a marketplace facilitator to facilitate sales on its online marketplace where the facilitator maintains inventory in the state where the customer is located
    - Contracting with in-state customers to stream videos to electronic devices for a charge
  - The other significant revision is to include teleworking under the list of unprotected activities
  - Practical considerations

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Sales Tax Three Years After Wayfair

- It all started in 2018 with the US Supreme court decision in Wayfair
- Wayfair created a threshold but it is not a minimum threshold
- States have become more efficient in identifying potential non-filers
- COVID may have given businesses a brief reprieve
- All states that impose a sales tax have now adopted an economic nexus standard
- Most states now apply their economic nexus standard to marketplace facilitators
- Local tax considerations
    - States with home rule – CO and LA
    - Chicago
- Due diligence considerations

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Managing and Mitigating Risk

- Indirect taxes, such as sales tax, are creating disproportionate risk for businesses
- Traditionally, assessing risk was a more stable process and businesses could have more comfort in knowing that they are “safe”
- Managing risk will become critical as states look for more creative ways to increase tax revenue and the advent of economic nexus
- Businesses will need to understand the factors that create risk for them. Are these factors internal or external?
- Analyzing risk will be necessary to determine if the business is willing to live with the risk or develop a plan to mitigate the risk

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Managing and Mitigating Risk

- Internal factors affecting risk
  - Changes in personnel
  - Unclear expectations of employees
  - Poorly trained employees
  - Lack of proper technology
  - Mergers and acquisitions
- External factors affecting risk
  - Changes in tax laws
  - Ambiguity in tax laws
  - Interpretations of tax laws
  - Targeted industries
  - Audits

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Managing and Mitigating Risk

- Phases of Risk
  - Risk that occurs during planning
    - Management discussions
    - Contract language
    - Documentation
    - Invoicing
    - IT
  - Risk that occurs as part of compliance
    - Changes in tax rates or tax base
    - Technology
    - Taxability determinations
  - Risk during an audit
    - Untrained auditors
    - Aggressive taxing positions
    - Appellate process

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Managing and Mitigating Risk

- How do you mitigate risk?
  - Clear direction as to strategy of the company and make sure that the strategy is communicated to responsible individuals
  - Nexus and taxability determinations
  - Documentation, documentation, documentation
    - Significant positions that the business is taking
  - Implementation of technology to assist in compliance
  - Training
  - Annual internal review of controls to identify over or underpayment of tax
  - Voluntary disclosures and tax amnesties

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What's Ahead

- Tax law changes affecting corporate and PTEs in response to federal tax reform and MTC initiatives
- P.L. 86-272 erosion
- Broader base for sales tax
- More aggressive interpretations of statutes and regulations
- Audits, lots of audits

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Questions?

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Contact the Presenter

Thomas M. Frascella
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Tom has a wide range of experience providing state and local tax services in the areas of income/franchise, sales and use, realty transfer, and unclaimed property taxes to a variety of businesses, including multi-state and multi-national businesses in the light and heavy manufacturing, distribution, life sciences, not-for-profit and services industries. He helps businesses address their multi-state tax needs.

Tom has also assisted clients with navigating the complex state and local tax issues associated with significant entity life events, such as acquisitions, dispositions, or liquidations.

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About Kreischer Miller

Kreischer Miller is an accounting, tax, and business advisory firm that has been serving clients since 1975. We've built our firm to respond to the unique needs of growth-oriented private companies, helping you smoothly transition through growth phases, business cycles, and ownership changes. The companies we work with need to be able to quickly adapt and respond to changing market opportunities and challenges. That's why our focus is on being responsive, decisive, and forward-thinking. We're up to the challenge—always looking at the road ahead, not in the rear-view mirror. **Learn more at www.kmco.com.**

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