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# *Update on Tax Legislation*



GYF VIRTUAL CPE DAY 2021

*Presented by:*

**Don Johnston and Marne Babich, GYF Tax Services Group**

**December 2, 2021**



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**DON JOHNSTON**  
*Partner, Tax Services*  
**412-338-9309**  
**DJOHNSTON@GYF.COM**



**MARNE BABICH**  
*Sr. Manager, Tax Services*  
**412-338-9308 x206**  
**BABICH@GYF.COM**



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## INTRODUCTION

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### *Topics to Be Covered*

- Current tax update
- Pandemic related matters and areas for consideration
- Other federal tax matters and areas of importance
- State income and sales tax exposure
- Tax planning thoughts and strategies



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## CURRETN TAX UPDATE

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## CURRENT TAX UPDATE

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### *Key 2021 Tax Legislation*

- American Rescue Plan Act (ARP) – enacted March 2021
- Infrastructure Investment and Jobs Act – enacted November 2021
- Build Back Better Act – in progress



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## CURRENT TAX UPDATE

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### *Year-end Tax Legislation*

- State of pending 2021 tax legislation
- Where we started vs. where we will land
  - *Original proposals were very aggressive, with substantial tax increases*
  - *Compromises needed to be made to get the bills passed*



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## CURRENT TAX UPDATE

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### ***“Made in America Tax Plan” & “American Families Plan” Provisions:***

- Increase of the corporate tax rate from 21% to 28%
- Increase of the top individual rate from 37% to 39.6%
- Increase of the capital gains rate to 39.6% for wealthy taxpayers
- Elimination of the “step-up” in basis at death
- Changes to the carried interest rules
- Increased net investment income taxes (on active income)



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## CURRENT TAX UPDATE

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### ***Infrastructure Investment and Jobs Act***

- Very minor tax implications
- Repealed prior extension of the ERC to exclude the fourth quarter of 2021 (ERC can now only be claimed through September 30, 2021)



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## CURRENT TAX UPDATE

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### ***Build Back Better Act***

- \$1.7 trillion bill passed by House of Representatives on November 19, 2021
- Moved into the Senate and will likely be further modified before passage
- As it currently stands, includes a number of tax change provisions



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## CURRENT TAX UPDATE

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### ***Build Back Better Act – Tax Provisions***

- Child tax credit
  - *One year extension through 2022*
  - *Permanent extension of refundability*
  - *Advanced credits already happening*
  - *Phased out at \$75,000, \$112,500 and \$150,000 of modified AGI*



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## CURRENT TAX UPDATE

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### ***Build Back Better Act – Tax Provisions***

- SALT deduction cap
  - *Increases the SALT deduction from \$10,000 to \$80,000 and extends this limitation through 2031*
  - *Effective in the tax year 2021!*
  - *This is a revenue raiser*
  - *This will likely be changed by the Senate*



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## CURRENT TAX UPDATE

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### ***Build Back Better Act – Tax Provisions***

- Net investment income (NII) tax
  - *Rules changed to make all income that is not already subject to payroll or self-employment taxes subject to NII tax*
  - *NIIT change applies at AGI levels \$250,000/\$400,000/\$500,000*



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## CURRENT TAX UPDATE

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### ***Build Back Better Act – Tax Provisions***

- Excess business losses
  - *Makes the new EBL limitation permanent*
  - *The provision disallows the current use of losses that exceed \$524,000 for 2021 joint filers and \$262,000 for 2021 other filers*
  - *The unused portion of the losses would not become part of the NOL carry-over, but would retain its character as business loss to be carried over and added to the following year's business losses to determine the limitation*



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## CURRENT TAX UPDATE

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### ***Build Back Better Act – Tax Provisions***

- Section 1202 small business stock
  - *Changes rules to exclude the exemption if the taxpayer's AGI is over \$400,000*
  - *Applies to stock sales after September 13, 2021*
  - *The 75% and 100% exclusions would not apply to taxpayers with AGI of \$400,000 or more*



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## CURRENT TAX UPDATE

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### ***Build Back Better Act – Tax Provisions***

- Expanded tax credits
  - *Extends expanded earned income tax credit enacted by ARPA through 2022*
  - *Increases the amounts for expanded premium tax credit assistance through 2025*



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## CURRENT TAX UPDATE

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### ***Build Back Better Act – Tax Provisions***

- Other business-related tax changes
  - *15% minimum tax on profits of large corporations (those with over \$1B in profits reported to shareholders) – largest revenue raiser in the bill*
  - *1% surcharge on corporate stock buybacks (publicly traded stock)*
  - *Other changes related to entities that have foreign operations or are foreign owned*





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## CURRENT TAX UPDATE

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### ***Build Back Better Act – Tax Provisions***

- High-income surcharge for individuals, trusts and estates
  - *5% surcharge when AGI exceeds \$10M, plus 3% when AGI exceeds \$25M*
  - *Surcharge applies at much lower levels (\$200,000) for trusts and estates, and rises to 8% at \$500,000*



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## CURRENT TAX UPDATE

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### ***Build Back Better Act – Tax Provisions***

- Nominal changes compared to where we started
  - *No change to the individual ordinary income tax rates*
  - *No change to the capital gains rates*
  - *No change to the estate tax exemption*
  - *No changes to carried interest?*



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## PANDEMIC-RELATED MATTERS

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## PANDEMIC-RELATED MATTERS

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### *Paycheck Protection Program (PPP) Loans*

- 2020 and 2021 loan forgiveness applications
- SBA audits of PPP loans that are \$2M and greater
- Loan necessity questionnaire
- Federal and state tax consequences of the PPP loan



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## PANDEMIC-RELATED MATTERS

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### *Employer Retention Credit (ERC) Matters*

- The tie-in and coordination to the PPP
- Who qualifies? – 2020/2021
- Timing of the refund claim (2020 and 2021)
- Timing of the refunds
- Federal and state tax consequences of the ERCs



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## PANDEMIC-RELATED MATTERS

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### *Other Considerations*

- Family and sick leave credits
  - *Emergency paid sick leave*
  - *Emergency family & medical leave*
- Business meals are 100% deductible in 2021 and 2022



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## OTHER FEDERAL TAX MATTERS

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## OTHER FEDERAL TAX MATTERS

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### *IRS Changes and Increased Audit Activity*

- Organizational changes at the IRS
- Increase in compliance audits
- Timing of IRS audits and communications with the IRS



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## OTHER FEDERAL TAX MATTERS

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### *Technical Areas of Importance*

- Section 199A
- Elimination of certain tax benefits that were extended during the pandemic
  - *Excess losses limitations*
  - *Net operating loss (NOL) changes*
- Shareholder compensation matters (reasonable compensation)
- S corporation wages and pass-through income – the tie-in to Section 199A



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# *Update on Tax Legislation*



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## STATE INCOME AND SALES TAX EXPOSURE

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## STATE INCOME AND SALES TAX EXPOSURE

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### *Nexus Issues*

- Sales tax fallout as a result of *Wayfair*
- Remote workers can create nexus in other states and cause compliance issues for employers



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## TAX PLANNING CONSIDERATIONS

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## LOOKING TO THE FUTURE

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- Very uncertain tax times
- It is unlikely that there will be additional legislation increasing taxes in 2022
- Recurring concerns and planning considerations
- IRS services limitations



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## TOP 10 PLANNING STRATEGIES

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1. Hire a professional to provide assistance
2. Plan in advance – finding a qualified professional is getting harder, and finding someone for a quick turnaround may not happen
3. Plan now for future college costs and understand the rules for the state where your child will attend school
4. Understand the education tax benefits (American opportunity tax credit and the Lifetime learning credit)
5. The PA EITC (Educational Income Tax Credit)



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## TOP 10 PLANNING STRATEGIES

6. Be aware of pending tax legislation
7. As in individual, make sure you understand the 0% capital gains rate
8. Be cognizant of filing requirements for foreign investments and for Cryptocurrency issues
9. Estate tax planning
  - *Estate planning is more than simply minimizing estate taxes, it should include updating documents, repurposing insurance, asset protection and making sure your heirs understand the plan and where to find documents and knowing your advisors*
10. Timing is important



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# Questions?



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**For More Information About Tax-Related Issues Contact:**

**Don Johnston: [DJOHNSTON@GYF.COM](mailto:DJOHNSTON@GYF.COM) || Marne Babich: [BABICH@GYF.COM](mailto:BABICH@GYF.COM)**

**Administrative Concerns** should be directed to Mary Lou at: [HARRISON@GYF.COM](mailto:HARRISON@GYF.COM)