



2021 Estate & Tax Planning Professional Seminar

Candice DeClark-Peace, JD, CPA
Clark, Schaefer, Hackett & Co.
10100 Innovation Drive
Dayton, Ohio 45342
937-226-0070
cdeclark@cshco.com



Introduction

Today's presentation will focus on developments that impact the way we, as professionals, approach tax planning and tax compliance. Let's look at –

1. What has the IRS announced as it's focus in 2021;
2. Legislation Recap
3. The Build Back Better Act

IRS Announced Focus

- The top four identified areas for IRS enforcement in the upcoming year are:
 1. Virtual currency
 2. Employee vs Independent Contractor
 3. Cannabis Industry
 4. Identity Theft

If IRS is funded (\$80 billion) additionally thru the Build Back Better Legislation; you can add “Wealthy Tax Cheats” to the list. **Definition to follow!**

Virtual Currency

History of cryptocurrency:

- First launched in January of 2009; called Bitcoins;
- By 2012 major companies were accepting Bitcoin as payment for goods and services (Expedia, Newegg, and Microsoft were among the global entities to recognize the virtual currency)
- May of 2013 GAO issued the first report on how the use of virtual currency could result in producing taxable income. They also noted that tracking of virtual transactions would be difficult; producing a means for evading tax.
- 2019 was the first comment by the IRS as to the taxation of virtual currency.

Virtual Currency-continued

- Notice 2014-21 (March of 2014) the IRS issued a FAQ advising Taxpayers of the proper treatment of virtual currency transactions. Key points included:
 1. Virtual currency is property and is subject to tax principles applicable to property transactions;
 2. A Taxpayer who accepts virtual currency for goods or services must recognize income equal to the value of the virtual currency as of the date of receipt;
 3. Virtual currency transactions must be valued based on U.S. dollars;
 4. A Taxpayer who receives virtual currency for services should be issued a W-2 or 1099, based on the substance of the transaction

Virtual Currency - continued

- In 2016, as part of the Coinbase court case, the IRS was granted permission to issue a “John Doe” summons. Looking for US citizens involved in virtual currency transactions. The summons produced > 14,000 Taxpayers who had virtual currency transactions > \$20,000.

Only 800 Taxpayers had reported the transactions

The Taxpayer information was turned over to the IRS in March 2018. In July 2018 IRS announced a Virtual Currency Compliance campaign.

By August 2019, more than 10,000 Taxpayers had been contacted by the IRS. The letters require action on behalf of the Taxpayer.

Virtual Currency - continued

The letters resulted in \$13 million of additional tax being assessed and collected.

In October 2020 IRS issued Rev Rul 2019-24 as well as a FAQ with 45 common questions.

The 2019 form 1040 requires the Taxpayer to answer; Yes or No, as to any activity in the tax year with virtual currency.

This question sets up the element of fraud if the Taxpayer is not truthful in his or her response. Similar to US v Peter Horowitz et al on the “willfulness” to evade. This case dealt with the failure to respond truthfully about foreign assets and FBAR reporting.

Employee v. Independent Contractor

This is an area that continues to be an area of focus for the IRS. Why?

1. Collection of payroll taxes
2. Less opportunity for Taxpayers (worker) to be non-compliant
3. With the elimination of the deduction of Employee Business expenses; generally the total tax paid by the Employer and Employee will be more than would be paid by the Independent Contractor

Employee v. Independent Contractor

We as practitioners can no longer “just” advise clients on worker status based on IRS policy; we must also take into consideration:

- National Labor Relations Board
- Department of Wage and Hour
- State law

The California Assembly Bill 5; passed in 2016 and effective 1/1/2020 made Uber, Lyft, Door Dash etc.. drivers, employees. This classification was upheld in an August 2020 state court decision. **BUT....**

Employee v. Independent Contractor

In Nov of 2020; California voters rejected Assembly Bill 5; in Proposition 22, making App Based Drivers contractors. Lawsuits resulted to attempt to overturn Proposition 22.

In April of 2021 the California Supreme Court ruled that it would not review the case. Various lawsuits are still in the courts (so it is not over yet!)

Department of Labor has released its definition of an employee (similar but not on point with IRS considerations)

As advisors, how do we work with the various agency rules to keep our client “legal”?

Cannabis Industry

The federal government considers all aspects of marijuana (production; processing; dispensing) to constitute an illegal activity. As such; very different rules exist for a Taxpayer to report his respective activity.

Example: the dispensary operation must report all income (similar to any business operation) but is only allowed to deduct the cost of product sold. The Taxpayer may not deduct any costs (i.e.: rent, labor, advertising, security, etc.)
See IRC 280E

The “illegal” nature of the industry also prohibits the Taxpayer from using standard banking practices. This requires the Taxpayer to deal either in cash or virtual currency.

Cannabis Industry

In a sample audit of 237 Taxpayers whose primary business was in one of the three businesses (production; processing; dispensing) 140 of the returns had errors resulting in additional tax being assessed. These 140 audits produced \$48 million of additional revenue.

The IRS report did not state what preparer penalties were assessed (if any). With a 59% error rate, we as preparers will become a target if compliance does not improve. As we should not take on work that we are not qualified to handle this serves as a reminder. Continuing Education is now widely available for those serving the Cannabis Industry.

Identity Theft

In early 2020, pre pandemic, the IRS announced that they were satisfied with the provisions put into place to control or eliminate identity theft as it related to tax filings. The IRS had spent up to 70% of allocated resources for the Criminal Investigation Division combating ID theft.

THEN CAME COVID

Covid programs-unemployment benefits, stimulus payments, etc. gave a new focus for those who profit from stolen identities. The FTC reports a 73% increase in ID theft for fiscal 2021 v. 2020.

What additional work will have in assisting clients with 1099s etc. reporting benefits that were NOT received by our clients?

Legislative Recap

In March of 2021 IRS released the new 1040X

- Amended returns can now be efiled (if original filing was electronic)
- The efile option was expanded to include 2019 returns
- Up to 3 amendments can be made electronically. The 4th and subsequent amendments must be paper filed.
- Paper filing also required if filing status is different on 1040X from original filing OR the social security number of the Taxpayer or Spouse is different from the original filing.

Legislative Recap

The pandemic has resulted in significant legislation over the last 18 months:

- Families First Coronavirus Response Act (FFCRA) March 2020
- Coronavirus Aid, Relief, and Economic Security Act (CARES) March 2020

Both bill we covered in detail last year

- Consolidated Appropriations Act of 2021 (CAA 2021) December 2020
- American Rescue Plan (ARPA 2021) March 2021

Legislative Recap

December 27, 2020 Pres Trump signed the Consolidated Appropriations Act of 2021 (CAA)

- In addition to renewing expiring tax provisions the bill provided additional Covid relief:
 1. provided for the second round of stimulus payments; \$600 to each qualifying individual;
 2. the phase outs were to be based on the 2019 returns with a true up on the 2020 returns

If the Taxpayer qualified for more based on 2020 tax filings the additional funds were added to their respective refunds. If the Taxpayer was overpaid they were not required to repay the excess.

Legislative Recap

The American Rescue Plan created round 3 of stimulus payments.

- \$1,400 to every qualifying individual
- Different income levels for this round (no phase out and lower income level to qualify)
- If the stimulus was issued before the Taxpayer filed 2020 returns; the 2019 return information would be used. This set up the possibility for additional funds to be received post filing of 2020

Legislative Recap

Federal Pandemic Unemployment Compensation

- Supplemental payments of \$600 per week was part of the CARES Act thru December of 2020;
- The CAA extended the benefits thru March of 2021 but at a reduced amount of \$300 per week
- AFPA extended the benefits thru Sept of 2021 and increased the duration that an individual could draw the benefits from 50 to 79 weeks

We all remember that in March of 2021 as part of AFPA, the first \$10,200 of benefits would not be taxes to a taxpayer with AGI of \$150,000 or less.

Legislative Recap

Chaos ensued!

March 18, 2021 IRS announced Taxpayers should not amend a 2020 filing for the Unemployment change; more info was to come.

March 31, 2021 IRS released IR-2021-71 stating that the IRS would recalculate the returns and issue refunds. Refunds would begin in May and continue thru the summer.

Problem of credits and deductions that were income based now being recalculated at the IRS discretion. What about the state filings? We have clients who are still in limbo on this.

Legislative Recap

AFPA Expands the Child Tax Credit

- Prior to AFPA a Taxpayer could receive up to \$2,000 for a dependent child under the age of 17 as of December 31st.
- Prior to AFPA the credit phased out when income exceeded \$400k married joint; \$200k all other filing status
- If the Taxpayer did not use the credit to offset tax liability, only \$1,400 was available as a refund

AFPA expands the credit as follows (beginning for 2021)

- The credit is \$3,600 per year for a child under the age of 6 and \$3,000 per year for a child age 6 to 17
- The phaseout is income based but two tiers: the \$2,000 follows the pre AFPA rules; the enhanced credit phases out at lower limits: \$75k for single, \$112,500 for HofH and \$150k for joint filers
- **HERE IS WHERE OUR SOFTWARE IS INVLAUABLE!**

Legislative Recap

The enhanced credit is fully refundable if the Taxpayer has more credit available than tax liability.

Another filing issue will be for the prepare to ascertain if the Taxpayer received the credit monthly or if they opted out. Given the accuracy of clients on recording their stimulus payments for the “true up” this likely will be another area which will result in “calculation” error notices at filing.

Since the credit has an income cap the law provides new rules for overpayments where the Taxpayer’s income would otherwise negate receiving all or part of the credit.

Legislative Recap

ARFA also expands the Earned Income Tax Credit

Changes to the EITC include:

- elimination of the 65 age cap
- reducing the age eligibility from 25 years old to 19 years old
- increasing of the credit percentages and phaseouts resulting in larger credits available in 2021 versus the same income level in 2020
- the Taxpayer does not have to provide the name and social security number of the qualifying child
- investment income limit (amount of investment income that can be received and still qualify for the credit) increased from \$3,650 to \$10,000

Legislative Recap

EITC Changes-continued

- Pre ARFA married individuals must file a joint return to qualify for EITC; now new code section 32(d)(2)(A) provides circumstances where a married filing separate Taxpayer may qualify
- ARFA allows Taxpayers to use their 2019 income for calculation purposed of the EITC on their 2021 return if 2021 income is less than 2019 (which would normally result in a lower credit)

Legislative Recap

Other ARPA changes:

- The Premium Tax Credit (Market Place Health Coverage) has new affordability percentages which will produce a credit for Taxpayers with income over 400% of the federal poverty level

Related to the PTC; IRS 2021-84 was issued indicating that excess advanced payments were not required to be repaid.

Legislative Recap

ARPA continued

- Student loans that are forgiven (2021 thru 2026) are excludable from gross income (most loans qualify unless the forgiveness results from the Taxpayer working for or providing services to the lender)

Legislative Recap

Changes to FSA and Dependent Care Plans

- The CAA provides a permissible carryover of unused funds from 2020 to 2021 and from 2021 to 2022;
- The CAA extends the age for dependent care from age 12 to age 13;
- The CAA allows the Taxpayer to change amounts for either FSA or Dependent care (previously irrevocable)
- ARPA expands the dependent care contribution from \$5,000 to \$10,500 for 2021 only (and can be changed anytime during the year)

Legislative Recap

Charitable Contributions- while part of CAA (covered last year) be reminded that the above the line charitable deduction increases to \$600 for 2021

Round 2 of Payroll Protection Program-required a 25% or more decline in revenue for a 2020 quarter over 2019. The funds were exhausted by early May 2021 leaving many Taxpayers unfunded. Forgiveness of PPP Round 2 is now underway

CAA 2021 made certain that the PPP funds were not taxable and the Taxpayer did not have to reduce expenses by the amount of the PPP payment.

Legislative Recap

Economic Injury Disaster Loans- this is a Small Business Administration loan program that has been in place for several years. The CAA 2021 bill allocated an additional \$20 billion for Taxpayers whose business was hurt by the pandemic. ARFA bill allocated an additional \$15 billion. The criteria is:

- Business located in low income communities
- Business suffered a loss of at least 30%
- The business employed < 300 workers

The loan is at 3.75% (2.75% for NFP); with a 30 year amortization. No personal guarantee unless the loan is > \$150k

Legislative Recap

Restaurant Revitalization Fund Grants- ARPA allocated \$28.6 billion for Taxpayer's expenses (must be spent by March 2023) This is a grant program (not a loan) so no repayment required.

SBA was required to give priority to 1) socially disadvantaged individuals and 2) economically disadvantaged individuals

The first 21 days of application acceptance was limited to the priority groups. After 21 days; SBA processed applications on a first in basis. The program was underfunded and many applicants did not get funded.

Legislative Recap

Employee Retention Tax Credit (ERTC)

The CARES Act created the ERTC for wages paid between March 13, 2020 and January 1, 2021

The CAA 2021 extended the ERTC to June 30, 2021

The AFPA extended the ERTC to Dec 31, 2021

The Infrastructure Investment and Jobs Act 2021 ended the ERTC early; Sept 30, 2021

While the period for which the ERTC is calculated has ended, the ability to file for the credit is still present.

Legislative Recap

ERTC calculation is “tricky”

First; a business must qualify-must have been shut down by federal or state mandate OR must have a calendar quartering 2020 that gross revenue is 50% or less than the same quarter in 2019 (and 80% or less for 2021 operations as compared to 2019)

Second; Coordination of benefits means that the wages used for PPP forgiveness cannot also be used for ERTC calculation.

Third; other limitation factors include: # of employees; qualifying wages; qualifying employees

Legislative Recap

ERTC Continued

The Taxpayer files for the credit by amending the 941 form for the qualifying quarter;

The Taxpayer can request a refund or may leave the funds on deposit to use going forward in lieu of making required payroll tax deposits

As practitioners, we should be asking our clients if they have explored the ERTC. Many small clients will qualify but they may not be aware. Generally, the payroll provider can assist in the filings. If not for a particular client, this had become a value added service of larger firms.

Legislative Recap

Corporate Charitable Deductions- increased from 10% to 25% by CARES Act thru 2020. CAA 2021 extended the 25% limit thru 2021

CAA 2021 increases the deductibility of business meals from 50% to 100% thru 2022 when the meal is provided by a restaurant

Notice 2021-25 defines “restaurant”. “Restaurant” does not include prepackage foods, a grocery store, a convenience store or a kiosk

The Build Back Better Act

While we cannot be sure what provisions will be part of any legislation still under consideration, our clients are looking to us for guidance as we embark on year end planning.

Let's look at some of the key provisions that would impact our clients and how we counsel them

The increase in tax rates is easy- what does the client believe their 2022 income will yield? The normal shifting (as is permissible) of income and expenses between years to effectuate the lowest overall tax

The Build Back Better Act

H.R. 1865-Repeal of ACA provisions

- Repeal of the medical device tax for transactions after 12/31/2019
- Repeal of the Health Insurance Provider's Fee for tax years beginning after 12/31/2020
- Repeal of the Cadillac Plan Tax

The Build Back Better Act

More challenging issues:

Limitations on Retirement Accounts-

- mandatory RMD when combined accounts equal or exceed \$10million

- inability for an IRA to hold private equity investments (and a two year window to move that asset out)

Query-as the IRA owner how do you approach the person or group that manages the investment? If your client is the manager; what strategies exist for assisting the investor without undue stress on capitalization

The Build Back Better Act

Limitations on Retirement Accounts-continued

Elimination of Roth Conversions for high income Taxpayers after 2021- should they make the conversion before year end

Elimination of the “back door” Roth conversion for all Taxpayers after 2021-clients still have 6 weeks to get this accomplished

Effective elimination of the ROBS Program- IRA assets cannot be invested in a non publicly traded entity where the IRA owner is an officer, director or owner of the entity

The Build Back Better Act

Carried Interest Rule- would increase the holding period to get capital gains treatment from 3 years to 5 years

Elimination of the 75% and 100% 1202 deduction for Taxpayers with AGI > \$400k

Increase in capital gains rates for high income Taxpayers- should we be looking at 1031 transactions, installment sales, or other means to keep the gains at the lowest possible rates

Limitation of QBI for high income Taxpayers- max deduction \$500k on joint, \$400k on HofH \$10k on trusts

The Build Back Better Act

Estate Tax-termination of temporary increase in Unified Credit- taking us back to \$5 million from \$11,700,000

- Gift now as there will be no clawback of gifts in excess of the Unified Credit that is in place at the date of death under IR 2019-189
- The elimination of discounts on non-business assets for estate and gift tax purposes
- The effective elimination of the use of defective grantor trusts

The Build Back Better Act

Eliminate the step up in basis for high income Taxpayers.

Announced this week- the proposed bill was amended to increase the SALT deduction limitation from \$10k to \$80k

While we are uncertain when or if this legislation will pass, we need to be aware of the provisions to assist our clients as they navigate their financial dealings.

IRS Operations

IRS continues to struggle with staffing and the impact of Covid on operations-

- Above normal wait times for a response on correspondence
- Above normal wait times for processing of amended returns, NOL carrybacks, paper filed returns
- Increased wait times to speak to an IRS representative

If your clients are frustrated and you are taking the brunt of their frustration direct them to:

<https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>

This is the IRS explanation of delays and anticipated times for results- No business could get by with this level of poor service!

IRS Operations

The IRS is attempting to get Taxpayers to establish a personal account on-line with the Agency. The benefits:

- Access to transcripts
- The IRS hopes to communicate (notices; etc.) to you thru your on-line account
- Ability to pay balance due and estimated payments on-line

The personal accounts were introduced in 2016. to date only 8 million accounts have been established. One issue is that only 40% of Taxpayers attempting to establish the personal account is successful

IRS Operations

Recent actions:

IR 2021-231 11/17/2021 IRS provides answers to taxability and reporting of state and local grants from Coronavirus State and Local Fiscal Recovery Funds

IR 2021-228 11/17/2021 IRS announced the launch of improved identity verification to enable Taxpayers to more securely access and use IRS on-line tools

IRS Operations

IR 2021-219 11/10/2021 IRS announced the 2022 annual inflation adjustments for tax rates, brackets and deductions that are indexed.

IR 2021-212 11/1/2021 IRS announces that they are still processing Unemployment Refund adjustments. They recently finalized 430,000 re-calculated returns resulting in \$510 million of additional refunds

Oct 15, 2021 IRS announced new FAQ process. Included in this is if a Taxpayer reasonably relies on any FAQ in good faith they will have a reasonable cause defense against any negligence or accuracy related penalty.

A photograph of the U.S. Capitol building at night, illuminated with warm orange lights. The large dome is prominent on the left side of the frame. The sky is a deep blue. The text "Thank You!" is overlaid in the upper right area.

Thank You!

Have a healthy and
successful 2022

