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SEPTEMBER 2022 NEWSLETTER

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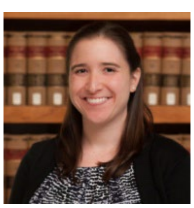
Firm News: WE'RE MOVING!
After 32 years at the same address, MMPPH will be moving our office across the street, **effective November 1, 2022**. Our new address will be 402 W. Broadway, Suite 950, San Diego, California 92101. Please bear with us as we rearrange our offices and files during the transition period. We look forward to providing the same quality service to all our clients as we have for the past 63 years.

Firm News: We welcome attorney Michael W. Rashmir to our team. Michael comes to us after completion of his MBA at University of Nevada at Reno, as well as his J.D., and L.L.M in Taxation from USD School of Law. With experience in politics and writing legislation at both the state and federal levels, Michael will be focusing his practice on tax planning and diligence, property reassessment, business reorganizations, and general business planning, including for real estate investors. Michael is admitted to practice before the California Supreme Court and the U.S. Tax Court.

IN THIS ISSUE



INFLATION REDUCTION ACT OF 2022: A SUMMARY

By Katie A. Lepore, CPA, J.D., LL.M., Taxation

On August 16, 2022, President Biden signed the *Inflation Reduction Act of 2022 (H.R. 5376) ("IRA")* into Law. The *IRA* will initiate changes in corporate tax law, green energy, healthcare, and IRS funding. The *IRA* also aims to increase revenues while simultaneously reducing the deficit. Some of the provisions are carried over from the failed *Build Back Better Act ("BBBA")* of President Biden's agenda. It should be noted that the approximate cost of the *IRA* is $1 trillion while the BBBA would have cost approximately $2 trillion. The most significant changes taxpayers can expect from the *IRA* are tax credits and other initiatives to "go green."

Corporate Tax Law Changes

Minimum Tax

A new corporate alternative minimum tax ("AMT") is instituted for tax years after 2022. You may recall that the corporate AMT was repealed by the *2017 Tax Cuts and Jobs Act ("TCJA")* under President Trump's Administration. This new AMT, or "book minimum tax," will levy a 15% corporate AMT on an "applicable corporation." An applicable corporation is a domestic corporation that has over $1 billion average "adjusted financial statement income" over a 3-

year period, or is a foreign corporation with average adjusted financial statement income over a 3-year period exceeding $100 million. S-corporations, REITs, or RICs are specifically excluded. Any corporation not meeting the definition of an applicable corporation will not be subject to the AMT and will fall under the *TCJA*'s repeal.

The AMT is expected to increase revenues by $220 billion over a 10-year period. The Joint Committee on Taxation ("JCT") expects approximately 150 corporations to be affected by the new AMT rules, mostly in the manufacturing sector, but also a large amount of banks and insurance companies.

Stock Buyback

Additionally, a 1% excise tax on stock buybacks is instated, under a brand new Section 4501 of the Internal Revenue Code. Beginning in 2023, publicly-traded corporations which repurchase their stock from the open market will be subject to a 1% non-deductible excise tax on the fair market value of the shares purchased. The excise tax is expected to increase revenues by $74 billion over 10 years.

<u>Excess Loss Limitations</u>

The loss limitation under Section 461(l) is extended for 2 years until 2028 for excess business losses for non-corporate taxpayers, including pass-through businesses. Such excess business losses cannot be used to offset non-business income; income limitations apply.

<u>Energy Credits for Individuals and Businesses</u>

It is expected that the *IRA* will reduce greenhouse gas emissions ("GHG") by 50% by 2030.

Individuals

- *Electric Vehicles* – A $4,000 tax credit is available for purchasing used clean vehicles, and a $7,500 tax credit is available for purchasing new clean vehicles, through 2032. The current 200,000 vehicle cap per-manufacturer is removed, which only allowed credits for the first 200,000 qualifying vehicles per car brand. However, new income requirements are instituted. Single taxpayers within income above $150,000 would not be eligible, or $300,000 for married couples. Further, there are caps on the MSRP of certain vehicles ($55,000 for new cars; $80,000 for pickups, SUVs, and vans). Additionally, restrictions are placed to require manufacturing in certain instances within the United States.
- *Residential Clean Energy Credit* – This credit was expected to expire at the end of 2023 and now will carry forward through 2034. It is a non-refundable tax credit (meaning it cannot take your tax liability below zero) to encourage installation of solar water heaters, geothermal wind pumps, fuel cells, and battery storage technology at your residence. The credit is available for installing certain clean household energy such as solar, wind, or geothermal improvements for up to 30% of the cost of the improvement. Beginning in 2024, manufacturers need to provide a specific product identification number for each qualifying product that is sold, and taxpayers must in turn provide such numbers on their tax return to claim the credit.
- *Energy Efficient Home Improvement Credit* – This credit is expanded to remain in place through 2032 to provide a tax credit to anyone purchasing a new single-family home that meets certain requirements for energy efficiency. In addition, from 2023 forward, a $1,200 annual tax credit will be available (instead of the $500 lifetime limitation) for up to 30% of the costs of eligible home improvements. Improvements that may qualify could include new exterior doors, new windows, electric panel upgrades, biomass stoves and boilers, and other items.
- *High-Efficiency Electric Home Rebate Program* – A possible rebate, as opposed to a tax credit, may be available for installation of heat pumps that can both

heat and cool homes, as well as a rebate for other items like heat pump water heaters, clothes dryer, or electric stove. There's also a rebate if a home needs an electrical panel upgrade to support these new appliances or for electrical wiring improvements. Updated insulation and sealing may also be covered under the rebate program. Total rebates are capped at $14,000, though income limitations apply. As the rebate is supposed to be applied at the time of sale, the program will likely not be up and running for several months. The rebate program is effective through September 30, 2031.

Businesses

- *Research Credit* – Small businesses can apply a tax credit against payroll tax liability of up to $500,000 beginning in 2023 for research. The election is available for the first 5 years in which the company has gross income, and is limited to small businesses, defined as having less than $5 million in gross receipts. The credit may not exceed the company's payroll tax liability, though carryforwards may be used in future quarters. Small businesses may include sole proprietorships, though special rules may apply.
- *Investment Tax Credit* – Already an existing tax credit available for certain energy-efficient projects, the Investment Tax Credit ("ITC"), will no longer require certain technologies to be used, so long as the project produces a net zero GHG emissions and begins after 2024.
- *Production Tax Credit* – Also an already existing tax credit for certain energy-efficient projects, the Production Tax Credit ("PTC"), will also no longer require certain technologies to be used so long as the project produces a net zero GHG emissions and begins after 2024. Notably, solar power is once again eligible for the PTC.
- *Advanced Manufacturing Production Credit* – This credit is available to companies that manufacture clean energy components, materials, technology, and related items for sale to third parties.
- *Advanced Energy Project Credit* - This credit will be revived to provide up to $10 billion in tax credits for new projects that expand energy manufacturing facilities.
- *Advanced Industrial Facilities Program* – This program creates incentives to reduce GHG emissions in manufacturing facilities mostly that produce steel, cement, and chemicals.
- *Modified Energy Efficiency Tax Credits* – In order to receive a tax credit for an energy efficient commercial building, a building must now only demonstrate a 25% reduction (instead of 50%) in energy, though a new 3-year cap is instituted.
- *Carbon Capturing Equipment* – Companies may receive cash payments up-front in lieu of tax credits for installing carbon capturing equipment. A credit is also available for prior equipment placed in service after December 31, 2022.
- *Zero Emissions Nuclear Credit* – This credit is for existing nuclear facilities that never received the Advanced Nuclear Production tax credit which produce clean hydrogen which meets certain GHG emissions.
- *Aviation Fuel Credit* – A new credit is provided for sales of sustainable aviation fuel that is sold or used prior to December 31, 2024.
- *Hydrogen Production* – A new credit is initiated for hydrogen production, which can increase in value if certain other thresholds are met.
- *Clean Commercial Vehicles* – Up to a 30% tax credit is available for the purchase of commercial clean vehicles, as well as $1 billion in grants for a new purchase of clean heavy-duty vehicles, such as buses.

Healthcare

Insurance Premiums

A 3-year expansion is instituted of the *Affordable Care Act's ("ACA")* premium subsidies for certain taxpayers who receive health insurance from *ACA* public marketplaces.

Medicare Prescription Costs

- A $2,000 annual cap on prescriptions for Medicare recipients for out-of-pocket prescription costs under Medicare Part D is instituted, beginning in 2025.
- The Secretary of Health and Human Services (currently Xavier Becerra) has the power to negotiate drug prices for Medicare recipients to "maximum fair prices" for 50 drugs as part of Medicare Part D and 50 drugs as part of Medicare Part B. A hefty penalty would be imposed on companies selling the drugs for above the negotiated maximum fair price. The number of drugs will increase over the years, with 10 drugs allowed in 2026, and 20 drugs beginning in 2029.
- A new $35-per month cap will be placed on insulin costs for Medicare Part D patients.
- A rebate would be required to be offered by drug manufacturers that increase prices on drug costs at a rate faster than inflation for patients on Medicare for certain drugs.

IRS Funding

As part of the bill, the IRS will receive an additional $80 billion over 10 years. At least $46 billion is earmarked for enforcement actions, which may result in increased audits, especially on high-net-worth individuals. It is believed that this expenditure will increase revenues by $204 billion over the next 10 years, for a net reduction in deficit of $124 billion. IRS Commissioner Rettig released a statement that the increased funding would be used to apply scrutiny to "large corporate and high-net-worth taxpayers, as well as pass-through entities and multinational taxpayers with international tax issues."

What's Not Included

Carried Interest

Last minute negotiations removed provisions regarding the so-called Carried Interest Loophole, which allows hedge fund managers to possibly treat their income as long-term capital gains at beneficial tax rates rather than ordinary income at marginal rates.

SALT Cap

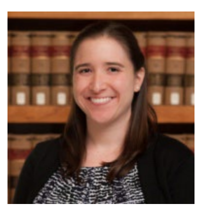
Though discussed, the current state and local tax cap for personal income tax itemized deductions is not repealed. The $10,000 cap is still effective through 2025.

BBBA Provisions – Estate Planning

The BBBA had proposed a reduction in the estate, gift, and generation skipping transfer tax exemptions, as well as changes to the grantor trust rules. It also contained a surcharge on high-income individuals and trusts, and increases in the long-term capital gains tax rates. These provisions are noticeably absent from the *IRA*, though this does not mean that they could not return in future legislation.

Conclusion

The Biden Administration is touting passage as a huge win for the President's agenda. Changes resulting from the *IRA* are expected to occur gradually over several years rather than showing immediate results. The immense number of new laws and programs instituted will likely take time for the IRS to implement. In any regard, taxpayers should pay attention to any possible ways to take advantage of new tax credits or incentive programs. If you have any questions, our team would be happy to speak with you.



FEDERAL TAX NEWS

By Katie A. Lepore, CPA, J.D., LLM., Taxation

Late Portability Election Extension. The IRS recently released Revenue Procedure 2022-32 that extends the time to elect late portability of the deceased spouse unused exemption (DSUE) under IRC 2010 from 2 years to 5 years from date of death. This means that if an estate tax return was not due and was not filed, a portability claim can still be made within 5 years of death if certain requirements are met. The Rev. Proc. supersedes Rev. Proc. 2017-34, 2017-26 I.R.B. 1281 and provides a simplified method to obtain an extension under Treasury Regulations 301.9100-3. The return must say at the top of page 1 that it is filed pursuant to Rev. Proc 2022-32 to elect portability under Section 2010(c)(5)(A).

Estate Deduction Proposed Regulations. On June 24, 2022, the IRS issued Proposed Regulations under IRC 2053 regarding present value principles for various estate deductions. When an estate has a deduction for certain administrative expenses or claims against an estate, certain valuations are now required. The Proposed Regulations also address interest expense, including on tax liability and loans owed by the estate. Amounts owed under a decedent's personal guarantee are also addressed.

Billionaire Income Tax. On July 29, 2022, Rep. Cohen (D-TN) introduced *H.R. 8558*, entitled *Billionaire Minimum Income Tax Act.* It would levy a 20% minimum tax on taxable income and net unrealized capital gains for those taxpayers with net worth in excess of $100 million, including trusts and estates. Unrealized gain would be calculated on December 31. For hard-to-value assets, the taxpayer would use the greater of original basis, adjusted basis, or most recent fair market value, adjusted for an annual interest rate. The tax calculated would later be treated as a credit against the tax owed when the asset is actually sold and gains are due.

CHIPS and Science Act. On August 9, 2022, President Biden signed into law the *CHIPS and Science Act, (H.R. 4346)*, which provides tax credits for investing in semiconductors and other emerging technologies. Advanced computer hardware and software, computer chips, as well as energy and industrial efficiency technology may also qualify for the credit. Certain cybersecurity, biotechnology, data storage, and similar items are also incentivized under the new law.

SECURE Act Deadline Extended. IRS Notice 2022-33, issued on August 3, 2022, extends the timeline under the 2019 *SECURE Act* for making timely amendments to retirement plans. The new deadline is December 31, 2025. In addition, extensions under the *CARES Act* for required minimum distributions, as well as under the *Miners Act* have also been extended under the Notice.

Supreme Court to Hear FBAR Case. The United States Supreme Court has granted the Petition for Writ of Certiorari in *U.S. v. Bittner*, involving penalties for FBAR violations. The issue at hand is whether the $10,000 penalty applies per year or per account. FBARs are a reporting requirement for foreign bank accounts.

Bill Regarding Cryptocurrency. The *Responsible Financial Innovation Act (S. 4356),* proposed in June by a bipartisan group of senators led by Senator Gillibrand (D-NY) and Senator Lummis (R-WY) would implement a tax structure surrounding cryptocurrencies. It would also provide the bulk of oversight to the Commodity Futures Trading Commission. The proposed bill includes such things as measuring gain or loss from disposition of digital assets, reporting requirements for brokers, and retirement investment accounts which include digital assets.

IRS Waiving Penalties for Late Filers. The IRS announced it will waive penalties for late filing for many taxpayers who filed late during the pandemic. Over $1.2 billion is expected to be refunded or credited for tax years 2019 and 2020.

IRS Increases Mileage Rate. For the final 6 months of 2022, the IRS has increased the standard mileage rate to 62.5 cents per mile, increasing by 4 cents from the rate effective in January 2022. The change is to reflect increased gas prices.

CALIFORNIA TAX UPDATE
By Katie A. Lepore, CPA, J.D., LLM., Taxation

PPP and Pass-Through Entity Tax Update. On June 30, 2022, *AB 194* became law to provide an exclusion for income from covered loan amounts forgiven under the *Paycheck Protection Program Extension Act of 2021*. The FTB's website has been updated to reflect information surrounding this exclusion of income.[1] For pass-through entities that elected to pay the entity-level PTE tax on their 2021 tax return, an amendment may be warranted. Further, the FTB reported issuing approximately 3,000 erroneous refunds due to the new PTE elective tax payments by incorrectly reporting payments made toward tax year 2022 in 2021.

Middle Class Tax Refund. Under *AB 192*, California taxpayers who filed a 2020 tax return by October 15, 2021 may be eligible to receive a one-time payment of up to $1,050 under a new Middle Class Tax Refund. For single taxpayers with income below $75,000 and for married taxpayers with income below $150,000, a refund may be issued, with the amount of refund increasing if you reported a dependent on your return. Phase outs are applicable as income increases, with a complete phase-out at $500,000 for married couples and $250,000 for single filers.

Profit Interest Determines Business Interest. In Case No. 19044718, the California Office of Tax Appeals stated that an LLC's profit interest, rather than capital interest, should be used to determine whether that LLC is "doing business" in California. In the case, an out-of-state LLC had a minority pass-through interest in California rental real estate.

California Coastal Act May Affect Short-Term Rentals. In *Keen v. City of Manhattan Beach (2022) 77 Cal.App.5th 142*, the Court of Appeals ruled that the *California Coastal Act,* governing public access to California's beaches, needs to be taken into account for coastal cities looking to ban or restrict short-term rentals. Coastal Commission approval may be needed for any such restrictions if they inhibit access to California's coast.

Sourcing of Hot Assets Could Create California Gain. For partnerships with out-of-state partners, and which partnership also has so-called "hot assets," FTB Ruling 2022-02 could create tax reporting implications. If the foreign partner sells his interest and there are Section 751 assets involved, proceeds from the sale of the hot assets are apportioned to California using the partnership's apportionment factor.

[1] https://www.ftb.ca.gov/about-ftb/newsroom/covid-19/paycheck-protection-program-loan-forgiveness.html

VALUATION SERVICES
BUSINESS APPRAISAL SERVICES/DISCOUNT OPINIONS
VALUATIONS FOR ESTATE AND GIFT TAX PURPOSES

TAXATION
IRS RULING REQUESTS
TAX REPRESENTATION

TAX PLANNING
BUSINESSES & INDIVIDUALS
REAL PROPERTY TRANSACTIONS & REORGANIZATIONS
BUSINESS ACQUISITIONS/SALES
EMPLOYEE COMPENSATION

BUSINESS & CORPORATE LAW
BUSINESS MERGERS, ACQUISITIONS, & SALES
CORPORATIONS, PARTNERSHIPS
LIMITED LIABILITY COMPANIES
BUY/SELL AGREEMENTS
EMPLOYMENT MATTERS
REORGANIZATIONS
ASSET PROTECTION

REAL ESTATE
SALES & LEASES
FINANCING
SHARED EQUITY AGREEMENTS
CO-OWNERSHIP ARRANGEMENTS

LITIGATION
ERISA LITIGATION
FIDUCIARY LITIGATION
PROBATE & TRUST LITIGATION
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REAL PROPERTY MATTERS
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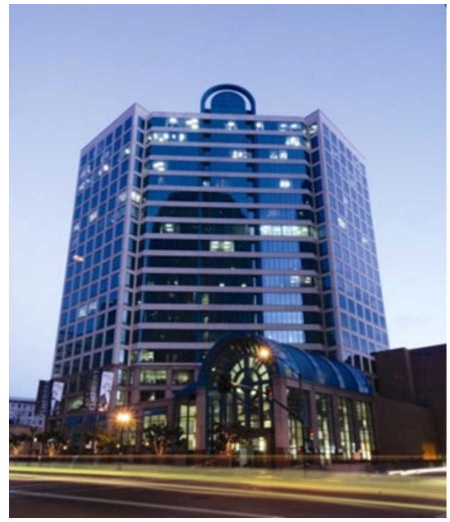

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