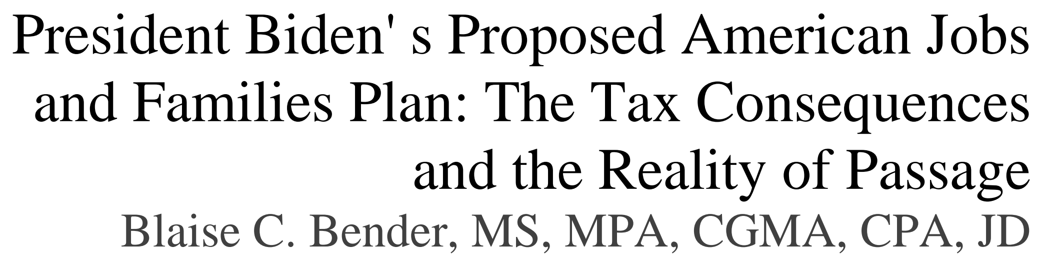

President Biden' s Proposed American Jobs and Families Plan: The Tax Consequences and the Reality of Passage

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BIO

Blaise C. Bender is President and Managing Shareholder of Blaise C. Bender, PC a law firm that concentrates on business and non-profit development, mergers and acquisitions, contractual and transactional analysis, tax planning for individuals and businesses, representation on tax issues and controversies impacting individuals and businesses, corporate legal counsel assistance, real estate, strategic planning, health care analysis and estate and trust assessment.

Formerly a full-time college professor for over twenty years. He received his B.B.A in Accounting Degree and a Master's of Science in Finance from Texas A& M University. He also received an MPA in Taxation from UTSA and his Juris Doctor in Law from St. Mary's University. He is presently a faculty member at Trinity University teaching Professional Ethics in their Masters of Accounting program.

Blaise is a member of the State Bar of Texas, and is a licensed CPA. He possesses over six years of experience in public accounting working for Arthur Andersen & Co., Deloitte Touche, and Ernest and Young. Blaise also served as a CFO and Controller in the private sector. He also served as a CEO for Servco, Inc. an international firm associated with the oil and gas industry.

Blaise currently serves as a Board Member of Credit Human, FCU and chairs its Budget and Finance Committee. He is a member of the Texas Society of CPAs and serves on the TSCPA Professional Ethics Committee, Federal Tax Policy Committee, Legislative Advisory Committee, and the CPE Advisory Committee. In 2019, Blaise was named to the Board of Directors of USIO, Inc. (a publicly traded company) and is chair of the Audit Committee.

Blaise has conducted over 975 seminars and workshops throughout Texas and the United States and has numerous publications in tax and accounting. His seminars include an Annual Federal Tax Updates, Individual Tax Updates. Business Tax Updates, Qualified Business Income Deduction Issues, Opportunity Zone Matters, Hobby Loss Issues and Succession Planning for Small Accounting Firms to name a few. He has received numerous awards for his service in education and continuing education including the TSCPA Meritorious Service to the Public Accounting Profession Award in 2015– 16 and the Fellow Award in 2019 from the San Antonio Chapter of CPAs.

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By

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I. The American Rescue Plan Act of 2021 (ARPA)

A. General

1.The American Rescue Plan Act of 2021 (ARPA, P.L. 117-2) was enacted Mar. 11, 2021, to provide additional relief to taxpayers and others affected by the continuing economic fallout from the COVID-19 pandemic.

2. The ARPA provides stimulus payments to individual taxpayers, additional supplemental unemployment benefits, partial exclusion for unemployment received in 2020 for certain taxpayers, aid to states and municipalities, additional funding for the Paycheck Protection Program, and health insurance subsidies.

B. Cancellation of Debt (COD) May Create Income

1. General Rule: Gross income includes income from the discharge of indebtedness. This applies equally to debts discharged by commercial lenders and those canceled by private lenders (See Section 61 (a) (12)).

2. The American Rescue Plan Act excludes from gross income in tax years from 2021 through 2025 amounts related to the discharge of certain student loan debt. There is no distinction between whether the student loan debt is private or federal. The exclusion is applicable to discharges of student loans after December 31, 2020 and before January 1, 2026.

3. The President Pia Executive Order suspended student loan payments until at least September 30, 2021. The suspension could be further extended depending upon economic conditions in September of this year. The suspension also applies to accrual of interest and collection efforts on these loans.

4. The Taxpayer Certainty and Disaster Tax Relief Act of 2019 (the Disaster Act, HR 1865, PL 116 – 94) extends the exclusion to discharge of debt income from qualified principal residents debt up to $2 million (1 million for married filing separately) for discharges that occurred prior to January 1, 2021.

5. The act modifies the exclusion to apply to qualified principal residents debt that is discharge pursuant to a binding written agreement entered into before January 1, 2021.

C. **Unemployment Benefits**

1. Unemployment benefits received in 2021 will be taxable. The exclusion of up to $10,200 unemployment benefits only applies to 2020.

2. For 2020, unemployment compensation is reported on Schedule 1 of the 1040: Additional Income Adjustments to income.

3. If the taxpayer receives Form 1099 – G showing in box 1 of the total unemployment compensation paid in 2020 this amount is reported on line 7. However if the amount reported in box 1 is incorrect report on line 7 the actual amount paid to the taxpayer in 2020.

4. If the taxpayer made contributions to a government unemployment compensation program or to any governmental paid family leave program and they are not itemizing, the taxpayer must reduce the amount reported by those contributions. Likewise, if the taxpayer received an overpayment of unemployment compensation in 2020 and it was repaid in that year the repayment is subtracted from the total amount received.

5. An unemployment compensation exclusion shall be entered as UCE on line 8, schedule 1.

6. Community Property Issues. If the taxpayer lives in community property state and files as married filing separately the taxpayer reports one half of unemployment compensation for themselves and one half of their spouses unemployment compensation on the return. The taxpayer can still exclude up to $10,200 based upon modified AGI. Specifically, the exclusion of up to $10,200 is based upon modified AGI be less than hundred $50,000 a year. However, if the taxpayer resides in the committee property state and files jointly the taxpayer will report one half of the unemployment compensation for themselves and one half of their spouse on line 8 of the unemployment compensation worksheet. The spouse reports the other one half of their unemployment compensation on line 9 of the worksheet.

Examples

Bubba and Bubbett are married there modified AGI is $125,000 consisting of $40,000 for Bubba and $85,000 for Bubbett. Bubba received unemployment compensation of $20,000. Bubbett received no unemployment compensation. The couple resides in Texas and files jointly. Since one half of the $20,000 unemployment compensation is considered received by each spouse, the couple would exclude the full $20,000 from their taxable income allocated $10,000 each to the limit of $10,200 each.

Assume the same facts except the couple files married filing separately and lives in Texas. The couple could still exclude the full $20,000 because each spouse's modified AGI filing separately was less than hundred $50,000. The $20,000 is considered received half by each spouse.

D.. Child Tax Credit

1. The American Rescue Plan Act expanded the child tax credit with the intention of reducing child poverty by supplementing the earnings of families receiving the credit. The Child Tax Credit was substantially expanded for taxable year 2021 by the American Rescue Plan of 2021 (ARP).

2. Taxpayers may claim a child tax credit (CTC) for up to $3,600 for each qualifying child under age 6 and up to $3,000 for all other qualifying children under age 18. To be a qualifying child in taxable year 2021, a child must have a social security number (SSN) at the time the return is due.

3. The full amount of the credit is refundable, regardless of the taxpayer's Federal income tax liability or the presence of earned income.

4. A taxpayer may also claim a $500 nonrefundable credit for all children and other dependents for whom a CTC may not be claimed. This second credit is called the credit for other dependents (ODTC).

5. The first $1,600 of the CTC per qualifying child under age 6 and the first $1,000 per qualifying child age 6 through 17 phase out sequentially with modified adjusted gross income (modified AGI) in excess of $150,000 for married joint filers or surviving spouses, $112,500 for head of household filers, and $75,000 for all other filers, at a rate of $50 per $1,000 (or part thereof) of modified AGI in excess of the relevant threshold.

6. The remainder of the CTC, plus any amount of ODTC, is further reduced by $50 for each $1,000 (or part thereof) that exceeds $200,000 ($400,000 for married taxpayers filing a joint return) of modified AGL Larger families follow a modified phaseout rule that extends the AGI range of the phaseout.

7. For taxable year 2021 only, taxpayers may receive up to 50 percent of their estimated total CTC (including ACTC) in advance, in a series of periodic payments. These payments will be issued from July to December of 2021.

8. A taxpayer may receive up to 50 percent of their otherwise allowable credit based on information reported on their 2020 individual income tax return (or the 2019 return if the 2020 return is not available).

9. Taxpayers may opt out of advance payments using a designated Internal Revenue Service (IRS) portal. The portal may also be used to report changes in circumstances during the year that affect taxable year 2021 CTC eligibility.

10. A taxpayer's Federal income tax will be increased, dollar-for- dollar, if their total CTC advance payments during 2021 exceeds the amount of the CTC to which they are eventually entitled. However, safe harbor rules may reduce the additional income tax owed depending on the taxpayer's modified AGL

11. For taxable years 2022 through 2025, a taxpayer may claim a CTC of up to $2,000 per qualifying child, only part of which is refundable. To be a qualifying child in these taxable years, a child must be under age 17 and have an SSN valid for work at the time the return is due.

12. A taxpayer without sufficient Federal income tax liability to claim the full CTC can claim the ACTC. The ACTC will be the lesser of:

- $1,400 per qualifying child, and
- 15 percent of earnings in excess of $2,500, up to the amount of any unclaimed CTC.

13. As in taxable year 2021, a taxpayer may claim a $500 ODTC for all children and other dependents for whom a CTC may not be claimed. The sum of the CTC (including any ACTC) and the ODTC will be reduced by $50 for each $1,000 that exceeds $200,000 of modified AGI (or $400,000 for married taxpayers filing a joint return).

14. The $1,400 maximum refundable amount per qualifying child is indexed for inflation but cannot exceed $2,000. The maximum credit amount per qualifying child, the income at which the phaseout begins, and the $2, 500 earned income threshold for refundability are not indexed.

15.For taxable years beginning after December 31, 2025, a taxpayer may claim a CTC of up to

$1,000 per qualifying child. To be a qualifying child, a child must have a TIN at the time the return is due.

16.A taxpayer without sufficient Federal income tax liability to claim the full $1,000 credit can claim the ACTC. The ACTC will be the lesser of (1) $1,000 per qualifying child, and (2) 15 percent of earnings in excess of $3,000, up to the amount of any unclaimed CTC.

17.The credit will be reduced for taxpayers with over $75,000 of modified AGI (or $110,000 for married taxpayers filing a joint return).

18. No parameters are indexed for inflation.

Example

Betty claims head of household status and has 2 qualifying children, Little Bubba Age 3 and Little Bubbett Age 7. Her AGI for 2021 is $100,000. Her credit will be $6600 she will be entitled to receive half in payments from July to December and the balance will be taken as a tax credit on her return. Based upon the information she should qualify for a child tax credit of approximately $4725.

E. Child and Dependent Care Credit

1. The American Rescue Plan Act expanded the child and dependent care credit only for 2021. The credit is refundable for a taxpayer who is a principal place of abode in the United States for more than one half the year.

2. The maximum credit rate is increased from 35% to 50% and the amount at which the maximum credit begins to phase down is increased to $125,000. The percentage phase down for taxpayers earning between $125,000 and $400,000.

3. The limitation on employer related Child and dependent care expenses is increased to $8000 in the case of one qualifying child and $16,000 if there are 2 or more qualifying children. A 2 part phaseout is applied to the 50% rate.

4. The act also increases only for 2021 the amount of the exclusion from employer-provided dependent care from $5000-$10,500.

F. Earned Income Credit

1. The American Rescue Plan Act expanded only for 2021 the minimum age to qualify for the earned income credit reducing it to age 19. If the individual is a specified student the minimum age is reduced to age 24. The provision reduces the minimum age to 18 for any qualified former foster youth or foster homeless youth. The upper age on the credit for taxpayers with no qualifying children is removed for 2021 only. This means that with the removal of the age limit a 68-year-old retiree could qualify for the credit in 2021.

2. The provision increases only for 2021 the amount of the credit for taxpayers with no qualifying children. The credit percentage and phaseout percentage are also increased to 15.3% from 7.65%. In addition, the earned income credit amount is increased to $9820 and the beginning of the phaseout range from non-joint filers is increased to $11,610. For married filing jointly it is $17,550.

3. The act also repeals the rule that an eligible taxpayer with at least one qualifying child who does not claim the earned income credit with respect to one or more qualifying children due to failure to meet the identification requirements (Social Security number) could not otherwise claim the credit. This means they can claim the credit without identifying number for 2021.

4. The act provides that a married individual separated from their spouse is treated as not married for purposes of the credit if the joint return is not filed. The provision applies only the taxpayer lives with a qualifying child of the taxpayer for more than one half of the tax year and either does not have the same principal place of abode as the individual's spouse during the last 6 months of the tax year or has a decree, agreement or writing with respect to the individual's spouse is not a member of the same household with that spouse by the end of the tax year.

5. The act raises the disqualified income maximum amount to $10,000 only for 2021.

6. For 2021 Form 8867 will be mandatory for all returns claiming the earned income credit. Expect the due diligence to change as a result.

G. Premium Tax Credit

1. The American Rescue Plan Act increases for 2021 2020 to the amount of financial assistance for people at lower income levels who are eligible for the premium tax credit. It provides for health insurance subsidies to people buying health insurance the marketplace who have income exceeding 400% of the federal poverty level.

2. In addition, premium tax credit repayments were forgiven for 2020.

H. Expansion of Recovery Tax Credit

1. The plan increased direct assistance to households by $1400 per person which will be reconciled as like this tax season as a Recovery Tax Credit.

I. Employee Retention Credit Extension

1. The American Rescue Plan Act (ARPA) extended the employee retention credit to wages paid in the 3rd and 4th quarters of 2021. While it retains most of the definitions under the Cares act and the Taxpayer Certainty and Disaster Relief Act it created a new employer under the ARPA known as the Recovery Startup Business

2. A Recovery Startup Business is an employer which began carrying on any trade or business after February 15, 2020, has average annual gross receipts of $1 million or less for the 3-taxable-year period ending with year prior to the calendar quarter in which the ERC is being claimed, and does not otherwise qualify as an eligible employer due to operations being fully or partially suspended by a governmental order or having a significant decline in gross receipts.

3. The ARPA also lifted the restriction on large employers paying qualified wages only to employees who were not performing services if the employer is "severely financially distressed." A "severely financially distressed employer" is one that had a decrease in gross receipts of 90% or more.

4.ARPA extends the statute of limitations for assessment attributable to the credit to five years. The 5-year statute applies only to credits claimed on the employment tax returns third and fourth quarter of 2021.

5. The credit was expanded to $ 10,000 of wages per quarter.

6. If an Eligible Employer elected not to claim the Employee Retention Credit in one calendar quarter, the Eligible Employer is not prohibited from claiming the credit in a subsequent calendar quarter for qualified wages paid in that subsequent quarter provided it meets the requirements to claim the credit. In addition, an Eligible Employer can file a claim for refund and make an interest-free adjustment for a prior quarter to claim the Employee Retention Credit to which it was entitled in a prior quarter, following the rules and procedures for making such claims or adjustments.

7. The proposed infrastructure bill shortens the time frame for using the employer retention credit (ERC). While the American Rescue Plan Act of 2021 had just recently extended the time for taking the credit to December 31, 2021, this proposed bill states that , except for wages paid by a recovery startup business, only wages paid until September 30 are to be taken into account for determining the credit.

J. Form 941 and Schedule R

1. The Service 2021 has issued Form 941 (Employer's Quarterly Federal Tax Return), the instructions for that form, and Form 941, Schedule R (Allocation Schedule for Aggregate Form 941 Filers). They are to be used for quarters ending after March 31, 2021.

2. The new Form 941 contains the following changes from the March 2021 version of the form.

- Lines 5a (Taxable social security wages) should include taxable qualified sick and family leave wages for leave taken after March 31, 2021.
- Line 5a (i) Qualified sick leave wages and 5a (ii) Qualified family leave wages should be used only for wages paid after March 31, 2020, for leave taken before April 1, 2021.
- Line 11b is now used to indicate the nonrefundable portion of credit for qualified sick and family leave wages for leave taken before April 1, 2021.
- New line 11e is used to enter the nonrefundable portion of COBRA premium assistance credit.
- New line 11f is used to indicate number of individuals provided COBRA premium assistance.
- The total refundable credits amount is now entered on line 11g (previously, on line 11d on the March 2021 version).
- Line 13c is used to indicate the refundable portion of credit for qualified sick and family leave wages for leave taken before April 1, 2021.
- Line 13e is used to enter the refundable portion of credit for qualified sick and family leave wages for leave taken after March 31, 2021.
- Line 13f is now used to indicate the refundable portion of COBRA premium assistance credit.
- Line 13g is now used to enter total deposits and refundable credits (previously, line 13f).
- Line 13h is now used to indicate total advances received from filing Form(s) 7200 for the quarter (previously, line 13f).
- Line 13i is now used to enter total deposits and refundable credits less advances (previously, line 13g).
- Line 18 is now divided into line 18a and line 18b.
- Line 18a is a checkbox used to indicate if the employer is a seasonal employer that doesn't have to file a return every quarter of the year. ARPA provides a special rule that permits seasonal employers to substitute the wages for the calendar quarter in 2019 for the average quarterly wages paid by the employer in 2019.
- Line 18b is a checkbox to indicate if the employer is only eligible for the ERC because it is a recovery startup business. A recovery startup business is subject to an ERC limit of $50,000 per calendar quarter. A "recovery startup business" is one that: (1) began operations after February 15, 2020 whose average annual gross receipts for a 3-taxable-year period ending with the tax year which precedes such quarter

does not exceed $1,000,000, and (2) experiences a full or partial suspension of operations due to a governmental order or experiences a significant gross receipts decline. (Code Sec. 3134)

- Line 19 is used to indicate qualified health plan expenses allocable to qualified sick leave wages for leave taken before April 1, 2021.
- Line 20 is used to enter qualified health plan expenses allocable to qualified family leave wages for leave taken before April 1, 2021.
- Line 23 is used to indicate qualified sick leave wages for leave taken after March 31, 2021.
- Previously reserved Line 24 is now used to enter qualified health plan expenses allocable to qualified sick leave wages reported on line 23.
- Previously reserved Line 25 is now used to enter amounts under certain collectively bargained agreements allocable to qualified sick leave wages reported on line 23. ARPA increases the paid sick and family leave tax credits by the employer's collectively bargained contributions to a defined benefit pension plan and the amount of collectively bargained apprenticeship program contributions.
- New line 26 is used to enter qualified family leave wages for leave taken after March 31, 2021.
- New line 27 is used to indicate qualified health plan expenses allocable to qualified family leave wages reported on line 26.
- New line 28 is used to enter amounts under certain collectively bargained agreements allocable to qualified family leave wages reported on line 26.

3. Schedule R has been changed to reflect the line changes of the draft Form 941.

K. Form 941-X

1. The IRS has issued a revised Form 941-X. The revision adds lines to allow for the correction of various credits reported on the most recent version of Form 941 for 2021, Employer's QUARTERLY Federal Tax Return (Rev. June 2021).

2. Lines 18a-d are used to correct the reporting of the nonrefundable portion of employee retention credit, the nonrefundable portion of credit for qualified sick and family leave wages for leave taken after March 31, 2021, the nonrefundable portion of COBRA premium assistance credit, and the number of individuals provided COBRA premium assistance.

Lines 26a-c are used to correct the reporting of the refundable portion of employee retention credit, the refundable portion of credit for qualified sick and family leave wages for leave taken after March 31, 2021, and the refundable portion of COBRA premium assistance credit.

L. Form 7200 Advanced Payment of Employer Credits Due to Covid – 19 Revised

1. The IRS has issued a new version of Form 7200 and the instructions to that form, for use for the 2nd through 4th quarters of 2021.

2. The instructions note that the credit for qualified sick and family leave wages is available for leave taken before October 1, 2021, and the ERC is available for wages paid before January 1, 2022. COBRA premium assistance is only available for periods of coverage beginning on or after April 1, 2021, through periods of coverage beginning on or before September 30, 2021. 3. 3. The COBRA premium assistance credit could be claimed on employment tax returns for the second, third, or fourth quarter of 2021, depending on when the employer (or other person) becomes entitled to the credit.

3. Changes to the form include the following:

- The box for "Applicable calendar quarter in 2021" lists only the 2nd, 3rd and 4th quarters, while the January form listed all four 2021 quarters. Line B no longer asks the filer to indicate whether the business started on or after January 1, 2020. Instead, Line B is used to indicate the total number of employees who were paid qualified wages for the ERC for the applicable quarter.
- New Line G is used to indicate the number of individuals who received COBRA premium assistance during the quarter the advance is requested.
- New Line H is used to indicate if the filer is receiving the ERC as a recovery startup business. Under Code Sec. 3134(c)(5), a recovery startup business is one that: (1) began operations after February 15, 2020, and whose average annual gross receipts for a 3-tax-year period ending with the tax year that precedes such quarter does not exceed $1 million; and (2) experiences a full or partial suspension of operations due to a governmental order or experiences a significant gross receipts decline.
- Part II (Enter Your Credits and Advance Requested) has been updated to account for COBRA premium assistance provided during the applicable quarter (Line 4).

4. The last day to file Form 7200 to request an advance payment for the second quarter of 2021 is August 2, 2021. The last day to file Form 7200 to request an advance payment for the third quarter of 2021 is November 1, 2021. The last day to file Form 7200 to request an advance payment for the fourth quarter of 2021 is January 31, 2022.

5. The last day to file Form 7200 is the same whether the employer files quarterly (on Form 941) or annually (on Form 943, 944, or CT-1). An employer may not file Form 7200 for a quarter after it filed Form 941 for the same quarter.

6. The instructions note that an employer can't file a corrected or amended Form 7200. If an employer requested an advance payment on Form 7200 and then later learned that some of the wages weren't qualified wages or the employer is entitled to less of a credit on its employment tax return than expected, the employer can't file a corrected or amended Form 7200. If the employer made an error on Form 7200, the error will be resolved when the employer claims the credit on its Form 941, 943, 944, or CT-1.

7. While the January 2021 version of Form 7200 states that it can be used for all four quarters of 2021, IRS has, on a recently-issued webpage, instructed taxpayers not to use that version of Form 7200 after the first quarter of 2021. Use of prior versions of Form 7200 for the second, third, or fourth quarter will result in requests for an advance payment of credits being rejected.

II. American Families Plan

A. Increase Top Marginal Income Tax Rate for High Income Taxpayers

1. For taxable years beginning after December 31, 2017 and before January 1, 2026, the top marginal tax rate for the individual income tax is 37 percent. For taxable years beginning after December 31, 2025, the top marginal tax rate for the individual income tax is 39.6 percent.

2. For 2021, the 37 percent marginal individual income tax rate applies to taxable income over $628,300 for married individuals filing a joint return and surviving spouses, $523,600 for unmarried individuals (other than surviving spouses) and head of household filers, and $314,150 for married individuals filing a separate return.

3. The proposal would increase the top marginal individual income tax rate to 39.6 percent. This rate would be applied to taxable income in excess of the 2017 top bracket threshold, adjusted for inflation.

4. In taxable year 2022, the top marginal tax rate would apply to taxable income over $509,300 for married individuals filing a joint return, $452,700 for unmarried individuals (other than surviving spouses), $481,000 for head of household filers, and $254,650 for married individuals filing a separate return.

5. After 2022, the thresholds would be indexed for inflation using the CPI-U, which is used for all current tax rate thresholds for the individual income tax.

6. The proposal would be effective for taxable years beginning after December 31, 2021.

B. Capital Gain Changes

1. Long-term capital gains and qualified dividends of taxpayers with adjusted gross income of more than $1 million would be taxed at ordinary income tax rates, with 37 percent generally being the highest rate (40.8 percent including the net investment income tax), but only to the extent that the taxpayer's income exceeds $1 million ($500,000 for married filing separately), indexed for inflation after 2022.[2]

2. This proposal would be effective for gains required to be recognized after the date of announcement.

C. Transfers of Appreciated Property by Gift or on Death

1. Under the proposal, the donor or deceased owner of an appreciated asset would realize a capital gain at the time of the transfer. For a donor, the amount of the gain realized would be the excess of the asset's fair market value on the date of the gift over the donor's basis in that asset.

2. For a decedent, the amount of gain would be the excess of the asset's fair market value on the decedent's date of death over the decedent's basis in that asset. That gain would be taxable income to the decedent on the Federal gift or estate tax return or on a separate capital gains return.

3. The use of capital losses and carry-forwards from transfers at death would be allowed against capital gains income and up to $3,000 of ordinary income on the decedent's final income tax return, and the tax imposed on gains deemed realized at death would be deductible on the estate tax return of the decedent's estate (if any).

4. Gain on unrealized appreciation also would be recognized by a trust, partnership, or other non-corporate entity that is the owner of property if that property has not been the subject of a recognition event within the prior 90 years, with such testing period beginning on January 1, 1940.

5. The first possible recognition event for any taxpayer under this provision would thus be December 31, 2030.

6. A transfer would be defined under the gift and estate tax provisions and would be valued using the methodologies used for gift or estate tax purposes.

7. For purposes of the imposition of this tax on appreciated assets, the following would apply:

- A transferred partial interest would be its proportional share of the fair market value of the entire

property.

- Transfers of property into, and distributions in kind from, a trust, partnership, or other non-corporate entity, other than a grantor trust that is deemed to be wholly owned and revocable by the donor, would be recognition events.

- The deemed owner of such a revocable grantor trust would recognize gain on the unrealized appreciation in any asset distributed from the trust to any person other than the deemed owner or the U.S. spouse of the deemed owner, other than a distribution made in discharge of an obligation of the deemed owner.

- All of the unrealized appreciation on assets of such a revocable grantor trust would be realized at the deemed owner's death or at any other time when the trust becomes irrevocable.

8. Transfers by a decedent to a U.S. spouse or to charity would carry over the basis of the decedent. Capital gain would not be recognized until the surviving spouse disposes of the asset or dies, and appreciated property transferred to charity would not generate a taxable capital gain.

9. The transfer of appreciated assets to a split-interest trust would generate a taxable capital gain, with an exclusion allowed for the charity's share of the gain based on the charity's share of the value transferred as determined for gift or estate tax purposes.

10.The proposal would exclude from recognition any gain on tangible personal property such as household furnishings and personal effects (excluding collectibles).

11. The $250,000 per-person exclusion under current law for capital gain on a principal residence would apply to all residences and would be portable to the decedent's surviving spouse, making the exclusion effectively $500,000 per couple.

12. The exclusion under current law for capital gain on certain small business stock would also apply.

13. The proposal would allow a $1 million per-person exclusion from recognition of other unrealized capital gains on property transferred by gift or held at death. The per-person exclusion would be indexed for inflation after 2022 and would be portable to the decedent's surviving spouse under the same rules that apply to portability for estate and gift tax purposes (making the exclusion effectively $2 million per married couple).

14. The recipient's basis in property received by reason of the decedent's death would be the property's fair market value at the decedent's death. The same basis rule would apply to the donee of gifted property to the extent the unrealized gain on that property at the time of the gift was not shielded from being a recognition event by the donor's $1 million exclusion.

15. The donee's basis in property received by gift during the donor's life would be the donor's basis in that prope1iy at the time of the gift to the extent that the umealized gain on that property counted against the donor's $1 million exclusion from recognition.

16 The payment of tax on the appreciation of certain family-owned and -operated businesses would not be due until the interest in the business is sold or the business ceases to be family-owned and operated. The proposal would allow a 15-year fixed-rate payment plan for the tax on appreciated assets transferred

at death, other than liquid assets such as publicly traded financial assets and other than businesses for which the deferral election is made. The Internal Revenue Service (IRS) would be authorized to require security at any time when there is a reasonable need for security to continue this deferral. That security may be provided from any person, and in any form, deemed acceptable by the IRS.

17.The proposal would include other legislative changes designed to facilitate and implement this proposal, including:

- the allowance of a deduction for the full cost of appraisals of appreciated assets; the imposition of liens;
- the waiver of penalty for underpayment of estimated tax to the extent that underpayment is attributable to unrealized gains at death; the grant of a right of recovery of the tax on unrealized gains; rules to determine who has the right to select the return filed;
- the achievement of consistency in valuation for transfer and income tax purposes; coordinating changes to reflect that the recipient would have a basis in the property equal to the value on which the capital gains tax is computed; and a broad grant of regulatory authority to provide implementing rules.

18. The proposal would be effective for gains on property transferred by gift, and on property owned at death by decedents dying, after December 31, 2021, and on certain property owned by trusts, partnerships, and other non-corporate entities on January 1, 2022.

D. Net Investment Income and Self-Employment Contributions Act

1. Individuals with incomes over a threshold amount are subject to a 3.8 percent tax on net investment income. The threshold is $200,000 for single and head of household returns and $250,000 for joint returns.

2. Net investment income generally includes:

- interest, dividends, rents, annuities, and royalties, other than such income derived in the ordinary course of a trade or business;
- income derived from a trade or business in which the taxpayer does not materially participate;) income from a business of trading in financial instruments or commodities; and
- net gain from the disposition of property other than property held in a trade or business in which the taxpayer materially participates. The net investment income tax (NIIT) does not apply to self-employment earnings. Proceeds from the NIIT flow into the General Fund of the Treasury.

3. Self-employment earnings and wages are subject to employment taxes under either the Self- Employment Contributions Act (SECA) or the Federal Insurance Contributions Act (FICA), respectively. Both SECA and FICA taxes apply at a rate of 12.4 percent for social security tax on employment earnings (capped at $142,800 in 2021) and at a rate of 2.9 percent for Medicare tax on all employment earnings (not subject to a cap).

4. An additional 0.9 percent Medicare tax is imposed on self-employment earnings and wages of high-income taxpayers, above the same NIIT thresholds of $200,000 for single and head of household filers and $250,000 for joint filers. The SECA and FICA taxes flow into the Social Security and Hospital Insurance Trust Funds.

5. General partners and sole proprietors pay SECA tax on the full amount of their net trade or business income, subject to certain exceptions. Section 1402(a)(13) of the Internal Revenue Code provides that

limited partners are statutorily excluded from paying SECA tax with respect to their distributive shares of partnership income or loss, although they are subject to SECA tax on their section 707(c) guaranteed payments from the partnership that are for services they provide to, or on behalf of, the partnership..

6. S corporation shareholders are not subject to SECA tax. However, tax law requires that owner- employees pay themselves "reasonable compensation" for services provided, on which they pay FICA tax like any other employee. Nonwage distributions to shareholders of S corporations are not subject to either FICA or SECA taxes.

7. Active owners of pass-through businesses are treated differently for purposes of the NIIT and SECA tax according to the legal form of their ownership and the legal form of the payment that they receive. While general partners and sole proprietors pay SECA tax on earnings from their
businesses, S corporation owner-employees and limited partners (their counterparts and sometimes competitors) pay employment taxes on only a portion of their earnings. LLC members often pay little or no SECA tax at all.

8. Although the NIIT reflects an intention to impose the 3.8 percent tax on both earned and unearned income of high-income taxpayers, certain income escapes both SECA tax and the NIIT, including the distributive shares of S corporation shareholder-employees, limited partners, and LLC members who claim the statutory exclusion for limited partners. Different treatment is unfair, inefficient, distorts choice of organizational form, and provides tax planning opportunities for business owners, particularly those with high incomes, to avoid paying their fair share of taxes.

9. The current system is also a challenge for the Internal Revenue Service (IRS) to administer. The determination of "reasonable compensation" of S corporation owners generally depends on facts and circumstances and requires a valuation analysis, which is expensive, and which can be contested by the taxpayer, adding to the cost of administration and enforcement. Uncertainty surrounding the treatment of limited partners and LLC members who materially participate in their businesses undem1ines the IRS's ability to ensure payment of SECA tax and the NIIT.

10. The proposal would ensure that all pass-through business income of high-income taxpayers is subject to either the NIIT or SECA tax, redirect NIIT funds to the Hospital Insurance Trust Fund, make the application of SECA to partnership and LLC income more consistent for high-income taxpayers, and (apply SECA to the ordinary business income of high-income nonpassive S corporation owners.

11.The proposal would ensure that all trade or business income of high-income taxpayers is subject to the 3.8-percent Medicare tax, either through the NIIT or SECA tax. In particular, for taxpayers with adjusted gross income **in** excess of $400,000 , the definition of net investment tax would be amended to include gross income and gain from any trades or businesses that is not otherwise subject to employment taxes.

12. Limited partners and LLC members who provide services and materially participate in their partnerships and LLCs would be subject to SECA tax on their distributive shares of partnership or LLC income to the extent that this income exceeds certain threshold amounts. The exemptions from SECA tax provided under current law for certain types of partnership income (e.g., rents, dividends, capital gains, and certain retired partner income) would continue to apply to these types of income.

13. S corporation owners who materially participate in the trade or business would be subject to SECA taxes on their distributive shares of the business's income to the extent that this income exceeds certain threshold amounts. The exemptions from SECA tax provided under current law for certain types of S corporation income (e.g., rents, dividends, and capital gains) would continue to apply to these types of income.

14. In order to determine the amount of partnership income and S corporation income that would be subject to SECA tax under the proposal, the taxpayer would sum

(a) ordinary business income derived from S corporations for which the owner materially participates in the trade or business, and
(b) ordinary business income derived from either limited partnership interests or interests in LLCs that are classified as partnerships to the extent a limited partner or LLC member materially participates in its partnership's or LLC's trade or business (this sum referenced to as the "potential SECA income").

15. Beginning in 2022, the additional income that would be subject to SECA tax would be the lesser of (i) the potential SECA income, and (ii) the excess over $400,000 of the sum of the potential SECA income, wage income subject to FICA under current law, and 92.35 percent of self-employment income subject to SECA tax under current law. The $400,000 threshold amount would not be indexed for inflation.

16. Material participation standards would apply to individuals who participate in a business in which they have a direct or indirect ownership interest. The statutory exception to SECA tax for limited partners would not exempt a limited partner from SECA tax if the limited partner otherwise materially participated.

17. The proposal would be effective for taxable years beginning after December 31, 2021.

E. Permanency of Expansion of Premium Tax Credit

1. The American Rescue Plan Act of 2021 (ARP) decreased the applicable contribution percentages and extended PTC eligibility to taxpayers with household income above 400 percent of FPL for taxable years 2021 and 2022.

2. The ARP changed the household income limitation on eligibility for the credit so that the PTC phases out with income as the required contribution eventually exceeds the benchmark premium. By fixing the parameters for two years, the ARP paused the pre-ARP indexation of the applicable contribution percentages.

4. The proposal would make permanent the ARP decrease in the applicable contribution percentages of household income used for determining the PTC. The proposal would also make permanent the ARP expansion of PTC eligibility to taxpayers with household income above 400 percent of FPL.

5. In addition, the proposal would permanently repeal the indexation of the applicable contribution percentages for years after 2022.

6. The proposal would be effective after December 31, 2022.

F. Permanency of the Expansion of the Current Earned Income Tax Credit

1. The American Rescue Plan Act of 2021 (ARP) expanded the credit for workers without children in taxable year 2021 by increasing the phase-in and phase-out rates, and increasing the income range over which the credit phases in.

2. These changes increased the maximum credit from $542 to $1,502. The chart below shows the 2021 parameters for workers without children, with and without the ARP expansion.

3. To be eligible for the EITC for workers without qualifying children, the taxpayer must meet the relevant age requirements.

4. In 2021, the taxpayer must be at least 19 years old or at least 23 if a full-time student. In the case of married taxpayers filing jointly, the credit may be claimed if at least one spouse is over age 19 (or at least 23 if a full-time student).

5. Former foster children and qualified homeless individuals are eligible at age 18, regardless of student status.

6. In years before and after 2021 the taxpayer must be at least 25 years old and less than 65. In the case of married taxpayers filing jointly, at least one spouse must be within the eligible age range to qualify for the credit.

7. In all years there is no age limitation to the EITC for workers with qualifying children. A taxpayer who may be claimed as a dependent or as a qualifying child by another taxpayer, including most college students, is not eligible to claim the EITC for workers without children.

8. In all taxable years beginning with 2021 taxpayers who live with qualifying children who they do not claim for EITC purposes because the children do not have social security numbers may claim the EITC for workers without children if otherwise eligible.

9. The proposal would make permanent the increase in the EITC parameters for workers without children that was enacted in the ARP. The end of the phase-in and the end of the plateau income ranges would be indexed for inflation in the same manner as other EITC parameters (by the CPI-U).

10. The proposal would also make permanent the ARP expansion of age-eligibility. As under ARP law, taxpayers who could be claimed as a qualifying child or a dependent would not be eligible for the EITC for childless workers. Thus, full-time students who are dependent on their parents would not be allowed to claim the EITC for workers without qualifying children, despite meeting the new age requirements, even if their parents did not claim a dependent exemption or an EITC on their behalf.

11. This proposal would be effective for taxable years beginning after December 31, 2021.

G. Permanency of the Child and Dependent Care Tax Credit

1. For 2021, taxpayers may claim a refundable credit for up to 50 percent of up to $8,000 in eligible expenses for one child or disabled dependent and up to $16,000 in eligible expenses for more than one child and/or disabled dependent.

2.The percentage of expenses for which a credit may be taken (the match rate) is reduced by 1 percentage point for each $2,000 or part thereof by which the taxpayer's adjusted gross income (AGI) exceeds $125,000 until the match rate reaches 20 percent (at an AGI of $183,000) after which point the match rate plateaus.

3.The match rate begins decreasing again by 1 percentage point for each $2,000 or part thereof by which the taxpayer' s AGI exceeds $400,000, reaching zero at AGI in excess of $438,000.

4. Up to $10,500 in employer assistance or employee contributions for dependent care may be excluded from employee wages for both income and payroll tax purposes. As under pre-ARP law, the maximum amount of expenses that may be used to claim the CDCTC must be reduced by any amount of employer assistance that is excluded from wages.

5. For tax years after 2021, taxpayers may claim a nonrefundable credit for up to 35 percent of up to $3,000 in eligible expenses for one child or disabled dependent and up to $6,000 in eligible expenses for more than one child and/or disabled dependent.

6. The percentage of expenses for which a credit may be taken is reduced by 1 percentage point for each $2,000 or part thereof by which the taxpayer's AGI exceeds $15,000 until the percentage of expenses reaches 20 percent (at an AGI of $43,000).

7. This 20 percent credit rate applies at all income levels above $43,000. The phase- down thresholds and the amount of expenses eligible for the credit are not indexed for inflation and have been unchanged since 2003.

8. The value of the credit has eroded over time. No taxpayer actually receives the maximum credit of $2,100 (35 percent of $6,000) because no taxpayer with dependent children incurs an income tax liability with AGI as low as $15,000.

9. Up to $5,000 in employer assistance or employee contributions to a dependent care flexible spending account (FSA) may be excluded from employee wages for both income and payroll tax purposes. The maximum amount of expenses that may be used to claim the CDCTC must be reduced by any amount of employer assistance that is excluded from wages.

10. The proposal would make permanent the changes to the CDCTC enacted in the ARP for taxable year 2021.

11. In addition, the proposal would establish reporting requirements appropriate for an expanded refundable tax credit. For example, the following requirements would further compliance:

12. The CDCTC would be added to the list of credits subject to paid preparer due diligence requirements described **in** section 6695(g). This change would treat the CDCTC in a comparable manner to the other refundable credits.

13.To claim the credit, taxpayers would be required to provide the information about the organizations or persons who provide the care, including the name, address, and the EIN or TIN of the care provider. Math error authority would be provided to the IRS to decline credit claims if such information is missing or deemed invalid.

14. There would be established an information return requirement for agencies that provide childcare subsidies on behalf of children or other dependents, including those associated with the Child Care Development Fund (CCDF) or the Child Care for American Families program proposed in this Budget.

15. This requirement would prevent credit claims in excess of allowable limits or on amounts not paid by the taxpayer. The Secretary of the Treasury or her delegate would be granted authority to issue regulations to exempt certain agencies from this reporting requirement and to prescribe a standardized

form detailing the information about the care expenses claimed for the CDCTC that would apply to the exempted agencies and other care providers.

16. The American Families Plan would establish Child Care for American Families to ensure that low and middle-income families pay no more than 7 percent of their income for high-quality childcare for children from birth to five-years-old. While families can benefit from both this childcare program and the tax benefits, including for the same child, they cannot claim the CDCTC (or the exclusion) for a care expense, including a co-pay, that was already subsidized under Child Care for American Families.

17.The proposal would be effective for taxable years beginning after December 31, 2021

H. Increase the employer Provided Childcare Tax Credit for Businesses

1. The proposal would increase the existing tax credit to 50 percent of the first $1 million of qualified care expenses for a maximum total credit of $500,000 per year. The portion of the tax credit related to referral expenses would remain at 10 percent with a maximum amount of $150,000.

2. The proposal would be effective for taxable years beginning after December 31, 2021.

I. Further Expansion of the Child Tax Credit (CTC)

1. The Child Tax Credit was substantially expanded for taxable year 2021 by the American Rescue Plan of 2021 (ARP).

2. Taxpayers may claim a child tax credit (CTC) for up to $3,600 for each qualifying child under age 6 and up to $3,000 for all other qualifying children under age 18. To be a qualifying child in taxable year 2021, a child must have a social security number (SSN) at the time the return is due.

3. The full amount of the credit is refundable, regardless of the taxpayer's Federal income tax liability or the presence of earned income.

4. A taxpayer may also claim a $500 nonrefundable credit for all children and other dependents for whom a CTC may not be claimed. This second credit is called the credit for other dependents (ODTC).

5. The first $1,600 of the CTC per qualifying child under age 6 and the first $1,000 per qualifying child age 6 through 17 phase out sequentially with modified adjusted gross income (modified AGI) in excess of $150,000 for married joint filers or surviving spouses, $112,500 for head of household filers, and $75,000 for all other filers, at a rate of $50 per $1,000 (or part thereof) of modified AGI in excess of the relevant threshold.

6. The remainder of the CTC, plus any amount of ODTC, is further reduced by $50 for each $1,000 (or part thereof) that exceeds $200,000 ($400,000 for married taxpayers filing a joint return) of modified AGL Larger families follow a modified phaseout rule that extends the AGI range of the phaseout.

7. For taxable year 2021 only, taxpayers may receive up to 50 percent of their estimated total CTC (including ACTC) in advance, in a series of periodic payments. These payments will be issued from July to December of 2021.

8. A taxpayer may receive up to 50 percent of their otherwise allowable credit based on information reported on their 2020 individual income tax return (or the 2019 return if the 2020 return is not available).

9. Taxpayers may opt out of advance payments using a designated Internal Revenue Service (IRS) portal. The portal may also be used to report changes in circumstances during the year that affect taxable year 2021 CTC eligibility.

10. A taxpayer's Federal income tax will be increased, dollar-for- dollar, if their total CTC advance payments during 2021 exceeds the amount of the CTC to which they are eventually entitled. However, safe harbor rules may reduce the additional income tax owed depending on the taxpayer's modified AGI.

11. For taxable years 2022 through 2025, a taxpayer may claim a CTC of up to $2,000 per qualifying child, only part of which is refundable. To be a qualifying child in these taxable years, a child must be under age 17 and have an SSN valid for work at the time the return is due.

12. A taxpayer without sufficient Federal income tax liability to claim the full CTC can claim the ACTC. The ACTC will be the lesser of:

- $1,400 per qualifying child, and
- 15 percent of earnings in excess of $2,500, up to the amount of any unclaimed CTC.

13. As in taxable year 2021, a taxpayer may claim a $500 ODTC for all children and other dependents for whom a CTC may not be claimed. The sum of the CTC (including any ACTC) and the ODTC will be reduced by $50 for each $1,000 that exceeds $200,000 of modified AGI (or $400,000 for married taxpayers filing a joint return).

14. The $1,400 maximum refundable amount per qualifying child is indexed for inflation but cannot exceed $2,000. The maximum credit amount per qualifying child, the income at which the phaseout begins, and the $2, 500 earned income threshold for refundability are not indexed.

15.For taxable years beginning after December 31, 2025, a taxpayer may claim a CTC of up to $1,000 per qualifying child. To be a qualifying child, a child must have a TIN at the time the return is due.

16.A taxpayer without sufficient Federal income tax liability to claim the full $1,000 credit can claim the ACTC. The ACTC will be the lesser of (1) $1,000 per qualifying child, and (2) 15 percent of earnings in excess of $3,000, up to the amount of any unclaimed CTC.

17.The credit will be reduced for taxpayers with over $75,000 of modified AGI (or $110,000 for married taxpayers filing a joint return).

18. No parameters are indexed for inflation.

19. The proposal would extend to taxable years beginning before January 1, 2026 most of the ARP changes to the CTC:

a. The age to qualify for the CTC would be increased one additional year to include children who are 17 years old.

b. The maximum tax credit per child would be increased to $3,600 for qualifying children under 6 and to $3,000 for all other qualifying children. The portion of the credit in excess of $2,000 will phase out sequentially with income in excess of $150,000 of modified AGI for married joint filers or surviving spouses, $112,500 for head of household filers, and
$75,000 for all other filers, with a modified rule for large families.

c. Allow 50 percent of the otherwise allowable credit to be paid in advance based on info1mation on the previous year's income tax return.

20. The CTC would be made fully refundable, regardless of earned income, for all taxable years.

21. The advance payments of the CTC would be automatically deposited by electronic funds transfer into the recipient's bank or card account each month to the maximum extent possible. This disbursement method would help ensure the quick and secure delivery of advance CTC payments.

22. The proposal would be effective for taxable years beginning after December 31, 2021.

J. Tax Carried Interest Revision

1. A partnership is not subject to Federal income tax. Instead, an item of income or loss of the partnership retains its character and flows through to the partners who must include such item on their tax returns.

2. Generally, certain partners receive partnership interests in exchange for contributions of cash and/or property, while certain partners (not necessarily other partners) receive partnership interests, typically interests in future partnership profits referred to as "profits interests" or "carried interests ," in exchange for se1vices.

3. If and to the extent a partnership recognizes long-term capital gain, the partners, including partners who provide services, will reflect their shares of such gain on their tax returns as long-term capital gain.

4. If the partner is an individual, such gain would be taxed at the reduced rates for long-term capital gains. Gain recognized on the sale of a partnership interest, whether it was received in exchange for property, cash, or services, is generally capital gain.

5. Section 1061 of the Internal Revenue Code (Code) generally extends the long-term holding period requirement for certain capital gains resulting from partnership property dispositions and from partnership interest sales, from one year to three years.

6. Under current law, income attributable to a profits interest is generally subject to self- employment tax, except to the extent the partnership generates types of income that are excluded from self-employment taxes, e.g., capital gains, certain interest, and dividends.

7. A limited partner's distributive share is generally excluded from self-employment tax under section 1402(a)(l3) of the Code.

8. The proposal would tax as ordinary income a partner's share of income on an " investment services

partnership interest" in an investment partnership, regardless of the character of the income at the partnership level, if the partner's taxable income (from all sources) exceeds $400,000. Such income would not be eligible for the reduced rates that apply to long-term capital gains.

9. It In addition, the proposal would require partners in such investment partnership to pay self-employment tax on the income.

10. In order to prevent income derived from labor services from avoiding taxation at ordinary income rates, this proposal assumes that the gain recognized on the sale of an interest would generally be taxed as ordinary income, not as capital gain, if the partner is above the income threshold.

11. An investment services partnership interest would be defined as a profits interest in an investment partnership that is held by a person who provides services to the partnership.

12. A partnership is an investment partnership if substantially all of its assets are investment-type assets (certain securities, real estate, interests in partnerships, commodities, cash or cash equivalents, or derivative contracts with respect to those assets), but only if over half of the partnership's contributed capital is from partners in whose hands the interests constitute property not held in connection with a trade or business.

13. To the extent the partner who holds such an interest contributes "invested capital" , which is generally money or other property, to the partnership, and) such partner' s invested capital is a qualified capital interest(which generally requires that the partnership allocations to the invested capital be made in the same manner as allocations to other capital interests held by partners who do not hold an investment interest and the allocations to these non-investment interest holders are significant income attributable to the invested capital would not be recharacterized.

14. The portion of any gain recognized on the sale of an interest that is attributable to the invested capital would be treated as capital gain. Invested Capital would not include contributed capital that is attributable to the proceeds of any loan or advance made or guaranteed by any partner or the partnership (or any person related to such persons).

15. Any person who performs services for any entity and holds a "disqualified interest" in the entity is subject to tax at rates applicable to ordinary income on any income or gain received with respect to the interest, if the person's taxable income (from all sources) exceeds $400,000.

16. A "disqualified interest" is defined as convertible or contingent debt, an option, or any derivative instrument with respect to the entity (but does not include a partnership interest, stock in certain taxable corporations, or stock in an S corporation).

17. This is an anti-abuse rule designed to prevent the avoidance of the property through the use of compensatory arrangements other than partnership interests. Other anti-abuse rules may be necessary.

18. The proposal is not intended to adversely affect qualification of a real estate investment trust owning a profits interest in a real estate partnership.

19. The proposal would repeal section 1061 for taxpayers with taxable income (from all sources) in excess of $400,000 and would be effective for taxable years beginning after December 31, 2021.

K. Repeal of Gain Deferral on Like kind Exchanges

1. Currently, owners of appreciated real property used in a trade or business or held for investment can defer gain on the exchange of the property for real property of a "like kind." As a result, the tax on the gain is deferred until a later recognition event, provided that certain requirements are met.

2. The proposal would treat the exchanges of real property used in a trade or business (or held for investment) similarly to sales of real property, resulting in fewer distortions.

3. The proposal would allow the deferral of gain up to an aggregate amount of $500,000 for each taxpayer ($1 million in the case of married individuals filing a joint return) each year for real property exchanges that are like kind. Any gains from like-kind exchanges in excess of $500,000 (or $1 million in the case of married individuals filing a joint return) during a taxable year would be recognized by the taxpayer in the year the taxpayer transfers the real property subject to the exchange.

4. The proposal would be effective for exchanges completed in taxable years beginning after December 31, 2021.

L. Excess Business Loss Limitation Permanent

1. The American Tax Cuts and Jobs Act impose Section 461(l) of the Code to limit the extent to which Passthrough business losses can be used to offset other income. The excess business loss limitation was suspended as a result of Covid but will resume in 2021.

2. The excess business loss is defined as the excess of losses from business activities over the sum of gains from business activities and a specified threshold.

3. In 2021, the thresholds are $524,000 for married filing jointly and $262,000 for all other taxpayers.

4. The determination of the excess business loss limitation is made at the taxpayer level aggregating all business activities. Gains or losses attributable to trade or businesses of performing services as an employee are not considered.

5. The proposal would make this provision of the code permanent and eliminate the expiration of the provision after December 31, 2026. The legislation however would keep the current provision indexed for inflation under the American Tax Cuts and Jobs Act until December 31, 2026. As such the permanency would occur after December 31, 2026.

M. Tax Administration Matters

1. Increase in IRS enforcement and operational audit matters. The bill would propose a multiyear adjustment to discretionary spending fund for IRS enforcement and operations support accounts. This would amount to a budget adjustment of 417 million enforcement and compliance initiatives. The budget would also require a 72 ½ billion dollars. The budget proposal would also include 72.5 billion in mandatory funding specifically the additional resources will go toward enforcement against taxpayers with higher incomes. The legislation appears to be targeting those with taxable income in excess of $400,000 and not those below $400,000 of taxable income.

2. Comprehensive Financial Account Reporting. The budget proposal would create comprehensive financial account information reporting beyond merely Form 1099, man any financial tuitions to report data on financial counts in an information return format on an annual basis. The reporting would include gross inflows and outflows and breakdown of physical cash transactions with a foreign account and transfers to and from another account with the same owner regard list of whether it is a foreign account or not. The above reporting will not apply if the amount of net flow is $600 or less in nature. The proposal would expand Form 1099 – K to all payee accounts not only gross receipts but gross purchases, cash on hand, payments to and from foreign accounts and transfers between accounts. The provision would be extended to bit coins in crypto currencies as well as custodial accounts. This particular provision will be effective December 31, 2022 – good luck!

3. Increase Paid Tax Return Preparer Oversight. The proposal would increase compliance regarding those preparing tax returns so that they prepare them in a high-quality and professional manner. To that end, the proposal give the Sec. of the treasury authority to regulate all tax preparers and impose mandatory minimum competency standards irrespective of whether they are a CPA or not. The proposal would increase the penalty amount of the due diligence 5 to the greater $500 per return, or 100% of the income derived per return. This particular case by any coast preparers. Coast preparers are those were compensated preparing tax returns but refused to identify themselves on the returns. Technically, this would include a staff accountant working for CPA firm. The proposal would be effective for returns filed after December 31, 2021.

4. Expansion of Electronic Filing. The proposal would expand electronic filings of tax returns and information returns. It would allow the secretary of the Treasury broader authority to require electronic filing and facilitate IRS compliance risk assessment and allow for efficient administration. The proposal would quiet returns filed by taxpayers reporting large amounts or that are viewed as complex business entities including income tax returns of individuals with gross income of $4000 or more, income, estate or gift returns of all parties with gross income of $400,000 or more in any preceding year to file electronically on a mandatory basis. Proposal would also require partnership returns with assets or items of income of more than $10 million in any 3 preceding years to file electronically as well as partnership returns below those numbers that have 10 or more partners in the return. The proposal would expand electronic filing to REITs and insurance companies and corporate returns with 10 mean dollars or more in assets or more than 10 shareholders. Mandatory electronic filing would be required in association with Form 8918: Material Advisor Disclosure Statements; Form 88 86: Reportable Transaction Disclosure statement; Form 1042: Amended Withholding Tax Return for US Source Income of Foreign Persons and Form 8300: Report of Cash Payments over $10,000 Received in a Trade or Business. The proposal would also require preparers that prepare more than 10 corporations or partnerships to file them electronically. The proposal will be effective after December 31, 2021.

5. Expansion Broker Information Regarding Crypto Assets. Information reporting on Bitcoin the Crypto currency would be expended requiring brokers who report crypto assets to include reporting on beneficial owners of entities holding such assets. Specifically, the proposal would require brokers, including any such as US crypto asset exchanges and host wallet providers to intimately report information and report information on foreign owners. Reporting would include gross proceeds and other information as the Sec. deems necessary. The proposal would be implemented after December 31, 2022.

6. Centralized Audit Provisions. The proposal would amend Section 6226 and 641 of the code to

provide that any amounts associated with a net negative change in tax that exceeds the income tax liability of a partner in the reporting year is considered an overpayment and may be refunded.

7. Authorized Limited Sharing of business tax return information to measure the economy on accurate basis.

III. American Jobs Plan

A. Raise Corporate Income Tax Rate

1.The proposal would increase the income tax rate for C corporations from 21 percent to 28 percent.

2. The proposal would be effective for taxable years beginning after December 31, 2021. For taxable years beginning after January 1, 2021 and before January 1, 2022, the tax rate would be equal to 21 percent plus 7 percent times the portion of the taxable year that occurs in 2022.

3. The president's proposal indicates that Raising the corporate income tax rate is an administratively simple way to raise revenue in order to pay for the Administration's infrastructure proposals and other Jong-run drivers of spending growth. Furthermore, a corporate tax rate increase can increase the progressivity of the tax system and help reduce income inequality. Additionally, a significant share of the effects of the corporate tax increase would be borne by foreign investors. Therefore, some of the revenue raised by this proposal would result in no additional federal income tax burden to U.S. persons. Also, the majority of U.S. equity income is untaxed by the U.S. government at the individual level, so the corporate tax is a primary mechanism for taxing such capital income.

B. Impose A 15% Minimum Tax on Book Earnings of Large Corporations

1. According to the OMB, around 120 companies report pre-tax net income of $2 billion or more on their financial statements but a significant share of these firms pay zero income tax or receive tax refunds.

2. The proposal would impose a 15 percent minimum tax on worldwide book income for corporations with such income in excess of $2 billion. In particular, taxpayers would calculate book tentative minimum tax (BTMT) equal to 15 percent of worldwide pre-tax book income (calculated after subtracting book net operating loss deductions from book income), less General Business Credits (including R&D, clean energy and housing tax credits) and foreign tax credits.

3. The book income tax equals the excess, if any, of tentative minimum tax over regular tax. Additionally, taxpayers would be allowed to claim a book tax credit (generated by a positive book tax liability) against regular tax in future years but this credit could not reduce tax liability below book tentative minimum tax in that year.

4. The proposal would be effective for taxable years beginning after December 31, 2021.

C. Global Minimum Tax and Controlled Foreign Corporations

1. Any US shareholder of a controlled foreign corporation is taxed annually in the United States under the global minimum tax of Section 951A of the code with respect to all of its controlled foreign corporation

income. A US shareholder global movement tax inclusion is determined by combining its pro rata share of its tested income or loss of all of its CF C. 8 CFCs tested income is the excess of certain gross income of the CFC over deductions that are allocable to the CFC gross income test. The US shareholders global minimum tax inclusion reflects a reduction for a 10% return on certain foreign tangible property known as qualified business asset income that is generally eligible for depreciation, depletion or amortization.

2. Under Section 250, a US corporate shareholder is generally allowed a 50% deduction against its global minimum tax inclusion. This deduction results in a 10.5% effective US tax rate on a corporate US shareholders global minimum tax inclusion under the current 21% rate.

3. Certain foreign income taxes paid by controlled foreign corporation can be credited against the US corporate shareholders income tax liability attributable to its global minimum income tax inclusion. The allowable credit is limited to 80% of the amount of the Ford taxes properly allocable to a CFCs tested income taking account as part of the global minimum tax inclusion. In 2020 under final rags if the foreign effective rate on the gross income of a CFC that would be part of the global movement tax inclusion exceeds 90% of US corporate income tax rate the US shareholder of the CFC is permitted to exclude that gross income from its global minimum tax inclusion.

4. Likewise, certain dividends received by domestic corporation from foreign corporations are exempt from US tax by reason of 100% deduction allowed with respect to such dividends under Section 254A. Under this provision a domestic corporation deduction is equal to the foreign source portion of the dividend received from a specified 10% foreign owned corporation but only if the corporation is a US shareholder of a foreign corporation.

5. The proposal would make changes to the global minimum tax system. The exemption would be eliminated so that all US shareholders net CFC test income is subject to US tax. The Section 250 deduction would be reduced from 100% to 25%. Also, foreign tax credits would be eliminated under this provision. The proposed change would be effective after December 31, 2021.

D. Repeal of the Deduction for Foreign Derived Intangible Income

1. Currently, a deduction to domestic corporations is allowed on foreign derived intangible income. The deduction is 37.5% of the domestic corporations foreign derived intangible income for any year beginning after December 31, 2017 and before December 31, 2025.

2. A domestic corporations foreign derived intangible income is the portion of the intangible income is derived from exports. The calculation for the deduction is determined by taking a domestic corporation's overall income less certain exceptions and reducing it by a deemed tangible income return (generally 10% of the domestic corporations qualified business asset investment) to arrive at the deemed intangible income. The purpose of the deduction was to encourage research and development. The administration has determined that this is not an effective way of enhancing research and development and proposes to eliminate the deduction altogether after December 31, 2021.

E. Limit Foreign Tax Credits from Sale of Hybrid Entities

1. Currently, a corporation that makes a qualified stock purchase of a target corporation is allowed to elect under Section 3382 treat the stock purchase as an accepted purchase for US tax purposes.

2. Generally this is done by adjusting the proposed acquisition tax basis of the targets corporation's assets to fair market value.

3. A qualified stock purchase is any transaction in which the purchasing Corporation acquires least 80% of the stock of the target corporation.

4. Section 338(h0(16) provides that the deemed asset sale resulting from a Section 338 election is generally ignored in determining the source or character of any items for purposes of applying the foreign tax credit to the seller. Any gain recognized by the seller is treated as a gain from the sale of the stock of the target corporation.

5. In this case, or in the case of a foreign target corporation, the code section prevents the impeachment from the deemed asset sale from changing the character of the gain from capital to ordinary and permits the use of foreign tax credits to reduce or eliminate the residual US tax on the stock gate.

6. The proposed bill would eliminate this provision. In essence it would eliminate the character difference of the income in association with these transactions.

F. Tax Incentives for Locating Jobs and Business Activity in the United States and Remove Tax Deductions for moving Jobs Overseas

1. The proposal would create a new general business credit equal to 10 percent of the eligible expenses paid or incurred in connection with onshoring a U.S. trade or business. For this purpose, onshoring a U.S. trade or business means reducing or eliminating a trade or business (or line of business) currently conducted outside the United States and starting up, expanding, or otherwise moving the same trade or business to a location within the United States, to the extent that this action results in an increase in U.S. jobs.

2. While the eligible expenses may be incurred by a foreign affiliate of the U.S. taxpayer, the tax credit would be claimed by the U.S. taxpayer. If a non-mirror code U.S. territory (the Commonwealth of Puerto Rico and American Samoa) implements a substantially similar proposal, the U.S. Treasury will reimburse the U.S. territory for the new general business credits provided to their taxpayers pursuant to a plan. Furthermore, the U.S. Treasury will reimburse a mirror code U.S. territory (Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands) for the new general business credits provided to their taxpayers by reason of the enactment of the proposal.

3. In addition, to reduce tax benefits associated with U.S. companies moving jobs outside of the United States, the proposal would disallow deductions for expenses paid or incurred in connection with offshoring a U.S. trade or business.

4. For this purpose, offshoring a U.S. trade or business means reducing or eliminating a trade or business or line of business currently conducted inside the United States and starting up, expanding, or otherwise moving the same trade or business to a location outside the United States, to the extent that this action results in a loss of U.S. jobs. In determining the income of a U.S. shareholder of a controlled foreign corporation (CFC) on its global minimum tax inclusion or Subpart F income, no deduction would be allowed in determining such amounts for any expenses paid or incurred in connection with moving a U.S. trade or business outside the United States.

5. Expenses paid or incurred in connection with onshoring or offshoring a U.S. trade or business are limited solely to expenses associated with the relocation of the trade or business and do not include capital expenditures or costs for severance pay and other assistants to displaced workers.

G. Expand Low Income Housing Tax Credit

1. The proposal would create an additional type of HCDA, called an "Opportunity HCDA" (OHCDA). HCAs would have a separate ceiling for OHCDAs from their existing allocation ceilings of HCDAs. HCAs would continue to receive annual infusions of regular HCDAs, without change to the allocation and ceilings for those HCDAs under current law.

2. Housing Credit Agencies would be required to allocate the majority of their OHCDAs to projects in Census Tracts of Opportunity (CTOs). The proposal would define a CTO as a tract which is entirely in one or more DDAs or which has low poverty or other advantages, as determined by the Secretary of the Treasury in consultation with HUD.

3. The proposal would be effective for calendar years beginning with 2022. The restrictions on use of OHCDAs would last until all OHCDA ceilings (including unused and returned amounts) had been allocated or had expired. The increased basis boost for buildings in DDAs with allocations would be permanent.

H. Neighborhood Homes Investment Tax Credit

1. The proposal would create a new tax credit-the Neighborhood Homes Investment Credit (NHIC). The credit would support new construction for sale, substantial rehabilitation for sale, and substantial rehabilitation for existing homeowners. The constructed or rehabilitated residence must be a single-family home (including homes with up to four dwelling units), a condominium, or a residence in a housing cooperative.

2. For each year between 2022 and 2031, inclusive, a specified amount of potential NHICs would be allocated to the 50 States, the District of Columbia, and U.S. possessions (collectively, States). The amount for 2022 would be $2 billion, and this amount would be indexed for inflation for the years 2023 to 2031.

3. Each State would create a new agency (or identify a pre-existing agency) to serve as the Neighborhood Homes Credit Agency (NHCA), with authority to allocate potential NHICs to project sponsors. Sponsors seeking potential NHICs would apply on a competitive basis by providing candidate plans for construction or rehabilitation, generally in one or more NHIC- Qualified Neighborhoods. The NHCA would be responsible for monitoring compliance with all provisions governing NHICs and for reporting violations to the Internal Revenue Service.

4. Each NHCA would establish a qualified allocation plan (QAP) to guide it in allocating potential NHICs among competing proposals. Every QAP would be required by statute to contain certain factors and preferences.[1] The Secretary could require additional attributes, and each NHCA could add further criteria to address local conditions. NHCAs would also set standards for development costs, building quality, and developer fees.[2]

5. Each NHCA would be prohibited from allocating more potential NHICs than are reasonably expected to be necessary for financial feasibility. If unforeseen matters render an allocation inadequate, the taxpayer may seek an additional allocation. If potential NHICs remain after the sponsor and the sponsor's

investors have received their NHICs from a custodian or rehabilitation, the unused potential credits would revert to the NHCA for future allocation. The sponsor returning the potential NHICs would receive a preference in the competition for the returned credits.

6. A taxpayer may claim NHICs only after construction, inspection, and owner occupancy. In the case of a home to be sold to a qualifying new, purchasing owner-occupant, the credit is claimed when that owner-occupant begins residence. In the case of continuing qualifying owner- occupants who are rehabilitating their homes, the credit is claimed when construction has been completed and inspected and the owner-occupant is in residence.

7. NHICs can be claimed only if the owner-occupant after construction or rehabilitation is a NHIC-Qualified Owner. NHIC-Qualified Owners are those who meet criteria to be established by the Secretary and whose household income does not exceed 140 percent of area/State median income, adjusting for household size as determined by the Secretary of HUD. The method for determining household income shall be established in consultation with HUD. If, within five years of the date of qualification for the NHIC, the purchasing or rehabilitating owner/occupant ceases to the residence's owner/occupant, a p01iion of the claimed NHIC amount would
generally have to be repaid to the NHCA for use in activities that further the purposes of the NHIC.

8. The amount of the credit is computed as development costs less the sales price or, in the case of a homeowner rehabilitation, less the amounts paid by the homeowners. The amounts that may actually be claimed , however, are subject to several limits.

9. The following principles contribute to determining the amount of credit:

- *Necessity:* When sales proceeds meet or exceed development costs, no credit may be claimed.
- *Limited subsidy:* The credit may not exceed 35 percent of the lesser of development costs or 80 percent of the national median sales price for new homes, nor may it exceed the excess of development costs over sales proceeds.
- *Skin in the game:* The taxpayer always has an incentive to sell the residence for a higher sales price. That is, an increase in sales price can result in an increase in the taxpayer's after-tax income. This determination considers both reduction in the credit and reduction in the taxpayer's tax loss on the property. A similar consideration applies to receipt of owner payments toward rehabilitation of an owner-occupant's home.
- *No cliffs:* There is no point at which an additional dollar of sales proceeds precipitously reduces the credit to zero. Instead, the credit smoothly phases out such that it reaches zero at the maximum amount of permitted sales proceeds.

10. The proposal would apply to allocations of potential NHICs to and by NHCAs in calendar years after 2021. Credits could be claimed in taxable years ending after December 31, 2021.

I. New Market Tax Credit Made Permanent (NMTC)

1. The proposal would permanently extend the NMTC, with a new allocation for each year after 2025. These annual amounts would be $5 billion, indexed for inflation after 2026. The proposal would be effective after the date of enactment.

J. Energy Credits

1. Renewable Electricity Production Credit. This is a general business tax credit associated with kilowatt hours of electricity produced from qualified energy resources at a qualified facility. The electricity must be sold to an unrelated 3rd party and a taxpayer can claim the credit for 10 year timeframe of the date the facility was placed in service. The tax credit rate is 1.5 cents per kilowatt hour of electricity adjusted annually for inflation. The credit applies to qualified energy resources including wind, open and close loop biomass, geothermal energy, solid waste, hydropower, marine renewable energy. The credit expired for construction after 2021. The proposal is to extend the credit after December 31, 2021 before June 1, 2027. After January 1, 2027 the credit rate will be phased down to 0/5 years reduced at a 20% threshold for facilities commencing construction after December 31 .26 and before June 1, 2028.

2. Renewable Energy Investment Credit. Currently, this provision provides investment to act credit for certain energy property, including solar and geothermal electrical property, qualified fuel cell power plants, stationary microturbine power plants, geothermal heat pumps, small wind property, water energy recovery property and combined heat and power property. The credit is calculated as a percentage of the basis of the property placed in service during the taxable year. Generally the credit is 30% for property that begins construction before Gerry one, 2020, 26% for property that begins construction after December 31, 2019 and before January 1, 2023. The credit will be reduced to 22% for property that begins construction after December 31, 2022 and before June 1, 2024 where it is placed in service before January 1, 2026.. The current provision does not allow a taxpayer to take the renewable electricity production credit and this credit simultaneously and that will continue. The proposal would extend the credit and expanded to include standalone energy storage technology that stores energy for conversion to electricity and has a capacity of not less than 5 kW hours. The credit would be restored to the 30% rate for eligible property begins construction after December 31, 2021 and before June 1, 2027. After 2026, the credit will begin to phase down to zero over a five-year timeframe.

3. Residential Energy Efficient Credit. Presently, this is a nonrefundable credit for the purchase of certain e residential energy efficient property, including solar electrical property, solar water heaters, fuel-cell property, geothermal heat pumps, small wind turbines and biomass fuel property installed on the US residents. Currently, special rules for fuel-cell property require the installation at the taxpayer's residence and limit the credit to $500 with respect to each half kilowatt of capacity of the qualified fuel-cell property. The credit is equal 26% for property placed in service after December 31, 2019 and before January 1, 2023. For all of 2023, the credit will drop to 22% and then will expire after 2024. The proposal is to extend the credit and expanded to include qualified battery storage technology of at least 3 kW hours of capacity installed at the residence. Beginning in 2022, the credit would go back to 30% for property placed in service after December 31, 2021 and before January 1, 2027. After that, the credit be phased out over the next 5 years reduced by 20% after that time frame. The proposal will be effective after December 31, 2021.

4. Tax Credit for Electricity Transmission Investments. The proposed new credit equal to 30% of the taxpayer's investment in qualifying electric power transmission property would be allowed. Qualified electric power transmission property would include overhead, submarine and underground transmission facilities meeting various criteria including a minimum voltage of 275 kW and a minimum transmission capacity of 500 MW. The proposal will be effective for property placed in service after December 31, 2021

and before January 1, 2032.

5. Tax Credit for Heavy and Median Duty Zero Emission Vehicles. The proposal would provide a business tax credit for new medium- and heavy-duty zero- emission vehicles, including battery electric vehicles and fuel cell electric vehicles, to promote consumer choice and vehicle adoption. These vehicles would be in Classes 3 through 8, as defined by the Federal Highway Administration's vehicle classification system. Similar to the section 30D tax credit, vehicle manufacturers would submit to the Internal Revenue Service the medium- and heavy-duty vehicles eligible for the credit. Additionally, the vehicle must be acquired for use or lease by the taxpayer and not for resale, the original use of the vehicle must commence with the taxpayer, and the vehicle must be used predominantly in the United States. Compliance with applicable Clean Air Act standards and federal motor vehicle safety standards would be required for a vehicle to be eligible for the tax credit.

For each vehicle class, the tax credit would be a set amount per vehicle as follows:

- For a Class 3 vehicle, the credit is:
  - $25,000 per vehicle purchased between January 1, 2022 and December 31, 2024.
  - $20,000 per vehicle purchased between January 1, 2025 and December 31, 2025.
  - $15,000 per vehicle purchased between January 1, 2026 and December 31, 2026.
  - $10,000 per vehicle purchased between January 1, 2027 and December 31, 2027.
- For Class 4-6 vehicles, the credit is:
  - $45,000 per vehicle purchased between January 1, 2022 and December 31, 2024.
  - $40,000 per vehicle purchased between January 1, 2025 and December 31, 2025.
  - $35,000 per vehicle purchased between January 1, 2026 and December 31, 2026.
  - $30,000 per vehicle purchased between January 1, 2027 and December 31, 2027.
- For Class 7-8 short-haul vehicles, the credit is:
  - $120,000 per vehicle purchased between January 1, 2022 and December 31, 2023.
  - $100,000 per vehicle purchased between January 1, 2024 and December 31, 2024.
  - $80,000 per vehicle purchased between January 1, 2025 and December 31, 2027.
- For Class 7-8 long-haul vehicles,the credit is:
  - $120,000 per vehicle purchased between January 1, 2022 and December 31, 2024.
  - $100,000 per vehicle purchased between January 1, 2025 and December 31, 2027.

Taxpayers would have the option to elect a cash payment in lieu of a general business credit (i.e., a direct pay option). The proposal would be effective after December 31, 2021.

6. Nonbusiness Energy Property. Section 25C of the Internal Revenue Code (Code) provides a tax credit for certain expenditures to improve the energy efficiency of a taxpayer's principal U.S. residence. Two types of property qualify for the credit: "qualified energy efficiency improvements" and "residential energy property expenditures." The 25C tax credit is equal to the sum of ten percent of the cost of qualified energy efficiency improvements and eligible costs for residential energy property expenditures, subject to a limit of a $500 nonrefundable tax credit for the taxpayer's lifetime. The 25C tax credit will expire December 31,2021. The proposal would extend the section 25C tax credit five years and increase the lifetime limit to $1,200 for property placed in service after December 31, 2021 and before January 1, 2027. For qualified energy efficiency improvements, the credit rate would be increased to 15 percent and the credit amounts for certain types of residential energy property expenditures would also be increased. Also, the proposal would modify the definitions of eligible qualified energy efficiency improvements and residential energy property

expenditures and update the required energy efficiency standards for such property. Roofs, advanced circulating fans, and certain equipment, such as water heaters and furnaces, powered by fossil fuels, would no longer be eligible for the tax credit; however, certain geothe1mal and load center equipment would be eligible for the tax credit. The proposal would be effective after December 31, 2021

7. Construction of new energy efficient homes. The proposal would increase the tax credit here for an energy efficient home from $2000 to$2500 and extend the credit to December 31, 2026. It would also modifies expend the dwelling units eligible for the credit. For new energy efficient homes, the required energy savings percentage would go from 50% to 60% under the 2006 IECC standards. The Energy Star homes were also be eligible for the credit as well as dwelling units with annual heating including consumption of at least 15% below the annual energy consumption level of a comparable dwelling under the 2018 IECC standards.

8. Energy efficient commercial buildings. Section 179D of the Code provides a tax deduction for energy efficient commercial building property placed in service during a taxable year. Energy efficient commercial building property is defined as property to which depreciation or amortization is allowable and meets certain building energy efficiency standards established by the American Society of Heating, the proposal would increase the maximum deduction per square foot from a dollar $83 for qualified property placed in service after December 31, 2021. The addition, the partial deduction rate would increase from $0.60 to a dollar per square foot for qualified property placed in service after December 31, 2021. The required energy efficiency standard would be adjusted from 50% to 30%. The proposal would be effective after December 31, 2021.

9. Mechanical Insulation Labor Costs Tax Credit. The proposal will create a new Gen. business tax credit in association with qualifying mechanical insulation labor cost. The credit would be 10% of the mechanical insulation labor costs paid or incurred by the taxpayer during the taxable year. Mechanical insulation labor cost include the labor cost of installing insulation property, materials, facing and accessory products for a depreciable mechanical system placed in service in the United States and that satisfies energy loss reduction. The credit will be available for costs incurred after December 31, 2021 through December 31, 2016.

10. Disaster Mitigation Tax Credit. The proposal would provide a nonrefundable tax credit for homeowners and businesses equal 25% of the qualified disaster mitigation expenditures capped at $5000. For individuals filing individual tax return, the credit would phaseout and adjusted gross income of $85,000 for single and $170,000 for joint filers. For businesses, the credit would phaseout when the business has gross receipts above 5 mean dollars. The credit would be the homeowners and businesses in areas where a federal declared disaster area has been made within the preceding years or an acreage adjacent to a federal disaster declaration made within the same time..

K**. Other Energy Deduction Matters**

1. Elimination of Intangible Drilling Cost and Working Interest. The proposal would eliminate intangible drilling costs and working interest to passive loss rules allowing passive investors and gas to deduct losses in excess of income in the current year. The effective date is December 31, 2021

2. Percentage Depletion. Discussion exists that would also eliminate percentage depletion. The effective date will be December 31, 2021.

3. Capital gains treatment for royalties. Royalties received on the disposition of coal or lignite generally qualify for treatment as long- term capital gain, and the royalty owner does not qualify for percentage depletion with respect to the coal or lignite. This treatment does not apply unless the taxpayer has been the owner of the mineral in place for at least one year before it is mined. Outside of the current proposals there's discussion on a limited accrued capital gain treatment of world on the disposition of coal other energy related products on any subsequent disposition.

IV. General Business Tax Issues

A. Section 179

1. For 2021, the aggregate cost of any Section 179 property the taxpayer elects to treat as an expense cannot exceed $1,050,000. The purchase limitation resulting in the expensing be reduced fix and act purposes exceeding $2,620,000. (Rev. Proc. 2020 – 45

2. Under Section 79(b)(2), the $2,620,000 purchase limitation is reduced (but not below zero) by the amount the cost of property placed in service during the 2020 taxable year exceeds $2,590,000. The Act changes the definition of *"qualified real property"* (for which treatment as section 179 property can be elected by substituting "qualified improvement property" for "qualified leasehold improvement property," "qualified retail improvement property" and "qualified restaurant property" as property included in the definition of "qualified real property" and by adding, as included property the following:

- roofs;
- heating, ventilation and air-conditioning property (HVAC property);
- fire-protection and alarm systems; and security systems.

3. In addition, the definition under Section 179 with respect to property also is expanded to include depreciable tangible property use predominately to furnish lodging or in connection with the furnishing of lodging. This would include lodging facilities such as beds, other furniture, refrigerators, ranges and other equipment used in a living quarter of a lodging facility. This would also include apartments, house, dormitory, hotels were sleeping accommodations are provided and rented out or leased out. This would appear to mean that Section 179 could apply to rental properties on a Schedule E property.

4. The changes to the definition of qualified real property are an expansion of what property qualifies because "qualified improvement property" will include property without regard to what business it is used in or whether the improved space is leased space. Also, qualified leasehold improvement property and qualified retail improvement property must be placed in service at least three years after the building that they improve was placed in service.

5. In addition, and as previously stated qualifying roofs, HVAC property, fire protection and alarm systems and security systems that are structural components of buildings are treated as qualified real property going forward even if they are not qualified improvement property

6. The expansion of qualified property also pertains to restaurant buildings and some restaurant improvements. However, it does not include the enlargement of the restaurant building under the definition.

7. Qualified improvement property is any improvement to an interior portion of a building which is non-residential real property if the improvement is placed in service after the date the building was first placed in service, except for any improvement for which the expenditure is attributable to:

- enlargement of the building,
- any elevator or escalator or
- the internal structural framework of the building.

8. **CAA 2021. Energy Efficient Commercial Property Deduction - §179D**

a. Section 179D provides an election under which a taxpayer can take an immediate deduction (it's not a credit) equal to energy-efficient commercial building property expenditures made by the taxpayer. However, the deduction is limited to an amount equal to $1.80 per square foot of the property for which such expenditures are made. This provision was scheduled to expire for taxable years beginning after Dec. 31, 2020. However, the TCDTR made the deduction permanent (§179D(h)).

B. Bonus Depreciation

1. The Tax Cuts and Jobs Act extends the deadline for placing into service qualified property eligible for bonus depreciation and AMT relief from December 31, 2019 (December 31, 2020 for certain long-production-period property and aircraft) to December 31, 2026 (December 31, 2027 for certain long-production-period property and aircraft). In essence the Act changes the placed in service requirement to provide that qualified property has to be placed in service by the taxpayer before January 1, 2027 except that aircraft and long production which has to be placed in service by January 1, 2028. These regs were finalized in September of 2019.

2. The Act increases bonus depreciation for qualified property from 50% to 100% bonus depreciation and cancels the phasedown of bonus depreciation that was to begin in 2018 with a reduction to 40%.

3. The increase to bonus depreciation to 100% pertains to qualified property in the applicable percentages are subject to a revised phasedown schedule that is shown below:

- 100% for property placed in service after September 27, 2017 and before January 1, 2023;
- 80% for property placed in service during calendar year 2023;
- 60% for property placed in service during calendar year 2024;
- 40% for property placed in service during calendar year 2025;
- 20% for property placed in service during calendar year 2026.

Note: The language in the statute with respect to place in service means both acquired and placed in service. This is particularly important with respect to the 100% in the first year. In addition, the phasedown also applies to long-term production property and aircraft.

4 With respect to specified plants, the 100% bonus depreciation applies as well as the phasedown percentages above. Placed in service under this section applies to planted or grafted after September 27, 2017 and before January 1, 2027

C. Technical Correction Regarding Bonus Depreciation on Qualified Improvement Property

1. The Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97) amended Section 16 to allow 100% additional first-year depreciation deductions for certain qualified property. The TCJA also eliminated pre-existing definitions for qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property.

2. The classification of improvements that used to fit into those three categories are now determined under the definition for the category called qualified improvement property and general 15-year recovery period was intended to have been provided for such property.

3. However, that specific recovery period failed to be reflected in the statutory text of the TCJA. As such, the IRS took the position that qualified improvement property falls into the 39-year recovery period for nonresidential real property making the property not eligible for the hundred percent bonus depreciation..

4. The CARES Act provides a technical correction to the TCJA, and specifically designates qualified improvement property as 15-year property for depreciation purposes. (See Section 168 (e((3)(E)(vii), as amended by Act Sec. 2307(a)(1)(A)) and thus makes such property eligible for 100% Bonus Depreciation. QI property.

5. The Act also was change to assigns 20-year class life for the Alternative Depreciation System (ADS). (See Section 168 (g)(3)(B), as amended by Act Sec. 2307(a)(3)(B))

6. The effective date of the change made by Act Sec. 2307 are effective for property placed in service after December 31, 2017. (Act Sec. 2307(b)) as such, it is the author's opinion that amended returns for property placed in service after this time may be under consideration.

C. Notice 2021-25: Temporary 100% Deduction for Business Meals Certain Expenses

1. The IRS announced in this notice a temporary 100% deduction for expenses paid or incurred after December 31, 2020 and before January 1, 2023 for food or beverages provided by a restaurant. This is pursuant to the Taxpayer Certainty and Disaster Tax Relief Act of 2020 that provides an exception to the general 50% limitation for food and or beverage expenses provided by restaurants.

2. The deduction is allowed so long as the business owner of the restaurant or an agent thereof is present when the food or beverages are provided and that the expenses are not lavish or extravagant in nature.

3. Under the notice, the 50% limitation does not apply to the amount of any deduction otherwise allowable for any expense paid or incurred after December 31, 2020, and before January 1, 2023, for food or beverages provided by a restaurant.

4. For these purposes, the term "restaurant" means a business that prepares and sells food or beverages to retail customers for immediate consumption, regardless of whether the food or beverages are consumed on the business's premises. It does not include a business that primarily sells pre-packaged food or beverages not for immediate consumption—for example, a grocery store; a specialty food store; a beer, wine or liquor store; drug store; a convenience store; a newsstand; or a vending machine or kiosk. The 50% limitation continues to apply to the amount of any deduction otherwise allowable to the taxpayer for any expense paid or incurred for food or beverages acquired from such a business (unless another exception in section 274(n)(2) applies to such expense).

5. In addition, an employer may not treat any of the following as a restaurant for purposes of section 274(n)(2)(D):

- Any eating facility located on the business premises of the employer and used in furnishing meals excluded from an employee's gross income under section 119
- Any employer-operated eating facility treated as a de minimis fringe under section 132(e)(2), even if such eating facility is operated by a third party under contract with the employer

6. Notice 2021 – 25, 2021 – 17 IRB. The IRS has released a notice to set out what is considered a restaurant for purposes of the 100% deduction for food and beverage expenses provided by a restaurant in 2021 and 2022.

a. The term restaurant means a business that prepares and sells food or beverages to retail customers for immediate consumption, regardless of whether the food or beverages are consumed on the business's premises.

b. A restaurant does not include a business that primarily sells pre-packaged food or beverages not for immediate consumption, such as a grocery store; specialty food store; beer, wine, or liquor store; drug store; convenience store; newsstand; or a vending machine or kiosk.

c. The 50% limitation continues to apply to the amount of any deduction otherwise allowable to the taxpayer for any expense paid or incurred for food or beverages acquired from such a business.

d. In addition, an employer may not treat as a restaurant any eating facility located on the business premises of the employer and used in furnishing meals excluded from an employee's gross income under Section 119, or any employer-operated eating facility treated as a de minimis fringe under Section 132(e)(2), even if such eating facility is operated by a third party under contract with the employer.

D. Business Interest Expense Limitation

1. Under the Tax Cuts and Jobs Act, for tax years beginning after 2017 the deduction for business interest expense cannot exceed the sum of the taxpayer's:

- Business interest income for the tax year;
- 30% of adjusted taxable income (ATI) for the year, or zero if the taxpayer's ATI is less than zero; and
- Floor plan financing interest expense (Sec. 163(j); Prop. Regs. Sec. 1.163(j)-2(b)).

2. Proposed regulations providing guidance for the Sec. 163(j) limitation were issued in November 2018 (REG-106089-18). These proposed regulations would be effective when finalized. However, taxpayers and their related parties may apply these rules to tax years beginning after 2017, if they are applied consistently.

3.The Section 163(j) limitation applies to any interest properly allocable to a trade or business. For corporations that are partners in a partnership (or members of a limited liability company (LLC) taxed as a partnership), the limitation applies first at the partnership level and again at the partner and shareholder level. It applies to both active and passive activities, but a rental real estate business can elect out.

4.The Sec. 163(j) limitation applies only to business interest expense that would otherwise be deductible in the current tax year (Prop. Regs. Sec. 1.163(j)-3(b)(1)).

5. The CARES Act temporarily increase the net business interest deduction limit from 30% of Adjusted taxable income to 50% for tax years beginning in 2019 or 2020.

V. Alter Ego and Liability for Corporations Debt

A. Background

1. Generally, a corporation, and not its shareholders, is liable for its own debts. Under state (Texas) law, a court may ignore the corporate form when the corporation is the alter ego of its owners or shareholders.

2. The alter ego principle applies when there is such unity between corporation and individual that the separateness of the corporation has ceased and holding only the corporation liable would result in injustice.

3. Determining the existence of such unity is shown from the total dealings of the corporation and the individual, including the degree to which corporate and individual property have been kept separately, the amount of financial interest, ownership and control the individual maintains over the corporation, and whether the corporation has been used for personal purposes. (See Western Horizontal Drilling, Inc. v Jonnet Energy Corp., (CA 5 1994) 11 F3d 65)

4. A court will analyze various factors to determine if a corporation's owner is its alter ego and look at the totality of the circumstances. (See Century Hotels, (CA 5 1992) 69 AFTR 2d 92-543)

5. Under Section 6321, the amount of a person's tax liability is a lien in favor of the government on all property belonging to that person. The government can levy on assets held in an alter ego's name in satisfaction of a corporation's liability. (See G.M. Leasing Corp., (S Ct 1977) 39 AFTR 2d 77-475)

Example

Lothringer, (DC TX 8/11/2020) 126 AFTR 2d 2020-5663. Arthur Lothringer formed Pick-Ups, Inc. as a company selling and financing used pickup trucks. He was the sole officer, director, and shareholder of the corporation. Pick-Ups did not file federal tax returns for 2006. IRS prepared a substitute 2006 return and assessed a deficiency against Pick-Ups consisting of tax and penalties. In 2011, Pick-Ups filed a petition in Tax Court contesting the 2006 liability. When Pick-Ups failed to prosecute its petition, the Tax Court dismissed it and entered an order finding Pick-Ups had a 2006 tax deficiency of $611,000. This decision was not appealed. Beginning in 2014, IRS filed notices of federal tax lien (NFTLs) on property owned by Pick-Ups and by Mr. Lothringer (as alter ego for Pick-Ups), including two contiguous parcels of real estate in San Antonio, Texas, one of which was Lothringer's principal residence.

The IRS filed a complaint in federal district court to reduce to judgment Pick-Ups' 2006 income tax liabilities and to determine that Pick-Ups is the alter ego of Lothringer and impose the tax liabilities upon him. The district court found that all four conditions for claim preclusion were met: Pick-Ups and the government were the parties in both the Tax Court and the district court; the Tax Court was a court of competent jurisdiction; the Tax Court's decision was a final decision on the merits; and the same claim, the correctness of the 2006 income tax assessment, was at issue in both proceedings. Therefore, Pick-Ups was precluded from challenging the 2006 assessment in district court.

The Service IRS pointed to a host of evidence demonstrating that Mr. Lothringer was the alter ego of Pick-Ups including the fact that Mr. Lothringer was the only shareholder, officer, director, and owner of Pick-Ups, he exercised complete dominion and control over Pick-Ups, he organized the entity. Mr. Lothringer failed to observe certain corporate formalities, including failing to file federal income tax returns and Texas Franchise Tax Public Information Reports for various years. Mr. Lothringer assumed a $52,000 debt of Pick-Ups owed to an individual.

The Service also produced evidence of multiple checks written from the Pick-Ups account to Mr. Lothringer's wife, despite the fact that she was not an employee of Pick-Ups. Mr. Lothringer did not dispute that these funds were used for personal or household expenses but argued that they qualified as either "constructive dividends" or "a non-taxable return of capital."

The court determined that there was such unity between corporation and Mr. Lothringer that the separateness of the corporation ceased and that holding only the corporation liable for the taxes would result in injustice.

References

The American Rescue Plan Act of 2021, P.L. 117-2.

The Coronavirus Preparedness and Response Supplemental Appropriations Act, PL 116 – 123, March 6, 2020

The Coronavirus Aid Relief, And Economic Security (CARES) Act, PL 116 – 123, Sections 1106 et al, March 27, 2020

The Taxpayer First Act of 2019, P.L. 116-25

H.R. 1, The "Tax Cuts and Jobs Act", P.L. 115-97.

H. R. 1892. Bipartisan Budget Act of 2018, P. L. 115 – 123

H. R. 1625, Consolidated Appropriations Act, 2018, P. L. 115 – 141