

# Chattanooga Tax Practitioners



## President Biden's Tax Plans?

General Explanation of Administration's Fiscal Year  
2022 Revenue Proposals

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# American Families Plan – Strengthen Taxation of High-Income Taxpayers (pg. 60)

- Increase top marginal rate for high-income individual taxpayers
- Reform taxation of capital gains
- Rationalize Net Investment Income and Self-Employment Contribution Act Taxes
- Tax profits interest as ordinary income
- Repeal like-kind exchange for real estate
- Make permanent excess business loss limitation of non-corporate taxpayers
- Program Integrity Allocation Adjustment and Provide additional funding for IRS
- Comprehensive financial account reporting to improve compliance
- Increase oversight of paid return preparers
- Expand broker information reporting with respect to Crypto assets
- Non-compliance with listed transactions
- 2• Limited sharing of business tax return information to measure the economy

# Top Marginal Rate for High Income Taxpayers

- Repeal Trump tax cut and raise top rate to 39.6%

	<b>Proposed Threshold</b>	<b>Current 37% Threshold</b>
Married Filing Jointly	\$509,300	\$628,300
Unmarried	\$452,700	\$523,600
Head of Household	\$481,000	\$523,600
MFS	\$254,650	\$314,150

- Penalizes MFJ by reducing the amount in the 35% bracket while increasing for all other classifications. Unmarried and head of household start the same place – perhaps reflecting increased credits applicable to children.
- Across the board tax increase for many individuals now in the 35% bracket.
- Increase threshold for inflation after 2022
- Effective for tax years beginning after Dec. 31,2021



# Capital Income (LTCG and Qualified Dividends)

- Reform to taxation of capital gains and qualified dividends will reduce economic disparities among Americans and raise needed revenue.

## RATE

- LTCG and qualified dividends of taxpayers with AGI of more than \$1 million taxed at ordinary rates (39.6%) plus net investment income (3.8% additional)
- Only to extent income exceeds \$1 million (\$500,000 MFS)
- Effective date April 9, 2021 when US Department of Treasury Office of Public Affairs released a statement by Secretary Yellen on President Biden's FY 22 Discretionary Funding Request.

# Capital Income – New Realization Events

- Transfers of appreciated property by **gift or death** as realization events
  - Deceased owner realizes capital gain at time of the transfer – excess of FMV over basis on decedent's date of death
    - Taxable on estate return on separate capital gains return
    - Deductible to reduce estate tax
    - Capital loss and carryforwards on death transfers useable on gain and up to \$3,000 ordinary income
  - For gifts, donor gain excess of FMV of asset over basis
    - Taxable on gift tax return or separate capital gains return
    - Does not say taxpayer can use loss carryover or even net gain on gifts against loss (does say on death)

# Capital Income – New Realization Events (Cont'd)

- Gain recognized by a Trust, Partnership, or other Non-corporate entity that owns property if property has not been subject of a recognition event within the prior 90 years.
  - Testing period begins January 1, 1940 (first recognition event Dec. 31, 2030).
  - Measure time property in trust or other non-corporate entity and not subject to a recognition event.
- Transfers of property into, and distributions in kind from, a trust, partnership, or other non-corporate entity, other than a grantor trust deemed to be wholly owned and revocable by donor are deemed recognition events. (page 62)
  - Context is by gift or death.
  - I am unclear on the scope of transfers to and from partnerships.
- Owner of revocable grantor trust recognize gain on unrealized appreciation in any asset distributed from the trust to any persons other than deemed owner or U.S. spouse unless in discharge of debt.
  - Unrealized appreciation of assets in grantor trust taxable at deemed owner's death or trust becomes irrevocable.

# Exclusions from Gain Realization

- Transfers by decedent to US Spouse or charity which will get carry over basis (does not address gifts to spouse but presumably that is exempt)
  - Gain recognized when surviving spouse disposes of assets or dies
  - Appreciated property to charity not generate gain
- Split-interest trust (lead trusts and remainder trusts) generates taxable capital gain with exclusion for charity's share of gain based on share of value transferred as determined for gift or estate tax purpose
  - Does not address the situation where the spouse retains the non-charitable interest
- Excludes from recognition gain on tangible personal property such as household furnishings and personal effects (excluding collectables)
- \$250,000 per person exclusion on principal residence apply to all residences and portable to decedent's surviving spouse (\$500,000 total)
- 1202 exclusion will continue

# Exclusions from Gain Realization (Cont'd)

- \$1 million per-person exclusion from recognition of unrealized capital gains on property transferred by gift or held at death (indexed for inflation)
- Basis of inherited property is FMV and basis of gifts whose gain is taxed is FMV
- Basis of gift shielded by exclusion is basis of donor (carry-over basis on the 1 million)
- Payment of tax on appreciation of certain (unspecified) family-owned and operated business not due until (i) interest in business sold; (ii) ceases to be family owned and operated
- 15 year fixed rate payment plan on appreciated assets transferred at death (other than liquid assets) and other businesses for which deferral election is made
  - IRS authorized to require security any time a reasonable need for security to continue deferral



# New Rules for Valuation

- “A transfer would be defined under the gift and estate tax provisions and would be valued using methodologies used for gift or estate tax purposes. However for purposes of the imposition of this tax (capital gain) ...” page 63
- Transferred partial interest (by gift or death) would be valued at its proportional share of the FMV of the entire property for purposes of the capital gains tax.
- Creates a disconnect between an actual sale and a deemed sale.
- Perhaps creates a disconnect between the value for estate and gift tax purposes and the no discount methodology for deemed sale.

# While Many Consider the Preceding New, Much of it is from Obama's Green Book Proposals

- Obama proposed gifts and estate as recognition events
- Recognition of gain on transfers to and from trusts as well as periodic recognition of gain for assets held in trusts and other non-corporate vehicles reaching a maximum holding period was not in Obama's plan.
- Many of the Biden's plan provisions can be found in legislation introduced by Senator Van Hollen and others in March 2021 called the Sensible Taxation and Equity Promotion Act (STEP) of 2021.
  - Look to this legislation as the beginning of the drafting
  - There are differences between STEP Act and Biden's proposals

# Effective Date of CG on Death, Gift and Property Owned by Trusts, Partnerships and other Non-Corporate Entities

- The effective date of capital gain recognition on death or gifts or property owned by trusts, partnerships and other non-corporate entities is:
  - Decedents dying after Dec. 31, 2021
  - Property owned by trusts, partnerships and other non-corporate entities on January 1, 2022.

# Not in Proposal

- Does not reduce the estate tax exemption or GST exemption.
- Does not reduce the gift tax exemption
- Remember there is a reduction in the estate and gift tax exemption in 2026



# State Collateral Effect of Deemed Dispositions

- Since most states with an income tax use federal taxable income as a starting point, the imposition of the capital gains at death, gifts or distributions effectively creates a form of state death and gift tax in many states.

# Death Tax Effect

- Assume zero basis property with a fair market value of \$100,000 that is subject to deemed sale tax and the estate tax.
- First \$100,000 x 43.4% (39.6%+3.8%)
  - Deemed LTCG Tax OF \$43,400
  - Applies to estates with gain over \$1,000,000 (\$2,000,000 if married and second to die with original \$1,000,000 unused)
- Second remainder subject to 40% estate tax
  - $\$56.60 \times 40\% = \$22.64$  of estate tax
  - Result, property going to heirs = \$33.96
  - Death tax is 66.04%
  - Essentially the effective rate on built in gain portion equal to Bernie Sander's estate tax proposal.

# Rationalize NII and Self-Employment Contributions Act Taxes

- Focus on high-income taxpayers (defined as adjusted gross income in excess of \$400,000) **Not indexed for inflation**
- All pass-through business income of high-income taxpayers is subject to either the NII or the SECA tax (both 3.8%)
- Net investment tax includes gross income and gain from any trade or business that is not otherwise subject to employment taxes
  - NII Tax will be directed toward Hospital Insurance Trust Fund just as revenue from 3.8% tax under FICA and SECA. (pretend there is a Trust Fund)
- Limited partners and LLC members who provide service and materially participate would be subject to SECA on their distributive share of LLC or partnership income to extent exceeds threshold amounts
  - Exceptions from SECA for rents, dividends, capital gains and certain retired partner income will continue to apply [However, most gets picked up by NII.]

# Rationalize NII and Self-Employment Contributions Act Taxes (Cont'd)

- S corporation shareholders who materially participate would be subject to SECA tax on distributive share to extent exceeds threshold amounts.
  - Exemption from SECA under current law will apply [but net investment income tax will apply]
- Rationalization apply for taxable years beginning after Dec. 31, 2021



# Estimated Revenue

- The increase in the top marginal rate, the reform of capital gains tax and the rationalization of net investment income and self-employment contributions act is estimated to raise \$691 billion over the ten year projection period.

# Close Loopholes

## Tax Certain Profits Interests as Ordinary Income

- For taxable years beginning after Dec. 31, 2021, the proposal would tax as ordinary income a partner's share of income on an "investment services partnership interest" ("ISPI") in an investment partnership, regardless of the character of income, if the partner's taxable income from all sources exceeds \$400,000.
- Self-employment taxes would be imposed on such income.
- Gain on the sale of a ISPI generally taxed as ordinary income if partner's income is above the threshold.
- *"To insure more consistent treatment with the sales of other types of businesses, the Administration remains committed to working with Congress to develop mechanisms to assure the proper amount of income recharacterization where the business has goodwill will or other assets unrelated to the services of the ISPI holder."*

# Close Loopholes

## Tax Certain Profits Interests as Ordinary Income (Cont'd)

- Projected to only raise \$1.468 billion (this would have to come from people with total income of less than \$1 million since capital gains for individuals earning over \$1 million are taxed as ordinary income).
- ISPI is a profits interest in an investment partnership held by a person who provides services to the partnership.
- Investment partnership = 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.”

# Close Loopholes

## Tax Certain Profits Interests as Ordinary Income (Cont'd)

- Exception for “invested capital” of partner holding an ISPI interest
  - Invested capital is either money or property (excluding that attributable to proceeds of loan or advance made or guaranteed by any partner or the partnership or any person related to such persons).
  - Qualified capital interest
    - Partnership allocations to invested capital made in same manner as allocations to other capital interests held by partners not holding ISPI
    - Allocations to the non-ISPI holders are significant
    - Income attributable to invested capital is not recharacterized.
    - Gain on sale of ISPI attributable to invested capital treated as capital gain
  - Anti-abuse rule for compensatory arrangements other than partnership interests if recipient has taxable income in excess of \$400,000.
    - Disqualified interest subject to ordinary income
    - Disqualified interest is a convertible or contingent debt, an option, or any derivative instrument with respect to the entity (excluding partnership interest, stock in certain taxable corporations , or stock in an S corporation) used to compensate



# Closing Loopholes

## Sort-Of Repeal of Deferral of Gain from Like-Kind Exchanges (i.e. 1031)

- Permits deferral of gain up to an aggregate amount of \$500,000 for each taxpayer (\$1 million in case of MFJ) each year for real property exchanges that are like kind.
- Gain in excess of the above cap during a taxable year would be recognized by the taxpayer in the year the taxpayer transfers the real property subject to the exchange
- Effective for exchanges completed in taxable years beginning after December 31, 2021.
- Projected to raise \$19.5 billion.

# Closing Loopholes

## Permanent Excess Business Loss Limitation of Non-Corporate Taxpayers

- For taxable years beginning after Dec. 31, 2020 and before January 1, 2027 the TCJA provided non-corporate taxpayers may not deduct excess business loss from taxable income but carried them forward to subsequent years as NOLs.
- Excess business loss defined as excess loss from all business activities over sum of:
  - Gains from all business activities (excluding business of performing services as an employee) can be offset
  - Specified threshold amount ( in 2021, \$524,000 MFJ or \$262,000 all others and indexed for inflation)
- Determination at taxpayer level
- **Makes permanent IRC Section 461(j) which otherwise sunsets in 2027.**
- Projected to raise \$43 billion from 2027-2031

# IRS Program Integrity Allocation Adjustment

- Program integrity is activity that maintains the effectiveness of a government program and for IRS is an allocation adjustment for enforcement and compliance programs that generate positive net revenue.
- First multi-year adjustment of \$6.7 billion over 10 years with \$417 million for 2022 (revenue estimate at end states \$50.3 billion to IRS over 10 years with a 2022 adjustment of \$334 million).
  - Was this changed at the last minute?
- Second additional funding for tax administration of \$72.5 billion over the 10 year budget window. (Similarly the revenue estimate showed \$266 billion over 10 years).
  - Portion to fund improvements and expansion in enforcement and compliance activities and enhance information technology capability including proposed financial information reporting regime and strengthen taxpayer services

# IRS Program Integrity Allocation Adjustment (Cont'd)

- Direct that additional resources go toward enforcement against those with the highest incomes, rather than Americans with actual income of less than \$400,000. (page 86)
- Explanation notes that details about IRS funding programs provided elsewhere in budget. (page 87)

# Comprehensive Financial Account Reporting to Improve Tax Compliance

- Tax gap for business income (outside large corporations) from the most recent IRS estimates is \$166 billion a year.
- Requiring comprehensive information reporting on the inflows and outflows of financial accounts will increase visibility of gross receipts and deductible expenses to IRS.
- Financial institutions will report gross inflows and outflows with breakdown for (i) physical cash, (ii) transactions with a foreign account; (iii) transfers to an from another account with same owner.
- Applies to all business and personal accounts from financial institutions (and similar) with exception of accounts with gross flow threshold of \$600 or FMV of \$600

# Comprehensive Financial Account Reporting

- Financial institutions (and similar) would collect TINs and file expanded Form 1099-K expanded to all payee accounts (subject to \$600 threshold) reporting not only gross receipts but also gross purchases, physical cash, as well as payments to and from foreign accounts, and transfer inflows and outflows.
- Businesses receiving crypto assets in transactions with FMV over \$10,000 must report transaction
- Broad regulatory authority to Secretary
- Effective for tax years beginning after Dec. 31, 2022
- Projected to raise \$316 billion over ten years.
- The June 8, 2021 publication by ProPublica of “The Secret IRS Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax” may make the financial institution collection of account information and perhaps the sharing of business tax return information a political hot potato. \$316 billion may provide a pot holder.
  - While the politicians will do what the politicians will do, I believe Commissioner Rettig will push hard to find the leak and push for maximum prosecution.



# Increase Oversight of Paid Tax Return Preparers

- Increase Oversight. Secretary will be given explicit authority to regulate all paid preparers of Federal tax returns, including minimum competency standards.
  - Effective date of enactment
  - Expect to raise \$575 million over ten years. Expect to spend \$270 million.
- Increase Penalties on Ghost Preparers Penalty for not signing return and including PTIN increase from \$50 to greater of \$500 per return or 100% of income derived by ghost preparer.
  - The limitations period would be increased from three years to six years.
  - Effective for returns required to be filed after Dec. 31, 2021
  - Expect to raise \$242 million over ten years. Expect to spend \$25 million

# Expansion of Mandatory Electronic Filing

- Require electronic filing of all returns reporting larger amounts or that are complex business entities including:
  - Individuals with gross income of \$400,000 or more;
  - Income, estate or gift tax return of all related individuals, estates and trusts with assets or gross income of \$400,000 or more in any of 3 preceding years;
  - Partnerships with assets or any item of income more than \$10 million in any of 3 preceding years;
  - Partnerships with more than 10 partners;
  - REIT, RIC, REMIC and insurance company returns;
  - Corporate returns with more than \$10 million in assets or 10 shareholders;
  - All information returns subject to back-up withholding;
  - Various enumerated specific returns; and
  - Return preparers expecting to prepare 10 more corporation or partnership returns required to file electronically.

# Crypto Asset Reporting by Brokers

- Global automatic exchange of information
- Expanded scope of information reporting by brokers who report on crypto assets to include reporting on certain beneficial owners of entities holding accounts with the broker.
  - Reports on non-US citizens to exchange with foreign governments
  - For certain passive entities, their substantial foreign owners
- Requires brokers to report customer identification information as well as gross proceeds and other information Secretary may require.
- Reporting requirements apply in cases in which taxpayers buy crypto assets from one broker and transfer crypto assets to another
- Effective for returns required to be filed after December 31, 2022

# Noncompliance with Listed Transactions

- Effective date of enactment, increase limitations period for returns reporting benefits from listed transactions from 3 to 6 years (\$661 million)
- Impose liability on controlling shareholders to collect unpaid income taxes who sell stock of an applicable C corporation secondary liability without resort to state law for payment of the C corporation taxes, etc. to extent proceeds received by the shareholder.
  - Applicable C corporation is any C corporation or successor 2/3 or more asset consist of cash, passive investment assets or assets subject of a contract of sale or whose sale has been substantially negotiated on date controlling interest is sold.
  - Not apply to (i) publicly US traded REIT; (ii) public RIC; (iii) to an acquiror whose stock or securities are publicly traded on established market in US or consolidated with such a public issuer.
  - Projected to raise \$4.7 billion

# Modification of Tax Administration Rules - Too Difficult to Obtain Supervisory Approval?

- Modify §6751
  - Eliminate rule that a supervisor must approve the assertion of penalties prior to the penalty being communicated to the taxpayer and while the taxpayer has opportunity to raise defenses to the penalty.
  - IRS would be able to approve a penalty any time prior to the issuance of a 90 day notice from which the Tax Court can review the proposed penalty and if taxpayer petitions the Tax Court, IRS may raise penalty in court if supervisory approval to do so. Any supervisory official can approve, not just immediate.
  - *Paranoia? Expect implicit or explicit threats of imposition of new penalties if not settle*
- Eliminates approval requirement under 6662 for underpayment of tax, 6662A for underpayments with respect to reportable transactions and 6663 for fraud penalties.
- Projected to raise \$1.9 billion.



# Limited Sharing of Business Tax Return Info to Measure Economy More Accurately

- Expands sharing of tax return information to Bureau of Economic Analysis (BEA) and Bureau of Labor Statistics (BLS).
- BEA access to Federal Tax Information of sole proprietorships with receipts greater than \$250,000 and of all partnerships.
- BLS would have access to certain businesses and tax exempt entities including name, TIN extensive employment information of wages, tips from employment tax returns, sales revenue, etc.
- Lot of assurances of confidentiality safeguards and monitor compliance by State agencies with access.
- The June 8, 2021 publication by ProPublica of “The Secret IRS Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax” may make the financial institution collection of account information and perhaps the sharing of business tax return information a political hot potato.
  - While the politicians will do what the politicians will do, I believe Commissioner Rettig will push hard to find the leak and push for maximum prosecution.



# Corporate Tax Provisions

- Raise corporate income tax rate to 28%. A 33.33% tax increase on C corporations' top rate.
  - Effective for tax years beginning after Dec. 31, 2021
  - Tax years beginning after Jan. 1, 2021 and before January 1, 2022 tax rate equal to 21% plus 7% times portion of tax year occurring in 2022.
  - Projected to raise \$858 billion over 10 years.
- Minimum tax of 15% on book earnings of large corporations with book income (less general business and foreign tax credits) in excess of \$2 billion. Effective for tax years beginning after Dec. 31, 2021.

# Corporate Interest Deduction Limitation

- Interest limitation (get lower ceiling of regular §163(j) or this amendment to §163(j)) for disproportionate borrowings of the US members of a financial reporting group (multinational group preparing consolidated financial statement GAAP, IFRS or per Regs.) with \$5 million or more of net interest expense for financial statements (computed on a separate company basis) which exceeds the members' proportionate share of group's net interest expense on consolidated financial statements. Interest deduction limited to:
  - Share of net interest expense x member's share of group's earning on consolidated financial statement (group earnings computed by adding back net interest expense, tax expense, depreciation, depletion and amortization)
  - Alternatively US member can elect limitation equal to business interest income plus 10% of members' adjusted taxable income (§163(j)) or be required to use this limitation if cannot substantiate its proportionate share
  - If deducted interest expense is less than proportionate share of overall book interest, excess is carried forward indefinitely.

# Corporate Interest Deduction Limitation (Cont'd)

- For purposes of the new interest limitation of 163(j), US subgroups of a financial reporting group would be treated as a single member
  - US Subgroup is comprised of any US entity not owned directly or indirectly by another US entity and all members (domestic or foreign) owned directly or indirectly buy such entity.
- The Subgroup interest limitation applies before §265 which generally disallows deduction allocable to tax-exempt income in which the proposal includes dividends from a foreign corporation eligible for §245A deduction and GILIT inclusion eligible for a §250 deduction.
- Proposal does not apply to financial services entities and such entities excluded from being included in the “other members” of the financial statement reporting group.
- Projected revenue \$19 billion.

# International Tax Provisions

- Rewrite US international taxation and reverse position on a worldwide minimum tax of US to OECD. Projected to raise \$533 billion over ten years (all revenue estimates 10 yrs.).
  - 15% minimum tax (down from his original proposal of 21%).
  - EU is making supportive noises, Ireland questionable (currently Ireland's top rate is 12.5%).
- Revisions/rewrite to
  - Global Intangible Low-Taxed Income (GILTI)
  - Foreign-Derived Intangible Income (FDII) - somehow use revenue for US R&D (\$124 billion + and -
  - Base Erosion and Anti-Abuse Tax (BEAT) replaced with Stopping Harmful Inversions and Ending Low-Tax Developments (SHIELD) rule (applies if revenue over \$500 million) –considered low tax if below 21% (likely changing to 15% since that is level of minimum tax now supported by Biden). Disallows deduction for payments by US corp or branch to low tax members and partial disallowance of such to non-low tax depending on effective tax rate of other group members.
- Modify tax rules for dual capacity taxpayers to limit foreign tax credit to amount it would pay were it not a dual-capacity taxpayer (primarily oil and gas companies) \$124 billion.
- Generally effective date years beginning after Dec. 31, 2022 but some provisions effective upon enactment or tax years beginning after Dec. 31, 2021.

# Tax Credits – Existing Energy Incentives

- Repeal fossil fuel related incentives (enhanced oil recovery §43; expensing of intangible drilling costs; eliminate accelerated amortization for air pollution control facilities §169(d)(5). *Will increase cost of fossil fuel and reduce future domestic supply.*
  - *Total hit to fossil fuel is \$35 billion before considering dual capacity taxpayers' and foreign tax credit of \$124 billion.*
- Extend period for electric vehicle charging stations, increase limit and change to a per device credit
- Extension of existing renewable and alternative energy credits (\$265 billion)
  - Renewable electricity production credit;
  - Renewable energy investment credit (extend period for sources currently covered and expand credit to include stand-alone energy storage technology which store energy for conversion to electricity; and
  - Modify existing phase-out period.



# Tax Credits – New Energy Incentives

- New Energy Incentives
  - Electricity transmission infrastructure – 30% credit applicable to property placed in service after Dec. 31, 2021 and before Jan. 1, 2032 (\$23 billion).
  - Credit for electricity generation from existing nuclear power facilities – existing facilities bid for credit allocations for a two year period.
    - Up to \$1 billion of credits each year
    - Credit window from Jan. 1, 2022 through Jan. 1, 2030
  - Credit for sustainable aviation fuel for fuel produced after Dec. 31, 2021 and before Jan. 1, 2028
    - \$1.50 per gallon that achieves at least a 50% emissions decrease
  - Business tax credit for new medium and heavy-duty zero emission vehicles
    - Credit based on class of vehicle and year of credit
    - Vehicles purchased Jan. 1, 2022 through December 31, 2027
- 38 The various “clean” energy incentives total over \$363 billion dollars



# Tax Credits – Housing Tax Credits

- Low-income housing tax credit expansion (\$32 billion)
  - New housing credit dollar amount (HCDA) – Opportunity HCDA (OHCDA)
    - States allocate majority of OHCDA to Census Tracts of Opportunity – i.e., tracts entirely in difficult development areas
    - More available to states with higher costs of constructing/operating affordable housing
  - Buildings in DDAs that are allocated HCDA or OHCDA receive “basis boost” of up to 50%
- New neighborhood homes investment credit (NHIC) (\$13 billion)
  - Support new construction for sale and substantial rehab for sale/existing homeowners. (Owner occupant after construction/rehab must meet household income requirement)
  - Generally NHIC amount = development costs less sales price (or amounts paid by homeowner if homeowner rehabilitation)

# Tax Credits – Individual Tax Credits

- Make permanent some temporary American Rescue Plan changes:
  - Premium tax credit §36B (\$116 billion)
    - Decrease contribution percentage of household income used to determine credit and expansion of eligibility to taxpayers with household income above 400% federal poverty line (moving toward universal gov healthcare)
  - Earned income tax credit §32 (\$94 billion)
    - Increase availability for workers without children and expand age of eligibility
  - Dependent care assistance credit and exclusion §§21 and 129 (\$557 billion)
    - Expand credit amount, refundability (i.e. payment); and exclusion from gross income
  - Child tax credit §24 (\$50 billion)
    - Increase in age limit, credit amount and extension of advance payment of credit
- Increase employer-provided child care credit amounts §45F

# Infrastructure – State and Local Bonds

- New Qualified School Infrastructure Bonds (QSIB)
  - Similar to old Build America Bonds
  - Encourage construction/renovation of educational facilities
    - Priority projects needed to reopen schools in line with CDC guidelines (even though schools are to be open for fall of 2021)
  - Interest on QSIB is taxable
  - \$16.7 billion for 2022, 2023 and 2024
- Private Activity Bonds of §141 expanded by \$15 billion and new qualified activities of public transit, passenger rail and infrastructure for zero emission vehicles

# Revenue and Expenditure Numbers

- The revenue and expense numbers as projected by the government are found on page 109-114 of the Green Book.

# What Will Congress Pass – Stay Tuned

- Certainly some of the tax provisions will be passed (or try to be passed) in a reconciliation bill
- Political recalibration is in process because Senate Parliamentarian having indicated the prior reconciliation bill could be amended has now ruled that such an amendment should only occur in situations involving sharp revisions in the revenue or spending estimates or major developments in the economy.”
  - Budget Committee is 50/50 and has to vote to discharge a revision to a budget resolution.
  - Next window for an automatic budget resolution discharge is apparently April of 2022, the mid-term election year.
- The \$1.9 Trillion American Rescue Plan earlier this year passed by reconciliation in the Senate with the Vice President casting the deciding vote.

# What will Congress Pass – Stay Tuned (Cont'd)

- Senator Schumer (D-NY) had been planning on dividing up the \$2.3 trillion American Jobs Plan and the \$1.8 trillion American Families Plan as well as Biden's calls to expand Medicare and lower the price of prescription drugs into multiple reconciliation packages and passing them in sequence with a 50/50 vote.
- To understand the size of the multi-trillion bills consider the fact that total Federal Government Revenues in fiscal year 2019 was \$3.5 trillion and the outlays were \$4.4 trillion.
  - Individual income taxes were \$1.7 trillion
  - Corporate income taxes were \$230 billion
  - Payroll taxes were \$1.2 trillion
  - Other estate, gift, customs, etc. \$271 billion



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In over 35 years of practicing tax and business law, Leigh Griffith has helped clients grow their businesses from the start-up stage to multimillion-dollar corporations. Transaction-oriented businesses, healthcare companies, private equity firms, Limited Liability Companies (LLCs), and partnerships rely on Leigh's experience and counsel to structure their tax matters, which can range from a few million dollars to over \$1 billion. Colleagues and clients regularly turn to him for his deep knowledge of tax at the state, national, and global levels as well as the intersection of non-profit tax law, for-profit tax law and healthcare regulatory law.

Leigh is also a sought-after seminar leader for continuing professional education programs and has a featured column, "The Pass Through Partner," in Taxes Magazine, published bimonthly by CCH Tax and Accounting. His background as a certified public accountant has contributed to groundbreaking legal work, including:

- Creation of the first LLC in Tennessee
- Development of the Double Holdco LLC structure for the home healthcare industry
- Being named principal draftsman of the Tennessee LLC Act
- Participating in the first life insurance/annuity combination securitization, recognized by the rating agencies as a new security and a new asset class
- American Bar Association Tax Section Advisor to National Conference of Commissioners on Uniform State Laws - Series of Unincorporated Business Entities Drafting Committee

Excited by the intellectual challenges presented by the ever-changing landscape of tax laws, Leigh provides advice that "looks around the corner" and he "looks out the windshield rather than in the rear-view mirror."

### Recognitions

*Best Lawyers* recognizes Leigh in the categories of Government Relations Practice, Litigation & Controversy–Tax, and Tax Law. Leigh is also one of only two Tennessee Fellows of the American College of Tax Counsel.