

TAX PLANNING AND SECURE ACT UPDATES **FOR THE CONSTRUCTION INDUSTRY**

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Marie Marks
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January 20, 2021



AGENDA

- Tax Planning under the Biden Administration
 - Presented by Laura Culp, CPA, PFS, MT, CCIFP
- Secure Act and Secure Act 2.0
 - Presented by Marie Marks, CFP
- 2021 Tax Update
 - Presented by Tom Bayer, CPA, CExP



TAX PLANNING UNDER THE BIDEN ADMINISTRATION

Laura Culp, CPA, PFS, MT, CCIFP

January 20, 2021



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Laura Culp, CPA, PFS, MT, CCIFP

Laura is the partner-in-charge for Construction and Real Estate Services and has more than 30 years of experience working with the owners of privately held businesses to help them grow their wealth and implement tax saving strategies. Her extensive knowledge of the unique tax and financial issues that contractors and developers face is valued by her construction and real estate clients. Laura's planning and wealth management skills provide clients with an integrated level of service, and clients appreciate her down to earth advice.

BIDEN'S TAX PROPOSALS - INDIVIDUAL TAX RATES

- Increase top marginal rate for individual taxpayers with income above \$400,000 from the current rate of 37% to 39.6%. The current rate for all other brackets would remain the same.
- Increase the capital gain and qualified dividend tax rate for individuals with income in excess of \$1 million from the current rate of 20% to the proposed ordinary income tax rate of 39.6%,
 - Combined with the 3.8% net investment income tax (NIIT), the effective tax rate would be 43.4%.
 - Result: Almost double the current maximum capital gain rate of 23.8% (20% plus 3.8% NIIT).

BIDEN TAX PROPOSALS - ITEMIZED DEDUCTIONS

- Repeal the \$10,000 cap on state and local taxes
- Taxpayers with income over \$400,000 would have a cap of 28% on the benefit of deductions
 - For example, for each \$100 of allowable itemized deductions, income tax liability could not be reduced by more than 28%,
- Pease limitation that was repealed under the Tax Cut and Jobs Act of 2017 (TCJA) through 2025 would be restored
 - Reduces itemized deductions by 3% for every dollar that AGI exceeds a specific income threshold, with maximum reduction of 80%. Biden is proposing phase out for taxable income above \$400,000.
- Combination of 28% and Pease limitation increases taxes by 12.44% of amount of deduction.

BIDEN TAX PROPOSALS - SOCIAL SECURITY TAX

- Social Security taxes-currently the social security is imposed on the first \$142,800 of compensation, at the combined employer/employee rate of 12.4%.
- The proposal is to impose the 12.4% on earnings over \$400,000, with wages/earned income between \$142,800 and \$400,000 continuing to not be subject to the social security tax.
- Since the cap is adjusted annually, if the \$400,000 is not indexed, eventually all wages/earned income would be subject to social security tax.

BIDEN TAX PROPOSALS - INDIVIDUAL TAX CREDITS

- Credit of up to \$5,000 for informal caregivers of aging family members.
- Expanded child and dependent care credit to maximum of \$8,000 for one child and \$16,000 per family. 50% of credit would be refundable.
- Housing Tax Credit of up to \$15,000 for eligible first-time homebuyers.
- Credit for low-income renters that would keep rent and utilities to 30% of monthly income.
- Refundable retirement savings credit rather than exclusion from income for each dollar contributed to 401(k) plans and IRAs.
 - Reduces benefit of contributions for high-income taxpayers since exclusion would have reduced AGI.
 - Depending on how credit works, might be more beneficial for high-income taxpayers to contribute to ROTH 401(k) and IRAs.

BIDEN TAX PROPOSAL - ESTATE TAX

- Current law-2021 gift and estate exemption is \$11.7 M for single and \$23.4M for married taxpayers with a maximum federal rate of 40% (the exemption is set to sunset 1/1/2026 to \$5M, adjusted for inflation).
 - Biden proposes to decrease the exemption to \$3.5M/7M and raise the top rate to 45%
- Current law-at death the basis in the decedent's assets is "stepped up" to fair market value.
 - Decedent's heir only pays tax on the difference between the selling price and the FMV at the time of inheritance (date of death)
- Biden proposes to either eliminate the step-up or tax the unrealized appreciation at death.

TAX PLANNING IDEAS FOR INDIVIDUALS

- Review succession plans and determine if advantageous to accelerate ownership transfers both from an estate and income tax standpoint.
 - It is unclear whether a change in the estate tax exemption would be retroactive to 1/1/21.
- Net operating losses for 2018-2020 can be carried back 5 years, review if more advantageous to carryforward due to proposed tax increases.
 - If waiving the loss carryback, must attach election statement to timely filed return for first taxable year ending after March 27, 2020.
- Bunching of itemized deductions should be considered if limitations under Biden's proposal apply to determine how to maximize deductions.
- Consider ROTH IRA conversions for 2021 if new tax rates are not retroactive and it makes sense to pay tax at lower 2021 rates.
- For an installment sale in 2020, perhaps elect out of installment method and pay tax at lower 2020 capital gain and ordinary income rates
 - Must make election on or before due date (including extensions) for filling the seller's return for the taxable year of sale.

ESTATE PLANNING IDEAS

- Review estate plans and determine if additional transfer of wealth makes sense with proposed lower estate and gift exemption.
- Utilize annual gifting (\$15,000 per person) to children and grandchildren.
- Intra-family loans-with low interest rates can loan funds to family members and freeze value of the note while allowing family member to invest proceeds so assets can grow outside of estate.
 - The loan doesn't have to be gifted immediately but can be forgiven over time using annual exclusion or estate exemption.
- Other transfer techniques include Family Limited Liability Companies, Grantor Retained Annuity Trusts, Intentionally Defective Grantor Trust, or charitable trusts to transfer assets to next generation.

BIDEN TAX PROPOSALS - BUSINESS TAXES

- Increase corporate tax rate from 21% to 28%
- Impose a new 15% alternative minimum tax on reported book income for corporations with at least \$100 million in annual income.
- New “Made in America” tax credit of 10% for activities that restore production, revitalize facilities to advance manufacturing employment or expand manufacturing payroll.
- QBI - Under current law, S corporation, partnership and sole proprietorship owners can claim a deduction of 20% of qualified business income.
 - Biden plans to eliminate this deduction for taxpayers with taxable income over \$400,000
- Eliminate Section 1031 “Like Kind” Exchanges
- Reform Opportunity Zone tax incentives
- Make the New Markets Tax Credit permanent
- Energy related credits

TAX PLANNING IDEAS - BUSINESSES

- Review method of accounting
 - Under TCJA more construction businesses qualify for cash, completed contract, or accrual method of accounting vs percentage of completion.
 - Method used could possibly keep taxable income under \$400K for individuals.
 - Need to consider pass through income impact on Individual AMT tax.
- Review form of entity being used for business
 - LLC, Partnerships or Sole Proprietorships generating high self employment income, perhaps convert to S corporation
 - As S Corporation, could limit wages subject to the higher social security tax and take higher distributions (assuming S corporation distributions don't become subject to Social Security)
 - Consider use of both C corporations and passthrough entities to take advantages of different tax rates and incentives.
 - C corporations will still be subject to double taxation.
 - Elimination of basis step up might make pass through entities more attractive than C Corporations from an estate standpoint.

TAX PLANNING IDEAS, CONTINUED

- Consider whether it is more advantageous to take Sec. 179 or bonus depreciation on 2020 assets or take lower regular depreciation, if expect to be in higher tax brackets in the future.
 - Can elect out of bonus depreciation by asset class, could take bonus on Qualified Improvement Property and take regular depreciation on lower life assets.
- Review retirement plans to see if changing to a cash balance plan or another kind of retirement plan could increase contributions to owners' accounts and lower income to keep below Biden income targets.

TAX PLANNING IDEAS, CONTINUED

- Employ children in business (lower business income and provide work experience to the child)
 - Need to consider state child labor laws for young children
 - Children under age 16 working in nonagricultural employment in a business solely owned by parents may work any time of day and for any number of hours. However, cannot be employed in any occupation considered hazardous by Secretary of Labor.
 - 14- or 15-year-old may not work in construction or repair jobs but could perform office or clerical work and some maintenance work
 - Pay reasonable compensation for duties performed
 - Federal tax-free income up to the standard deduction (\$12,550 for 2021)
 - IRA or ROTH IRA contributions can be made for child
 - Payroll savings if business is unincorporated (sole proprietorship, partnership or LLC)
 - Wages paid to owner's children under 18 are exempt from FICA taxes
 - Wages paid to owner's children under 21 are exempt from FUTA taxes

POLLING QUESTION

Are you concerned about Biden's proposed tax law changes?



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SECURE ACT AND SECURE ACT 2.0

Marie Marks, CFP

January 20, 2021



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Marie is a senior retirement plan specialist with over 35 years of experience serving clients with their cash balance plans, defined benefit plans and defined contribution plans. She establishes and oversees retirement plans, provides benchmarking and RFP services and offers documented due diligence processes for retirement planning. Her ability to deliver a deep analysis of a company's business practice and process for a retirement plan allows her to expertly consult on the overall benefits needs of a business.

SECURE ACT



Signed into law by the President on **December 20, 2019.**

Purpose

Help Americans save more for retirement by creating new rules.

Expand and preserve
retirement savings

Improve the
administration of
retirement plans

Provide additional
benefits and create
revenue provisions

SECURE ACT



ACT 2.0 Proposed

Purpose

To expand on some of the enhancements of the Secure Act.

PLAN ESTABLISHMENT DATES

TIMING FOR PLAN ESTABLISHMENT



Employers may start a qualified plan up until their business tax filing deadline (including extensions).

This gives them more time to establish a profit sharing or defined benefit plan



Elective deferrals cannot take advantage of the extension.



Applies to plan years beginning after **December 31, 2019.**

SMALL EMPLOYER START-UP PLAN CREDITS

SMALL EMPLOYER PLAN START-UP CREDIT

Credit granted to small employers Increased to the greater of

\$500

The lesser of

\$250
each eligible
employee who is
not an HCE

\$5,000

This credit can be applied for the first three years the plan is in effect.
Plan years beginning after **December 31, 2019**.

SMALL EMPLOYER AUTOMATIC ENROLLMENT CREDIT

New Credit Limit
\$500/year

For the **first three years** that a new or existing 401(k) or SIMPLE IRA includes an automatic enrollment feature.

Plan years beginning after **December 31, 2019.**

POLLING QUESTION

Do you currently have or have you considered automatic enrollment?

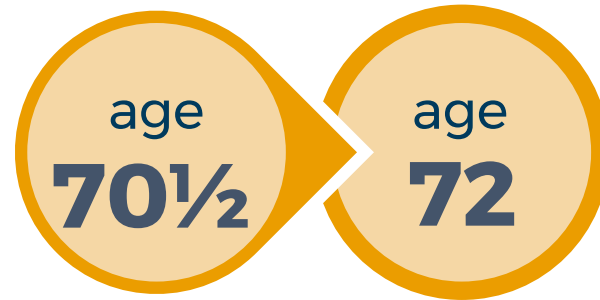
SECURE ACT 2.0 PROPOSED : **REQUIRE NEW PLANS TO HAVE AUTOMATIC ENROLLMENT**

- SECURE Act 2.0 would require most new 401(k) and 403(b) plans to have automatic enrollment provisions requiring contributions of 3-10% of pay.
- Exceptions may be available for small businesses with 10 or fewer employees
- Participants could opt out as under current law.

REQUIRED MINIMUM DISTRIBUTIONS

SECURE ACT DELAYED THE AGE FOR REQUIRED MINIMUM DISTRIBUTIONS

Required minimum distributions (RMDs) trigger age moved back



Applicable to:



Applies to distributions made **after December 31, 2019** for individuals who attain **age 70½** after such date.

SECURE ACT 2.0 PROPOSED

Required minimum distributions (RMDs) trigger age moved back



Applicable to:

IRA's

401(k)s

profit sharing
plans

403(b)s

governmental
457(b)s

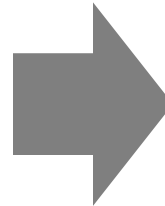
Applies to distributions made **after December 31, 2019** for individuals who attain **age 70½**, after such date penalty reduced to 25% for failure to take RMD.

IRA AGE LIMITATION

Age limits for Individuals with earned income to make contributions to traditional IRAs

Current Law

70½ age limit



SECURE Act

No age limit

Applies to contributions and distributions made for tax years
after December 31, 2019.

LOST PARTICIPANTS

2.0 PROPOSED: LOST PARTICIPANTS

- SECURE Act 2.0 would create a **federal Office of Retirement Lost and Found** to be managed by the PBGC to maintain a database of unclaimed benefits.
- Participants could use the database, which would include to access benefit information, including plan sponsor contact information.

ELIGIBILITY FOR LONG-TERM PART-TIME EMPLOYEES

ELIGIBILITY FOR LONG-TERM PART-TIME EMPLOYEES

Current law

Employee may be excluded from eligibility should they not meet the 1,000 hours per year requirement.

SECURE Act

Employee must be eligible to participate in the plan (unless collectively bargained).

REQUIREMENTS

employed for 3 consecutive 12-month periods

within which they provided 500 hours of service

and they meet the plan's minimum age threshold

SECURE ACT 2.0 PROPOSED: ELIGIBILITY FOR LONG-TERM PART-TIME EMPLOYEES

SECURE Act

Employee must be eligible to participate in the plan (unless collectively bargained).

REQUIREMENTS

employed for **2** consecutive 12-month periods

within which they provided 500 hours of service

and they meet the plan's minimum age threshold

IS SECURE ACT 2.0 LIKELY TO PASS?

It is too early to know for sure, but Secure Act 2.0 fixes or further enhances some of the features in the Secure Act.

It's important for you to be aware of what's new under the Secure Act and what may be coming with 2.0.



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2021 TAX UPDATE

Tom Bayer, CPA, CExP

January 20, 2021



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Tom Bayer, CPA, CExP

Tom is the partner-in-charge of the Indianapolis office. He has more than 28 years of experience providing a broad range of accounting, tax, and business advisory services to commercial clients across various industries and Sikich offices. Tom has specialized expertise in the areas of business succession planning, tax planning and compliance, and business advisory. He puts his business succession planning abilities and knowledge to work firm-wide, serving clients in advisory services across the country.

PPP UPDATE

PPP TAXABILITY: NEW RULE

- PPP money is not considered gross income (SAME as old law)
- Expenses paid with PPP loan proceeds ARE deductible (NEW)
- Basis increase as well for S corporation and Partnership (NEW)
 - Otherwise without basis increase, when money is later paid out as a distribution, would be taxed as “distribution in excess of basis” – generally capital gain
 - S corps with E&P from C corp years, distribution could trigger a C corp dividend

PPP: NEW ITEMS IMPACTING EXISTING LOANS

- Blanket forgiveness for loans under \$150,000
 - New 1 page form to be provided within 24 days of enactment
 - “Rubber Stamp” – no documentation needed
 - Loan amount
 - Number of employees retained
 - Estimate of amount spent on payroll
- Can choose any covered period between 8 weeks and 24 weeks
 - So could be 10 weeks or 22 weeks
- Company paid life insurance, disability, vision, dental insurance ok as “payroll”

PPP: NEW LEGISLATION

- Additional expenses allowed (but cannot be used to increase PPP loan):
 - Worker protection – an operating or capital expenditure
 - Property damage caused by looting not covered by insurance
 - Supplier costs – must be essential to the operations of the entity
 - Certain operation expenses – business software, cloud computing, etc.

PPP “SECOND DRAW”: REVENUES

- Eligibility
 - 25% (or more) reduction in any calendar quarter revenue from 2019 to 2020
 - Or 2020 calendar year as compared to 2019 calendar year (per 1/6/2021 IFR)

- Affiliates
 - Affiliates of a business are to be combined together in computing the 25% revenue decline..
 - Brother-sister corps, etc.

PPP “SECOND DRAW”: REVENUES

- Gross revenue definition (same as your method of accounting)
 - “includes all revenue in whatever form received or accrued (in accordance with the entity’s accounting method) from whatever source, including the sales of products or services, interest, dividends, rents, royalties, fees or commissions, reduced by returns and allowances.”
 - Subcontractor costs, reimbursements for purchases a contractor makes at a customer’s request, investment income, and employee-based costs such as payroll taxes may not be excluded.
 - Gross receipts do not include the following:
 - Taxes collected for and remitted to a taxing authority if included in gross or total income (such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees)
 - Proceeds from transactions between a concern and its domestic or foreign affiliates
 - Amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker

PPP “SECOND DRAW”

- Must have spent PPP1 proceeds in full before PPP2 loan obtained
 - Has used or will use the full amount of First Draw PPP on or before the expected date on which the Second Draw PPP will be disbursed.
 - Unclear how this works for sole proprietors where they don't really need to spend the money. This is just a timing issue though.
- Can use 2019 Sch C or 2020 Sch C to get a PPP2 loan (based on net profit)
- Maximum loan size of \$2 million
- “Current economic uncertainty makes this loan request necessary to support the ongoing operations”

PPP “SECOND DRAW”

- Eligibility
 - Less than 300 employees (based on 2020 headcount)
 - Except for those in NAICS code 72, the 300 count is per location
 - Except for certain “eligible news organizations”
 - Appears SBA size standards DO NOT apply to PPP2 (300 is the max)
 - No if a publicly traded company
 - No if a “shuttered venue operator”
- 2.5 times monthly payroll costs as before (prior 12 months, calendar 2020 or calendar 2019)
 - Except For: NAICS 72 industry – hotels and restaurants
 - 3.5 times monthly payroll as compared to 2.5 times

POLLING QUESTION

Do you plan to apply for PPP Second Draw loans?

EMPLOYEE RETENTION CREDIT (ERC)

EMPLOYEE RETENTION CREDIT (ERC) - 2020

- Eligible Employer
 - Carrying on a trade or business during 2020
 - **Case 1:** Fully or partially suspended operations during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19, **OR**
 - **Case 2:** Significant decline (more than 50%) in gross receipts beginning with the first calendar quarter beginning after December 31, 2019
 - And ending with the calendar quarter where revenues are greater than 80% of the revenues for the prior calendar quarter.

EMPLOYEE RETENTION CREDIT (ERC)

- Case 1: Partial or Suspended Operations
 - Not super clear what this means!
 - Orders from government
 - Orders limit commerce in a way that harms a business
 - Voluntary shutdown? **No**
 - No more customers because they were shutdown? **No** (Still have revenue test that could make you eligible)
 - Only the wages paid during the period you were shutdown count. NOT the entire quarter. Different than Case 2.

EMPLOYEE RETENTION CREDIT (ERC) - 2020

- Case 2: Reduction in Revenues

- What if first quarter you have a more than 50% decline in revenues? ERC for this quarter. 50% decline is not enough, needs to be more than 50%.
- What if the first quarter your quarterly revenues comes back to more than 80% of what they were for 2019? **ERC still counts for this quarter.** In other words, no ERC for the quarter following the quarter where greater than 80% threshold was met.

- Example 1:

▪ Q2 2019 = \$100,000	Q2 2020 = \$45,000	ERC for this quarter
▪ Q3 2019 = \$100,000	Q3 2020 = \$75,000	ERC for this quarter
▪ Q4 2019 = \$100,000	Q4 2020 = \$81,000	ERC for this quarter

EMPLOYEE RETENTION CREDIT (ERC) - 2020

Employee Size

- Average FTEs in 2019 100 or less?
 - All wages paid to employees during the eligible quarter are eligible for ERC
- Average FTEs in 2019 over 100?
 - Only wages paid to employees during an eligible quarter to not provide services are eligible for the ERC. In other words, paying them not to work.
 - Subject to legal interpretation, workers who are paid to perform services other than what was expected of them prior to the pandemic may also be defined as eligible under the "not providing services" rule. Very little specific guidance exists on this issue and it is the subject of some debate amongst advisors

EMPLOYEE RETENTION CREDIT (ERC) - 2020

Qualified Wages

- Maximum amount of wages for one employee for the year is \$10,000
 - Therefore, maximum credit (50%) of \$5,000 per employee for 2020
 - Employer health insurance does count as wages for ERC **(recent law change)**
 - Severance wages: **NO**
 - Qualified Family Leave or Sick Leave FFCRA wages: **NO**
 - Certain family members don't count. But individual owner and spouse can be claimed.
 - Code section 51(i) describes ineligible family members and related parties

EMPLOYEE RETENTION CREDIT (ERC) FOR 2021

- New law extended the ERC through June 30, 2021
- Significant changes in ERC for 2021
 1. \$10,000 per employee per year changed to \$10,000 per quarter
 2. 50% credit increased to 70% in 2021
 3. Maximum credit for an employee rises from \$5,000 per employee to **\$14,000 per employee** (for only half a year – credit currently expires 6.30.2021) - \$7,000 per quarter
 4. Raises 100 employee threshold for determining the relevant wages to employers with ≤ 500 employees

EMPLOYEE RETENTION CREDIT (ERC) - 2021

- **For 2021:** Expands eligibility for ERC by decreasing required decline in gross receipts (current year vs. prior year) from more than 50% to more than 20%. Note: a 20% decline is not sufficient for 2021, needs to be more than 20%.
- For Q1 2021 ERC eligibility:
 - Q1 2021 vs. Q1 2019 **OR** Q4 2020 vs. Q4 2019

EMPLOYEE RETENTION CREDIT (ERC)

- Retroactive change: Interplay with PPP both for 2020 and 2021
- **Provides that employers receiving PPP loans may still be entitled to ERC on wages not paid for with forgiven PPP loan proceeds.** This is a critical change by the new law as under CARES a borrower could not claim both a PPP loan and the ERC.
- So, look for other expenses (rent, utilities, interest, etc.) to secure PPP loan forgiveness.
- Consult your legal advisor

TAX EXTENDERS

EXTENDERS OF INTEREST IN CCA

- **179D** – for energy efficient improvements
 - Contractors can get deduction on government and some NFP projects
 - Made permanent – will not have to be extended again
- **Investment Tax Credit (ITC)** – 26% for solar energy property through 2023
- **Work Opportunity Tax Credit (WOTC)** – extended through 2025
- **New Markets Tax Credit** – extended through 2025



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This information was developed as a general guide to educate plan sponsors and is not intended as authoritative guidance or tax/legal advice. Each plan has unique requirements and you should consult your attorney or tax advisor for guidance on your specific situation.

For more information regarding the SECURE ACT, please click [here](#).

[[Securities disclosure](#)] ACR#344895 3/20

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