

WEBINAR

**YEAR-END
TAX PLANNING
FOR BUSINESS**
DEC 03 | 10AM



CPAs + Business Advisors | skrco.com

Welcome + Webinar Tips



Marjorie Noleen

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Webinar Facilitator

- This slide deck is available in GTW
- Attendees are in listen-only mode
- Webinar is being recorded and will be emailed after the event
- This presentation qualifies for 1.0 CPE
- Question panel:
 - Please post using the question panel.
 - Question support: Melody Antles, Senior Tax Manager



- Additional questions – communications@skrco.com

Agenda



Welcome and SKR+CO overview



Year-end tax planning



Tax implications in The CARES Act for businesses



Potential election tax implications



Q+A

Stockman Kast Ryan + Company



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- Business + Individual Tax
- Audit + Assurance
- Bookkeeping + QuickBooks
- Interim CFO Services
- Estate + Trust Planning
- Litigation Support
- Business Advising
- Business Valuations

Today's Speakers



Judy Kaltenbacher, CPA

Tax Partner-in-Charge



Jason Raak, CPA

Tax Manager





Year-End Tax Planning

Judy Kaltenbacher, CPA

Common Year-End Tax Planning Strategies

- Effective year-end tax planning considers each taxpayer's unique situation and tax planning goals.
- Tax Strategy when taxable income and rates remain consistent from year to year.
- Tax strategy when taxable income and rates are expected to decrease

1

Income deferral strategies

2

Deduction acceleration strategies

3

Expensing of capital assets (e.g., placing PP&E into service by Dec. 31, 2020)

4

Closing on taxable asset acquisitions before Dec. 31, 2020

Reverse Tax Planning Strategies

Taxpayers should reverse traditional tax planning strategies if they expect to be in a higher income tax bracket in the following year. Common reverse tax planning strategies include:

1

Income acceleration strategies

2

Deduction deferral strategies

3

Capitalization of assets

4

Placing assets in service after Dec. 31, 2020

5

Closing on taxable acquisitions after Dec. 31, 2020

Year-End Tax Planning + The Secure Act

- **Signed into law on December 20, 2019**
- **Required Minimum Distributions (RMD)**
 - No more RMD's for inherited IRAs except for remaining balance at the end of the 10th year
 - Age for RMD's after 12/31/19 increased from age 70 ½ to 72
 - Date for RMD is now April 1 the year after the participant reaches 72
- **Contributions**
 - Participants can make contributions beyond age 70 ½
 - Long-term, part-time workers are now eligible to participate in 401(k) program
 - Old rule was < 1,000 hours unable to participate
 - New rule is either > 1,000 hours, or 500 hours over 3 consecutive years
 - No requirement employer matches

Year-End Tax Planning + The Secure Act

- **The 10-Year Rule**

- Inherited IRA's must be completely distributed to beneficiary within 10 years from the participants date of death
- Applies regardless of whether participant dies before, on, or after the required beginning date for distributions to occur
- Some limited exceptions exist for surviving spouses, disabled beneficiaries or chronic illness, minor children, or beneficiaries not more than 10 years younger

- **Allow withdrawal of \$5,000 per parent penalty-free from retirement plan for the birth or adoption of a child**

Year-End Tax Planning + The CARES Act

- Signed into law on March 27, 2020
- Retirement Distributions
 - 10% Penalty waived up to \$100,000 in early distributions for “qualified individuals”
 - Who is a qualified individual?
 - An individual or spouse who is diagnosed with COVID-19 or
 - Individual who is suffering adverse financial consequences due to:
 - Inability to work because of lack of childcare
 - Furlough, reduced hours or the closing of business where the individual works or,
 - Reduced hours of a business that the individual personally owns or operates

Year-End Tax Planning + The CARES Act

- **Retirement Distributions Continued**

- Three-year rule

- Can choose to pay tax liability from COVID related distribution ratably over three years
- May also avoid tax completely by “rolling over” the funds to a qualified plan or IRA within a three-year period

- Waiver of RMD for 2020 tax year

- Applies to Inherited IRAs
- RMD's taken prior to March 27, 2020 and rolled over prior to August 31 will have no income tax implications

- Eligible for a loan up to the lesser of \$100,000 or 100% of your vested balance

- Plans can elect up 2022 to amend plan to allow loans

Year-End Tax Planning + The CARES Act

- **Charitable Contributions**

- Ability for taxpayers who do not itemize to take \$300 deduction, only cash donations qualify, and limit applies regardless of filing status
- 60% adjusted gross income limitation superseded in 2020, limitation raised to 100%
 - Contributions to donor advised funds do not qualify for the temporary limitation relief
 - Can eliminate 100% of income for income tax purposes, but understand other taxes may apply, i.e., 3.8% Net Investment income tax, .9% Medicare tax on excess wages or self-employment income
 - Excess contributions still eligible for a 5-year carryover
- Increased income limitation threshold for corporate charitable contributions from 10% to 25%

Year-End Tax Planning + Estate Planning

- **Estate exemption \$11.58 million per individual, \$23.16 million for a married couple**
 - 2026 (12/31/25) exemption will sunset back to \$5 Million, \$10 million for a married couple indexed for inflation
 - Any gifts or estates in excess of the above exemption are taxed at a flat 40% rate
 - Portability currently available for unused gift and estate tax exemption, but not GST (Generation Skipping Tax)
 - Gifts made under the current thresholds are protected under the “anti-clawback” rule
 - Current annual exclusion is \$15,000 per individual or \$30,000 for married couples (electing gift splitting)
- **Potential drivers for gifting**
 - Tax Policies
 - Depressed Asset Values – subsequent appreciation after the date of gift will escape gift and estate tax
 - Low Interest Rates – IRS uses the Applicable Federal Rate (AFR) as threshold for estate planning strategies

December 2020 Annual AFR Rates	
Short-term ≤ 3 years	.15%
Midterm > 3 years but ≤ 9 years	.48%
Long-term > 9 years	1.31%

Year-End Tax Planning + Estate Planning

- **Use of Intra-Family Loans**

- Younger family members can use cash to eliminate higher-rate debt or make investments that will yield a higher return

- **SCIN, Self Cancelling Installment Note**

- Avoid using annual gift tax exclusions and lifetime gift tax exemption
- Must account for “premium”, i.e. higher purchase price or higher interest rate
- Defer capital gain recognition based on payments, but remaining gain is taxed to the estate even when no more payments are received
- Understand risk if seller lives past the term of the note

- **Charitable Lead Annuity Trust (CLAT)**

- Allows for charitable deduction upon creation equal to present value of annuity using AFR (Section 7520 Rate)
- Provides fixed dollar amount to one or more charitable beneficiaries for specified period of time, payments made at least annually
- Established for a period of up to 20 years
- Results in taxable gift upon creation with FMV reduce by the present value of the annuity
- Preferred in low interest rate environments because lower AFR causes present value of annuity paid to be higher, which results in higher charitable deduction and smaller taxable gift to beneficiaries
- If rate of return exceeds the AFR then better chance value of assets passing to noncharitable beneficiaries free of gift or estate tax

Year-End Tax Planning + Estate Planning

- **Grantor Retained Annuity Trust (GRAT)**
 - Can transfer assets into a trust for a number of years
 - Grantor receives an annuity payment based on fixed dollar amount or percentage, remaining principal to beneficiaries
 - Overall goal is for the initial gift is to “zero-out”, i.e. the fair market value minus present value of payments equals zero
 - Hurdle rate for GRAT is 120% of the mid-term AFR, i.e. any appreciation on assets in excess of this threshold passes to GRAT’s beneficiaries free of gift and estate tax
- **Two disadvantages:**
 - Potentially all or portion of the value for the GRAT included in estate if Grantor passes before term is over
 - Can be less effective and thus not generally used for generation skipping purposes

Year-End Tax Planning + Estate Planning

- **Spousal Limited Access Trust (SLAT)**

- Irrevocable trust setup by one spouse for the other to use during their lifetime
- Biggest advantage is ability to utilize the current exemption of \$11.58 million
 - i.e. If exemption returns to \$3.5 million and rate of 55%, the SLAT yields a benefit of \$4 million in estate tax savings immediately
- Offers asset protection since control is given up and assets could no longer be attached for bankruptcy and litigation
 - If third party trustee is used instead of spouse, the assets may also be safe from your spouse's creditors
- Possibility to combine with other trust types such as Irrevocable Life Insurance trust, Dynasty Trust and Credit Shelter trust
- Highly Flexible, but here are some considerations to consider:

1. Forecast and Composition of Assets
2. Choose Trustee
3. Determine Beneficiaries

4. One or Two?
5. Income Tax Considerations
6. Death or Divorce



Tax Implications in The CARES Act for Businesses

Jason Raak, CPA

Employee Retention Credit

- A **refundable** payroll tax credit for employers impacted by COVID-19 who **retain** their employees receive a credit toward employer 6.2% Social Security payroll taxes.
- Max credit is **\$5,000/employee** based on 50% of wages (\$10,000 cap)
 - Time period March 12, 2020 – December 31, 2020
 - Qualifying Businesses and tax-exempt organizations:
 - Operations were fully or partially suspended due COVID-19 related shutdown order; **Or**, orders from governmental authority limiting commerce, travel, or group meetings
 - Gross receipts for the quarter are less than 50% of gross receipts for same quarter in the prior year (until reaching 80% again)

Employer Retention Credit

- Qualifying wages include compensation and healthcare costs
- Differences based on number of full-time employees
 - **> 100** – receive credit for wages paid to employees who are not working
 - **< 100** – receive credit for wages paid to all employees
- Full time employees are classified based on 30 hours per service week or 130 hours month
- Sick pay or wages paid through Families First Coronavirus Relief Act (FFRCA) are excluded for this credit,
- Funds from The CARES Act deemed forgivable and used to pay wages would be ineligible for the credit (i.e., Paycheck Protection Program)

Delayed Payment of Employer Payroll Taxes

- Allows employers to **defer payment** of employer portion of Social Security payroll tax (6.2%)
- Covers period from enactment of bill (3/27/2020) through 12/31/2020.
- 50% of deferred amount due before **12/31/2021** and remaining 50% due before **12/31/2022**.
- Self-employed individual can delay up to 50% of his or her self-employment tax
 - 25% due by 12/31/2021 and remaining 25% due by 12/31/2022.
- ~~Any business or self-employed individual who takes out small business loan debt that is forgiven would be ineligible for this deferral.~~ **UPDATE – Deferral is now allowed for PPP Loan participants with passage of H.R. 7010 – PPP Flexibility Act of 2020**

Takeaways from Employer Payroll Tax Credits

- **Be careful because there are several different credits and they each have their own criteria!**
 - Credit under Emergency Paid Sick Leave Act
 - Credit under Emergency Family and Medical Leave Act
 - Employer Retention Credit
 - Delayed Payment of Employer Payroll Taxes
- **Understand the cash flow benefits of payroll tax credit versus deferral of payments**
 - Ultimately qualifying for a loan to cover costs and having costs forgiven may still be the most beneficial (e.g., Paycheck Protection Program).
- **Upside is immediate cash flow assistance to small businesses, but unsure how this all plays out with 2020 filings for income taxes and payroll taxes.**



Qualified Improvement Property (QIP)

What is it?

- Any improvement made to the interior portion of a nonresidential building anytime after the building was placed in service.
- This specifically excludes any improvements to enlarge the building, improvements to elevators, escalators and an internal structural framework.



Qualified Improvement Property (QIP)

- Technical correction from tax reform, enacted 1/1/18, clarified:
 - **Qualified improvement property (QIP) placed in service after 12/31/17 is 15-year property eligible for bonus depreciation**
 - QIP placed in service during 2018 and 2019 is now eligible for bonus, which previously was subject to 39-year life and no bonus depreciation
- **Consider amending 2018 returns to re-classify these assets and claim bonus depreciation.**
 - Could result in net operating loss for taxpayer that can now be carried back 5 years when overall tax rates were higher.
- Taxpayer may file to change the accounting method used with their 2019 return to claim additional depreciation deductions in current year

Qualified Improvement Property (QIP)

Cost Segregation Studies

- Recommend for taxpayers generally having construction performed on a non-residential building with costs in excess of **\$500k**
- These studies can break-out property into class lives of 7-year, 15-year and 39-year class lives
 - Further benefit of knowing costs within building systems such as HVAC, Plumbing, Electrical, Fire, Security, Elevators, Escalators, etc. with partial asset disposition
- **Interplay with businesses electing real property trade or business due to 163(j) limitations and being subject to alternative depreciation system (ADS)**
 - **39-year assets go to 40-year life**
 - **15-year assets go to 20-year life (not eligible for bonus on newly acquired property)**

Net Operating Losses Timeline

Pre TCJA

- 2 Year Carryback and 20 Year Carryforward
- No limitation on offsetting taxable income, but only offset 90% of AMTI

Post TCJA

- No carrybacks allowed, must carryforward NOL's after December 31, 2017 indefinitely
- NOL's post December 31, 2017 limited to offsetting only 80% of taxable income prior to NOL deduction

CARES Act

- 5 Year carryback allowed for NOL's post December 31, 2017 and prior to January 1, 2021
- After 12/31/2020, any NOL deduction is limited to 80% of taxable income after deduction of pre-2018 NOL's, and before Qualified Business Income (QBI) deductions

Net Operating Losses

- **AMT Considerations in years prior to 2018**
 - Only offset 90% AMTI
- **Consider filing Form 1045/1139, Application for Tentative Refund for 2019 and 2020 NOL's**
 - Potentially faster, 90 days from date application filed or 90 days from end of month return was originally due (including extensions)
- **Technical correction for fiscal filers**
 - Fiscal filers beginning before 12/31/2017 and ending after 1/1/2018, have 120 days from enactment to request tentative refund
 - Only allowed to 2-year carryback
- **Other items to consider before carrying back losses**
 - Tax rates, section 179 deduction, charitable contributions, DPAD, statute of limitations for closed years
- **Colorado does not currently allow a carryback provision**

Excess Business Loss Limitations

- TCJA limited business losses for individuals and non-corporate taxpayers to \$250,000 for single filers and \$500,000 for joint filers (2018 thresholds)
- **Provides relief until 2021, Farm losses permanent (through 2026 for TCJA)**
- **Business losses fully deductible for years 2018, 2019, and 2020**
- If returns were filed for 2018 and 2019, they should be amended/superseded to not limit losses
- If the result is an NOL then prior return(s) should be amended to claim a refund
- Clarification on issues around items for business loss limitations starting in 2021
 - Will not be able to claim losses against wages and other income earned as an employee
 - Net operating losses and QBI deductions under 199A will not be considered for loss limitation calculation
 - Capital gains can continue to help offset limitation, but only after being netted with capital losses

Scenario – Single Filer

	2018	2019	2020	2021
Wages	\$100,000	\$100,000	\$100,000	\$100,000**
Investment Income	\$300,000	\$300,000	\$300,000	\$300,000
Business Income	(\$400,000)	(\$400,000)	(\$600,000)	(\$400,000)
461(l) loss limitation	\$250,000	\$0	\$0	\$250,000
Calc	\$100,000- \$400,000+ \$250,000=	N/A	N/A	\$400,000+ \$250,000=
NOL Carryover/ Carryback	\$50,000*	\$0	\$200,000	\$150,000
Net Taxable Income	\$50,000	\$0	\$0	\$150,000

- \$100,000 wages from business activity
- ***Actively participates, no passive activity loss rules, at-risk limitations or basis limitations***
- The 2018 unallowed loss due to excess business loss limitation should amend to claim a refund *
- Loss in 2020 can be carried back or carried forward, but remember change in tax rates
- **Notice in 2021 the unallowed loss is larger now because wages can no longer be claimed as business income to offset loss ****

Business Interest Limitation 163 (j)

- **Who does this potentially apply to?**
 - Average annual gross receipts greater than \$26 million for past 3 years
 - Own an interest in another business entity with a current, or prior year carryover of business interest expense
 - Business entity that is a tax shelter and has business interest expense
- **Additional business interest deduction of 20% for 2019 and 2020**
 - **Partnerships only have increased rate for 2020 tax year**
- If 2019 return has already been filed, return could be superseded prior to new filing date of 7/15/2020 or could file an amended return to claim refund
- **Have option for 2020 tax year to utilize 2019 adjusted taxable income due to potential drop in income from 2020**
- If the entity was new in 2019, adjusted taxable income for 2019 can be annualized based on number of months

Business Interest Limitation 50% vs. 30%

S-Corp 2019 Filing	30% Limitation	50% Limitation	30% Limitation Post 1/1/2022
Taxable Income	\$200,000	\$200,000	\$200,000
Additions:			
Business Interest Expense	\$150,000	\$150,000	\$150,000
Depreciation/Amortization	\$50,000	\$50,000	\$0
Contributions	\$1,500	\$1,500	\$1,500
Adjusted Taxable Income (ATI)	\$401,500	\$401,500	\$351,500
30%/50% Limitation	\$120,450	\$200,750	\$105,450
Allowable interest expense	\$120,450	\$150,000	\$105,450
Excess business interest expense	\$29,550	\$0	\$44,550

- S-Corporation with two owners 50/50
- *Adjusted Taxable Income equals 30% of ATI, floor plan financing interest and any business interest income*
- Starting 1/1/2022 there will be no addback for depreciation and amortization
- Taxpayers would amend the 2019 filing or supersede the filing to avoid having excess business interest expense trapped at entity level and each owner would receive an additional deduction of \$14,775

Business Interest Limitation 50% vs. 30%

Partnership 2020 Filing	2019 30% Limitation	2020 50% Limitation	2020 50% Limitation w/2019 ATI
Taxable Income	\$200,000	\$50,000	
Additions:			
Business Interest Expense	\$150,000	\$150,000	
Depreciation/Amortization	\$50,000	\$50,000	
Contributions	\$1,500	\$1,500	
Adjusted Taxable Income (ATI)	\$401,500	\$251,500	\$401,500
30%/50% Limitation	\$120,450	\$125,750	\$200,750
Allowable interest expense	\$120,450	\$125,750	\$150,000
Excess business interest expense	\$29,550	\$24,250	\$0

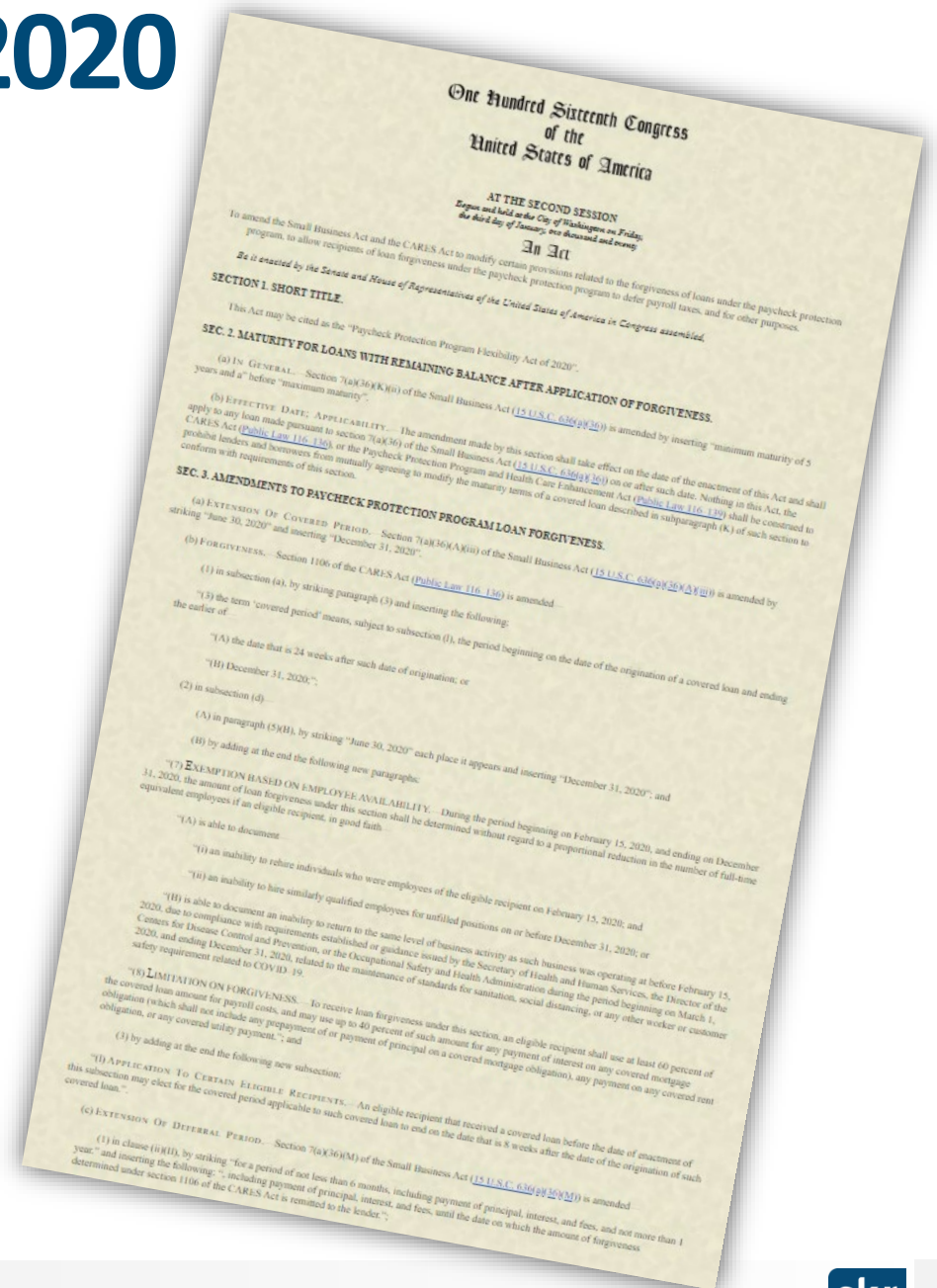
- Partnership with two owners 50/50
- **Increase from 30% to 50% for limitation only applies to 2020 for partnerships**
- **If limitation occurred in 2019, each partner could deduct 50% of the amount disallowed not subject to 2020 163(j) limitations, remaining 50% subject to excess taxable income to free up deduction**
- Election to deduct 50% excess business interest expense made at individual level
- Unsure how election will be made to use 2019 ATI at this point
- Excess taxable income equals \$50,750, which would free up all the excess business interest expense carried over from 2019

Colorado House Bill 20-1420 – “Tax Fairness Act”

- Signed into law by Governor Polis on July 11th
- Decouples Colorado from tax provisions of CARES Act
 - NOL's – no carrybacks for Colorado, 80% taxable income limitation still applies
 - Excess business loss deductions
 - Interest expense deduction under 163(j)
 - Qualified Improvement Property
- If you filed an amended Federal return for tax year before March 27, 2020 to incorporate changes from CARES Act, you will need to file an amended Colorado return.

PPP Flexibility Act of 2020

- 1,173 words upend major aspects of PPP Loan Forgiveness
- Designed to provide broader forgiveness to business owners
- Became law on June 5, 2020



Congressional Changes in the PPP Flexibility Act

One	Two	Three	Four	Five
Maturity for loans with remaining balance after application for forgiveness changed from two years to five years.	Extension of the covered period changed from 8 weeks to 24 weeks.	Exemptions based on employee availability, extends timeframe on rehiring FTEs to December 31, 2020.	Limitation on forgiveness on non-payroll costs changed from 75/25 to 60/40 , but new caveats apply.	Delay of payment of employer payroll taxes.

Joint Statement with Treasury and SBA

- June 8, 2020 statement clarified 60% cliff concerns:

If a borrower uses less than 60 percent of the loan amount for payroll costs during the forgiveness covered period, the borrower **will continue to be eligible** for partial loan forgiveness, subject to at least 60 percent of the loan forgiveness amount having been used for payroll costs.

\$2 Million Safe Harbor – Good Faith Request

- Original application required applicants making PPP loan requests to certify in good faith that there was current economic uncertainty to support ongoing operations
- The Small Business Administration (SBA) determined that any applicant, including affiliates, who received PPP Loan proceeds of an original principal amount less than \$2 million would be deemed to have made the required certification of good faith in obtaining the loan
- A large part of this determination with using the \$2 million threshold was the liquidity of borrower's requesting loans
- The SBA has stated that all PPP Loans issued above \$2 million are subject to review

PPP Forgiveness Support Team

You have questions.



We have answers.

- Reviewing or completing applications
- Preparing or reviewing calculations
- Minimizing forgiveness reductions
- Understanding documentation rules
- Balancing EIDL + PPP programs
- Layering PPP with FMLA + unemployment
- Maximizing federal and local relief funding
- Determining exit strategies
- Timing rehires and loan repayments
- Forecasting for business continuity
- Planning for post-COVID cashflow

PPP FORGIVENESS SUPPORT TEAM



When every business is different, every question is unique and every answer is essential to meeting strict guidelines, feel confident turning to your team of experts well-versed in the latest business recovery information.

Team members include:

- Jordan Empey, Tax Partner
- Jason Raak, Tax Manager
- Jennifer Carter, Senior Tax Consultant

For assistance with PPP loan programs or other business relief initiatives tied to COVID-19 interruptions, please contact 719.630.1186 or communications@skrco.com.

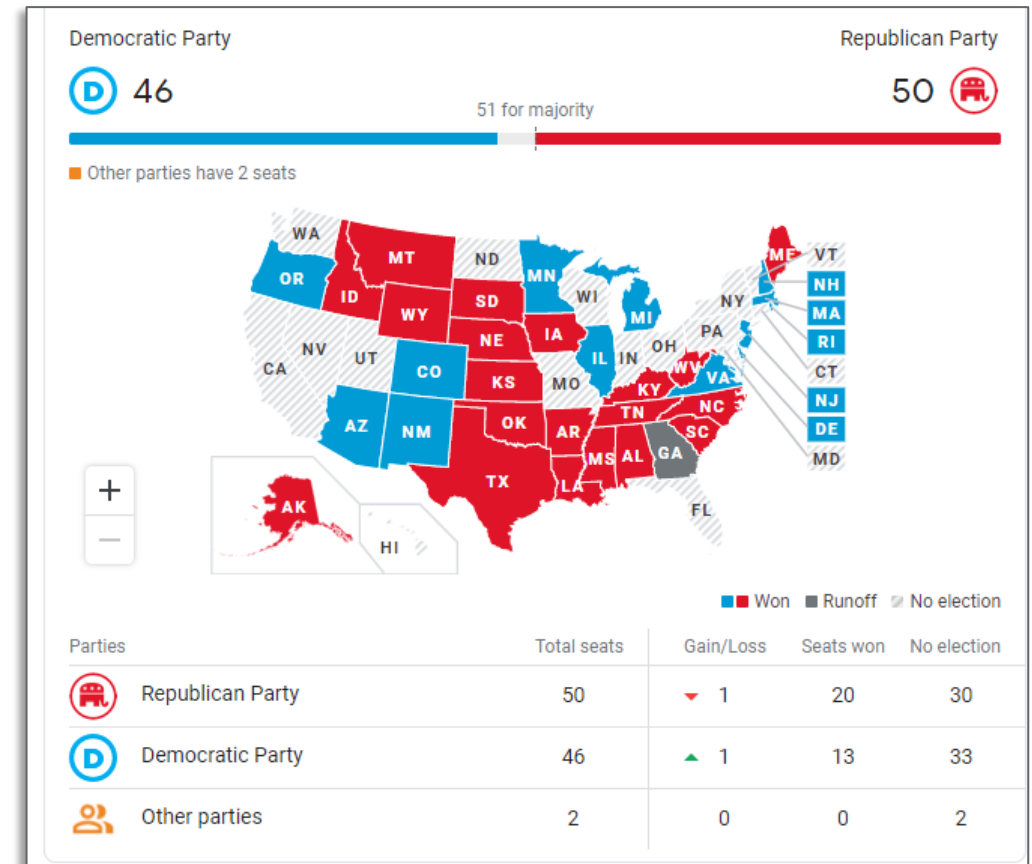


Potential Election Tax Implications

Judy Kaltenbacher, CPA

Post Election Results

- Vice President Biden was announced as President-Elect on November 7, 2020
- As of December 3, 2020, there is one race that has not been called, Georgia (2 seats) – runoff election will occur January 5th
- Current Senate seats are 50 Republican, 46 Democratic and 2 Independent
- Mid-term elections in 2022 could be critical
 - Total of 65 seats comprised of 30 Republican seats, 33 Democratic seats and 2 Independent seats



Election Results – President-Elect Biden Tax Proposals

Individual Income Tax Proposals

- Revert individual top rate from 37% back to 39.6% for incomes above \$400,000
- Tax capital gains and qualified dividends at ordinary rate of 39.6% on income above \$1 million
 - Currently married couples \$0 to \$80,000 taxed at 0%, \$80,001 to \$496,000 tax at 15% and greater than \$496,000 taxed at 20%
 - Also must consider 3.8% Net Investment Income Tax, applies to individuals with adjusted gross income over \$200,000 and married couples over \$250,000
- Effectively the top rate would increase from 23.8% to 43.4%

\$400,000 threshold

- Cap benefit of itemized deductions to 28 percent of value
- Restore Pease limitation on itemized deductions for taxable income > \$400,000
- Phaseout Qualified Business Income (QBI) deduction for taxable income > \$400,000
- **Payroll tax on wages above \$400,000 at 12.4% evenly split between employer and employee, 2020 threshold is \$137,700**

Election Results – President-Elect Biden Tax Proposals

- Expand Child and Dependent Care tax credit from \$3,000 to \$8,000, reimbursement rate from 35% to 50%
- For 2021, increase child tax credit from \$2,000 to \$3,000, extra \$600 for children under 6 and fully refundable, currently only \$1,400 is refundable
- Re-establish the First-Time Homebuyer Tax Credit with up to \$15,000 in credit

Election Results – President-Elect Biden Tax Proposals

Estate and Gift Tax Proposal

- Restore Estate and Gift Tax exemption and tax rate back to 2009 limits
 - 2009 limit was \$3.5 million exemption and 45% tax rate
- Eliminate step-up in basis for capital gain assets

Business Tax Proposal

- Raise corporate income tax rate from 21% to 28%
- Create minimum tax on corporations with book profits greater than \$100 million
 - Essentially an alternative minimum tax that would be the greater of 15% on book income or the corporate tax rate on taxable income, net operating losses and foreign tax credits would still be allowed
- Raise the offshore tax rate for foreign subsidiaries of U.S. firms from 10.5% to 21%
- Impose 10% surtax on corporations who offshore manufacturing and service jobs to foreign countries only to sell the goods and services back to the U.S.

Question + Answer



Upcoming SKR+CO Webinars

DEC 09 | How to Make Opportunity Zone Funds Work

- Presented by Trinity Bradley-Anderson, CPA, Tax Partner and Jared Usrey, Tax Supervising Senior



DEC 16 | Year-End Planning for Construction Industry

- Presented by Brian Tunnelle, CPA, Audit Partner and Buddy Newton, CPA, Senior Tax Manager



Registration here www.skrco.com/webinars