Spielman Koenigsberg & Parker, LLP
CERTIFIED PUBLIC ACCOUNTANTS

The Storm of Changes in Tax and Accounting – and further US Department of Treasury Revenue Proposals for 2023

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If one had a crystal ball to see what will happen in the future, one would think that information would be deemed very valuable. In today's fast changing world, this past year or two has seen much movement in tax policy, both on the federal and state level. This policy shapes our clients – both companies and individuals – by helping them weather the Covid-19 storm that affected how we operate our businesses, and at times, complicating tax, and accounting reporting by requiring more information to be disclosed to our government. Without your Certified Public Accountant to actively monitor and adjust your business and personal practices, we fear that opportunities would be lost, and punitive responses by the government would damage business success.

This past tax season has haunted professionals with many cumbersome, albeit sometimes helpful, policy changes by the Treasury and the Internal Revenue Service. Paycheck Protection Program proceeds and forgiveness, Employee Retention Credit benefits and taxation, new disclosure of Forms K-2 and K-3 that accompany your passthrough entity reporting, state and local tax deduction workarounds that have been developed and further modified by many states, and many other items – are just a handful of popular items that your CPA needs to be familiar with.

At SKP, we have stayed on top of our game to interpret and address these issues, requirements, and benefits, so that your businesses stay compliant, and take advantage of the programs available.

Touching briefly on several items that we feel are of most significance, are the following:

Paycheck Protection Program – while this program has ended and has shown great success in injecting funds into the hands of businesses and self-employed individuals to keep people employed, the IRS continued to adjust the presentation of the relief of loans (forgiveness) on business tax returns as to how it impacts basis.

Employee Retention Credits – another successful program to inject funds into businesses whose revenues were impacted by Covid – the IRS provided late guidance affecting the 2020 tax returns for those who qualified for the benefits, by requiring a removal of deductions for payroll used to claim such credits.

Passthrough Entity State and Local Tax Workarounds – Some states have enacted rapidly, in 2020, programs to create a benefit to shareholders/members of pass-through entities related to state and local taxes which were typically paid on the individual level. Modification of the computations are still being made to correct the states language interpretations, and New York, as an example, is now even planning to include something for NYC tax as well.

Cryptocurrency Reporting – The IRS and Treasury now require reporting of all cryptocurrency activity. Anytime there is a sale of such asset, a gain or loss must be reported on your tax return as short term and long-term capital gains. There is also a requirement to advise the IRS on your Form 1040 reporting of your activity involving cryptocurrency. This creates additional tax and reporting, even if you are simply using Crypto in a wallet to purchase something.

State Nexus and Reporting – When individuals started working remotely from their homes, states exercised some leniency in the rules related to economic nexus (connection) as it pertained to bordering states, and the Treasury also relaxed certain Federal residency rules pertaining to US nexus for certain foreigners contained by Covid lockdowns. After the more restrictive waves of Covid passed, and the remote workforce concept became more widespread, states realized they were losing out on revenues. They started taking positions to assert that individuals working from their home could create nexus and state allocated income for businesses and individuals alike. Other states sought to protect their eroding tax base by asserting conflicting rules that tied the employee to their business office location. We have seen an increase in nexus assertions by various states through desk audits, and one needs to be careful, individually, and as it relates to sourcing income from your business operations based upon employee location.

Forms K-2 and K-3 – While one can be anticipating a Form K-1 for investments made in publicly traded partnerships and other investments, the IRS has added on additional reporting requirements that had halted CPA firm preparation of partnerships and "s" corporations in February 2022. They created rules and failed to give professionals clarity on how to work with the new guidance. What is a K-2 or K-3? In a nutshell, these forms create additional reporting for entities that have foreign operations, foreign shareholders, and other complexities so that the IRS can "neatly" present the information in a standardized way. "Neatly" – not exactly. The new forms created quite a headache for many, and the presentation only confused the public and professionals alike.

Research and Development Tax Credit Reporting – coming into effect in 2022, any claims for tax credits related to research and development spending will be met with more stringent disclosures. Details of the specific research will need to be provided on the tax return when claimed, as the IRS is looking for abuses to the credits claimed.

Lease Accounting – The Financial Accounting Standards Board (FASB) creates new accounting pronouncements on a regular basis. This one has been delayed many times but is anticipated to roll out this year. Businesses will need to create balance sheet items related to leased assets. A rental arrangement for warehouse or office space will find its way onto the balance sheet in the form of an asset and liability. For those clients who prepare financial statements given to a bank, these changes should be addressed and presented now. Communication with the agencies and banks whom you report to – now - will clarify and gain mutual and better understanding of your reporting requirements and covenant computations for 2022.

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Future Policy Setting. In looking at the new US Department of Treasury Greenbook published in March 2022, we get a sense of the "crystal ball" based upon the current administration and its proposed changes in store for 2023. There seems to be a sense of catching up on revenue. Some of their proposals are like what we saw in the Build Back Better proposals that didn't pass. Here are some of the items to focus on:

- A potential increase in corporate tax rates from 21% to 28%
- A focus on keeping jobs domestically by reducing deductions for overseas staffing
- Potential Increase of top marginal individual income tax rates from 37% to 39.6%
- Tax reform related to capital gains tax rates – for taxable income of greater than 1 million would be taxed at ordinary rates
- Gain recognition in certain Grantor Trust transfers, and limitation of certain valuation discounts
- Taxation of carried interest more like ordinary income
- Repeal of the 1031 Like Kind exchanges
- Extend the statute of limitations for certain tax assessments (from three years to six)
- Requirements of reporting for digital asset transactions (Crypto-currency and NFT)
- Repeal of the base erosion and anti-abuse tax and replace with an undertaxed profits rule

While these items are only proposed changes, it is very clear that the current administration is pushing the same or similar agenda as previous proposals and bills (many of which have not passed), and it seems as though we should be expecting tax increases in the years to come.

We are working hard to disseminate current developments as they are brought to the table. Further clarity on some of the topics above will be sent out with email blasts to our clients and friends to help ensure you are kept abreast of current tax and accounting changes. As always, we suggest reaching out to your SKP professional as to any topics above or other new items you may hear about. We are here to help bring transparency of any new topics of relevance.