TEGE | EXEMPT ORGANIZATIONS COUNCIL

Capitol Hill Update

June 2022

Slides prepared by:
Alexander Reid, Partner BakerHostetler (Moderator)

Presenters:
Karin Hope, Tax Counsel, House Ways and Means Committee
Chris Arneson, Senior Tax Policy Advisor at U.S. Senate Committee on Finance

The government speakers were not involved in the preparation or review of these materials which were prepared by the moderator. The content of this presentation is not intended to represent the views of any member, staff, or committee of the Senate or House of Representatives.

TEGE | Exempt Organizations Council

Tax Legislation in the 117th Congress

Long and Winding Road to Tax Reform

- Timeline (AFTER the 3/11/21 $1.9T American Rescue Plan)
- March 31, 2021 – White House releases American Jobs Plan (AJP) (Targets corporate/international tax, i.e., Made in America Tax Plan)
- April 7 – U.S. Treasury releases report on AJP's Made in America Tax Plan
- April 28 – White House releases American Families Plan (AFP) (Targets high-net-worth individuals and tax compliance/enforcement)
- May 20 – U.S. Treasury releases report on AFP's Tax Compliance Agenda May 28 – U.S. Treasury releases FY 2022 Greenbook
- August 25 and September 10 – Sen. Ron Wyden (D-Or.) releases various tax proposals on international tax provisions and certain domestic tax provisions
- September 13 – House Ways and Means Committee releases its tax reform proposal
- October 28 – H.R. 5376, the Build Back Better Act, is introduced
- November 3 – Revised text of the Build Back Better Act is introduced

One Down, One To Go

- **IIJA**. $1.2 trillion Infrastructure Investment and Jobs Act (IIJA), Public Law No. 117-58, enacted Nov. 15, 2021
  - A/K/A "Bipartisan Infrastructure Framework (BIF)," "Bipartisan Infrastructure Deal" and "INVEST in America Act (H.R. 3684)"
- **BBB.** Build Back Better (which has main tax provisions) passed the House on Nov. 19, 2021 (H.R. 5376), but it has yet to gain the 51 votes needed to pass the Senate.
  - BBB is likely to be substantially different from the House bill if/when finally enacted.

Estimated Offsets for BBB

Total	$1.48 trillion per JCT
$79 Billion Investment in IRS Enforcement	**OMB estimates investment to yield $400B of increased federal revenue**
Corporate international reforms	$279 billion
15 percent corporate minimum tax	$319 billion
Reduce prescription drug costs	$250 billion
Surcharges on high wage earners	$480 billion ($252B Net Investment Income Tax (Medicare Tax) Loophole; $228B 5% surcharge over $10M and 8% over $25M)
Limit business losses for the wealthy	$160 billion
1 percent stock buybacks tax	$124 billion
SALT cap at $72,500 (may be $80)	$2 billion over 10 years (costs $222B 2022 through 2026; 2021 not scored)

Expired Charitable Deduction Provisions

Nonitemizer charitable deduction (Div. EE, sec. 212, of Consolidated Appropriations Act, 2021)

- The CARES Act (signed March 27, 2020) created a temporary above-the-line charitable deduction limited to $300 for "qualified charitable contributions" made in a taxable year that begins in 2020.
- Subtracted from gross income in computing AGI (new sec. 62(a)(22)). I.e., above the line.
- Eligible individual = an individual who does not elect to itemize
- A "qualified charitable contribution" is a cash contribution that generally would be allowable as a deduction under section 170 and which is paid to a public charity (other than a DAF or a supporting organization)
- $300 limit applies to the tax filing unit, such that MFJ still gets $300 (not twice that amount).

The Consolidated Appropriations Act, 2021 (signed December 27, 2020) creates a nonitemizer deduction for contributions made in taxable years that begin in 2021.

- Drafted differently from 2020 CARES Act rule: The deduction is subtracted in computing taxable income under sec. 63 but does not reduce AGI, as with the standard deduction and itemized deductions. So, the nonitemizer deduction for 2021 is no longer technically "above the line." Creates a new sec. 170(p).
- $300 ($600 for joint return filers)
- Increases the section 6662 penalty for an underpayment of tax arising from an overstatement of the new deduction from 20% of the underpayment to 50% and exempts the penalty from the requirement of supervisory approval under section 6751(b).

Expired Charitable Deduction Provisions

Charitable percentage limits (Div. EE, sec. 213, of Consolidated Appropriations Act, 2021)

- The CARES Act temporarily increases the section 170 percentage limits for “qualified contributions”
- “Qualified contributions” are cash contributions paid during calendar year 2020 to a public charity (other than a DAF or a supporting organization)
- No purpose-based limitation (as would normally be included when suspending the limits for disaster relief)
- Full suspension of the limits for individuals
- Increase to 25% of taxable income for corporations
- The Consolidated Appropriations Act, 2021 extends the CARES Act rules for contributions made during 2021.

Disaster relief contributions by corporations (Div. EE, sec. 304(a), Consolidated Appropriations Act, 2021)

- As already mentioned, the CARES Act increases the charitable percentage limits for “qualified contributions” made during calendar year 2020.
- The Consolidated Appropriations Act, 2021 increases the corporate percentage limit to allow taxable income to be fully offset for “qualified disaster relief contributions” (increasing from 25% to 100%)
- Must be a “qualified contribution” within the meaning of the CARES Act paid between 1/1/20 and 60 days after DOE, and must be made for relief efforts in a qualified disaster area.
- Possibly some question of how the 60-day time period interacts with the requirement that the contribution be a qualified contribution within the meaning of CARES, which in turn requires that the contribution have been paid during calendar year 2020.
- Was not necessary to cover taxpayers who are individuals in this provision, because the CARES Act provides for a full suspension of the individual percentage limits with no purpose-based limitation, so the CARES provision already covers contributions made for relief efforts in a qualified disaster area.

IRA Qualified Charitable Distributions

Present law sec. 408(d)(8) allows an exclusion from gross income up to $100,000 per year for a distribution made directly from an IRA to a public charity (other than a DAF or an SO).

Legacy IRA Act (H.R. 5171, S. 243)

- Generally expands allowable QCDs to include distributions to a split-interest entity (a CRUT, a CRAT, or a Charitable Gift Annuity).
- Increases generally-applicable annual cap to $130,000, but allows up to $400,000 for a split-interest distribution. Also lowers the age for a QCD from 70-1/2 to 65, but only for split-interest entity distributions.
- Distributions treated as ordinary income to the annuitant.

SECURE 2 legislation

- Indexes the $100,000 limit for inflation
- Includes a more limited expansion of the IRA QCD exclusion for split-interest entity distributions.
- Once-per-lifetime option to make such a distribution in an amount up to $50,000 (indexed). No change in 70-1/2 age for making a QCD.

Accelerating Charitable Efforts Act (ACE)

- S. 1981 was introduced in the Senate by Senators Chuck **Grassley** (R-IA) and Angus **King** (I-ME) on June 9, 2021, and Reps. **Pingree** (ME-1), **Reed** (NY-23), **Khanna** (CA-17) and **Porter** (CA-45) introduced a companion bill in the House on Feb. 3, 2022.
- Establishes "qualified" and "nonqualified" donor advised funds (DAFs) to encourage **speedier pay outs and shorter durations.**
- Restricts **community foundations** to geographic regions of **four or fewer states** and account sizes of **$1M or less.**
- Income tax charitable **deduction deferred** to date DAF grants out the funds.
- Gifts of **property not deductible until DAF sells property** and makes grants.
- Requires substantial new **information reporting** to IRS regarding gifts.
- Modify rules applicable to private foundations, exempting from the annual 1.39% excise tax those foundations with a **25 year limited duration** or which make **annual distributions in excess of 7%.**
- Modify the **public support rules for public charities**, no longer treating DAF distributions as support from a public charity.

Accelerating Charitable Efforts Act (ACE)

New Donor Advised Fund Rules.

1. **Definitions:**

a. Qualified DAF (QDAF) – Generally a DAF established under an agreement that requires termination of donors' advisory privileges with respect to a contribution before the last day of the 14th year beginning after the year in which the contribution is made (so, max of 15 years if contribution made on January 1). In other words, a limited duration DAF.

b. Qualified community foundation DAF (QCFDAF) – QCFDAFs have two additional ways to achieve "qualified" status. The DAF must be controlled by a Qualified Community Foundation (QCF) and:

i. Each person with advisory privileges with respect to the DAF can have advisory privileges with respect to all DAFs at the same sponsoring CF with a value of no more than $1 million (indexed).

ii. The DAF account is established under an agreement requiring a 5% annual payout at the account level.

iii. Qualified community foundation (QCF) – Generally, a section 501(c)(3) organization that serves no more than 4 states and holds at least 25% of its assets outside of DAFs.

Accelerating Charitable Efforts Act (ACE)

New Donor Advised Fund Rules.

2. 170 deduction rules for QDAFS, QCFDAFs, and NQDAFs:

a. Contribution to NQDAF (and DAF that is not a QDAF or QCFDAF):

i. Property other than cash, no deduction unless the sponsoring organization sells the asset for cash, and

ii. For any contribution (including cash), deduction delayed to year in which there is a qualifying distribution (to a charity that is not a DAF), with the donor's deduction being equal to the amount of the qualifying distribution.

b. Contribution to a QDAF or QCFDAF of a non-publicly traded asset:

i. No deduction until the sponsor sells the asset, and

ii. Deduction limited to gross proceeds of the sale that are credited to the DAF account.

iii. Up-front deduction for contributions of cash and other assets. But no deduction for contribution to QDAF unless donor identifies recommended charity for distribution at end of 14+ year period (this no-deduction rule does not apply to QCFDAF).

Accelerating Charitable Efforts Act (ACE)

c. Additional contemporaneous substantiation required for contributions described in (a) or (b) (with information also being provided to the Secretary). Penalty on DAF other than a QCFDAF (sec. 3 of the bill) – Generally imposes a 50% penalty on a failure of a DAF to distribute a contribution by: (1) in the case of a QDAF, the 14-year period described above, or (2) in the case of a NQDAF, by the 49th taxable year beginning after the contribution year.

Accelerating Charitable Efforts Act (ACE)

Taxpayer-Unfavorable Private Foundation Rules:

1. Sec. 4 of the bill: For purposes of the section 4942 5% private foundation payout requirement, in general, a qualifying distribution does not include administrative expenses (such as salaries) paid to a "disqualified person," unless the DQP is a foundation manager who is not related to a substantial contributor to the foundation.
2. Sec. 5 of the bill: For purposes of the section 4942 5% private foundation payout requirement, a qualifying distribution does not include a distribution to a DAF. Also, a PF must report on form 990-PF information about any such distributions.
3. Sec. 6 of the bill: Includes rules for when a grant from a DAF or DAF sponsor to a 501(c)(3) organization will count as public support for purposes of achieving public charity (non-PF) status. In general, all money received from DAFs at a sponsoring organization will be treated as having been received from one person, unless the sponsoring organization identifies the specific DAF donor. [In general, under present law, contributions from a person count as public support only to the extent they do not exceed 2% of the 501(c)(3)'s total support. But all amounts received from a charity or government generally are treated as public support.] No limit if sponsoring org certifies that the grant was made from non-DAF funds.

Accelerating Charitable Efforts Act (ACE)

Taxpayer Favorable Private Foundation Rules:

1. Sec. 7 of the bill: The sec. 4940 1.39 percent PF excise tax does not apply if the PF meets a 7-percent payout for the year (instead of the usual 5 percent).
2. Sec. 8 of the bill: The sec. 4940 1.39 percent PF excise tax does not apply if the foundation's organizing documents limit its existence to not more than 25 year and the foundation makes not distributions to a disqualified PF (generally, a PF with a common disqualified person). Includes a recapture rule if one of the requirements is later failed.

College Endowment Tax Modification

Modification of section 4968 university excise tax

- Present law sec. 4968 imposes an excise tax of 1.4 percent of net investment income on private universities with an endowment value that is large relative to the size of the student body (at least $500,000 per student).
- Under the proposal, if the university meets certain disclosure requirements relating to aid provided to students, it is eligible for a phaseout of the excise tax based on the amount of aid provided to undergraduate students.
- Excise tax fully phased out if school makes qualified aid awards of at least 33 percent of its aggregate undergraduate tuition and fees received.
- Part of the Build Back Better House Reconciliation Bill

Public University Infrastructure Credit

Credit for public university research infrastructure (sec. 137501 of RCP 117-18)

- Allows a 40% credit (in lieu of a 170 deduction) for qualified cash contributions to a public college or university to purchase, construct, or improve research infrastructure property.
- Secretary allocates credit amounts to a college or university for a qualifying project (taking into account intended use for STEM and ensuring consideration of smaller schools), and the school then designates cash contributions as qualified contributions (contributions in an amount up to 250% of amount of credit allocated to school may be designated).
- Total annual allocable amount capped at $500 million for each of 2022-2026, then expires.
- Part of the Build Back Better House Reconciliation Bill.

Syndicated Conservation Easements

Generally based on Charitable Conservation Easement Program Integrity Act, which was re-introduced in both the Senate and the House in 2021.

- Senate (S. 2256): Daines, Stabenow, Grassley, Wyden
- House (H.R. 4164): Thompson & Kelly
- Generally denies deduction for partner's allocable share of a deduction for a partnership's qualified conservation contribution that exceeds 2.5x the partner's basis in the partnership property with respect to which the contribution is made.
- Generally effective for contributions made after December 23, 2016.
- W&M markup version included a deed "curing" provision -- the taxpayer has 90 days from written notice by the Secretary of a deed defect relating to property line adjustments or extinguishment clauses that affects protection in perpetuity to correct the defect. Does not apply to a reportable transaction (e.g., one described in the IRS listing notice).
- Was in marked up version of BBB in House but not in version that went to the floor

College Coaching Contract Investigation

- Rep. Bill Pascrell (NJ-D) sent letters to the Presidents of Louisiana State University (LSU) and the University of Southern California (USC) on 12/17/21 requesting information about compensation for recently hired head football coaches. He sent letters to presidents of Michigan State University (MSU) and the University of Miami (Miami) on 1/11/22 requesting similar information.
- Published reports suggest total contract benefits over ten years for the coaches are as follows: Brian Kelly (LSU) $95 million, Lincoln Riley (USC) $110 million, Mel Tucker (MSU) $95 million, and Mario Cristobal (Miami) $80. The coaches will also receive additional benefits including annual incentive bonuses in excess of $1 million, housing benefits, and use of vehicles / private jet.
- Rep. Pascrell stated, “I write today to request important information about how the university’s lucrative athletics program is furthering the educational purposes for which [School] receives tax exemption…. [R]ecent reports about compensation that [your school] will pay its football coaches have raised significant concerns about whether the university is operating consistent with its tax-exempt status. … It is unclear how such lucrative compensation contracts further [School’s] overall educational mission and benefit your student body as a whole.”

Questions

Alexander Reid
Partner
BakerHostetler
areid@bakerlaw.com

Karin Hope
Tax Counsel
House Ways and Means Committee
Karin.Hope@mail.house.gov

Chris Arneson
Senior Tax Policy Advisor
U.S. Senate Committee on Finance
Christopher_Arneson@finance.senate.gov

The government speakers were not involved in the preparation or review of these materials which were prepared by the moderator. The content of this presentation is not intended to represent the views of any member, staff, or committee of the Senate or House of Representatives.