# Year End Planning for a Biden Administration and the SECURE Act


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# Chuck Porter

## Owner & Sr. Investment Advisor

Chuck has been with Canon Capital since 2006 and was admitted to the company as a unitholder (owner) in 2018. He is a Senior Investment Advisor specializing in serving high-net-worth individuals and families. Chuck graduated from Widener University where he majored in Economics with an emphasis in Personal Financial Service. He has a Certificate in Financial Management for the Family Office from Pepperdine University's Graziadio School of Business and Management and he is an Accredited Investment Fiduciary. Chuck is very involved in the community. He coaches youth football and basketball. He has been a committee member for the Penn Foundation autumn event, President of the Indian Valley Chamber Community Leadership Institute Alumni Association, a member of the North Penn United Way Emerging Leadership Society, and a team member on the Calvary Church Count Team. Chuck lives in Harleysville with his wife and their four sons. In his spare time, he enjoys playing sports, playing on the Calvary Church softball team, biking, doing yard work, spending time at the beach or around the fire pit with family, and savoring life with four sons.

# Brent Thompson

## Director and Manager

Brent joined Canon Capital in 1998 and is responsible for providing management advisory services, tax and general business planning, tax preparation, and financial statement preparation and review services for numerous businesses and their owners. In addition, he assists the firm directors with scheduling, staff development, and business development. He earned his Bachelor of Business Administration degree from Temple University. In addition to holding his CPA designation he also holds the Certified Management Accountant (CMA) designation and a Chartered Global Management Accountant (CGMA) designation. Brent is a member of the AICPA and the Institute of CMA's, and is a former instructor of business development courses at Montgomery County Community College. He has also served on the Economic Restructuring Committee for the Souderton/Telford downtown revitalization efforts and the Stewardship Committee for Keystone Fellowship. He currently serves as the treasurer of the Indian Valley Chamber of Commerce. Brent resides in Souderton with his wife and three children. He enjoys boating, water-skiing, and working on home improvement projects.

# What We Will Cover Today

- Current State of Affairs
  - State of the IRS
  - Status of the Election… potential impact on tax law change
  - Review of Tax Cuts and Jobs Act (TCJA)
- Review of Recent Tax Law Changes
  - The SECURE Act Passed in December 2019
  - The CARES Act Passed in 2020
- Potential Tax Changes with a Biden Administration
  - Possible Planning Points – Individuals and Businesses
- Brief Update on PPP Loan Developments since October

# State of the IRS

- They still have millions of pieces of unopened mail
- IRS plans a 50% increase in small business audits in 2021.
  - 50% sounds "scary" but rates have been ***extremely*** low
    - IRS only audited 140 partnership returns for 2018 out of 4M filed
    - IRS only audited 397 S-corporation returns for 2018 of 4.2M
- Expanding Identity Theft PIN#
  - Available to all taxpayers starting mid-January

# Status of Election and Biden Tax Plan

- Status of Election
- Early, Biden stated "day one agenda" is to eliminate TCJA
  - Strong words… retroactive tax implementation policy is possible
  - More recently modified to a focus on $400K income and above
- Conflicting Pressures…
  - Paying for Stimulus vs. Hindering Economic Recovery Post-Pandemic


SOMEDAY, ALL THIS WILL BE YOURS.
MOUNTAINS OF DEBT SCENIC OVERLOOK
IOU


ECONOMY
CORONAVIRUS

# TCJA Tax Brackets

Brackets for 2018 forward adjusted for inflation

| Married Filing Jointly & Surviving Spouses | | | |
|---|---|---|---|
| 2018 Tax Rates - Standard Deduction $24,000 | | 2017 Tax Rates - Standard Deduction $12,700 | |
| 10% | 0 to $19,050 | 10% | 0 to $18,650 |
| 12% | $19,050 to $77,400 | 15% | $18,650 to $75,900 |
| 22% | $77,400 to $165,000 | 25% | $75,900 to $153,100 |
| 24% | $165,000 to $315,000 | 28% | $153,100 to $233,350 |
| 32% | $315,000 to $400,000 | 33% | $233,350 to $416,700 |
| 35% | $400,000 to $600,000 | 35% | $416,700 to $470,700 |
| 37% | Over $600,000 | 39.60% | Over $470,700 |

# Tax Brackets 2020

## 3rd Year for TCJA

- 37% for single and MFS taxable income exceeding $518,400 ($622,050 for MFJ) (potential 2.6% incr)
- 35% for single and MFS taxable income exceeding $207,350 ($414,700 for MFJ) (potential 4.6% incr)
- 32% for single and MFS taxable income exceeding $163,300 ($326,600 for MFJ) (Potential 7.6% incr)
- 24% for single and MFS taxable income exceeding $85,525 ($171,050 for MFJ)
- 22% for single and MFS taxable income exceeding $40,125 ($80,250 for MFJ)
- 12% for single and MFS taxable income exceeding $9,875 ($19,750 for MFJ)
- Corporate tax rate remains at flat 21%

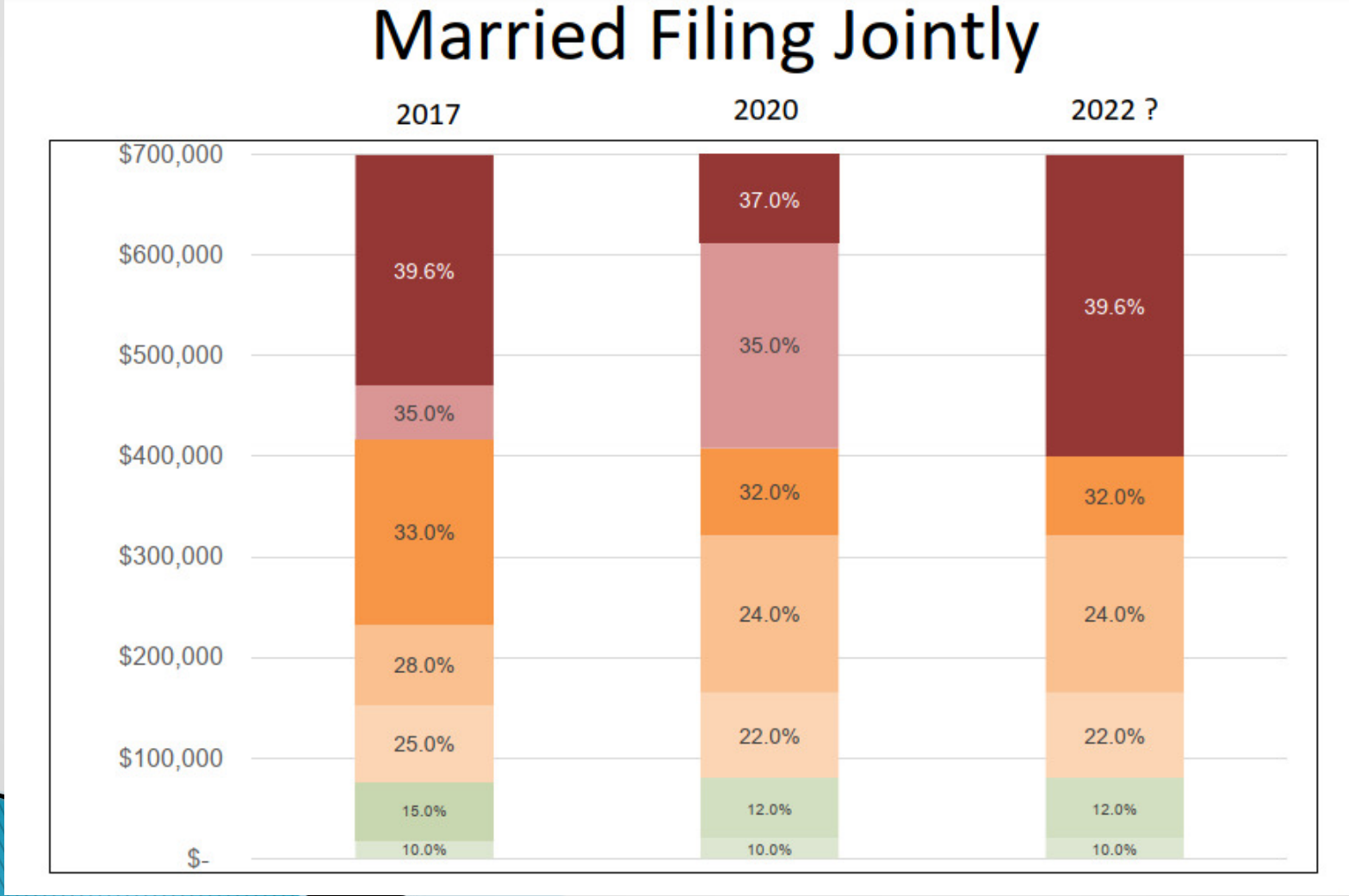
## Capital Gains

- 0% for single and MFS income up to $40,000, up to $80,000 for MFJ, and up to $53,600 for HOH
- 15% for single income $40,001 to $441,450, $80,001 to $496,600 for MFJ, $40,001 to $248,300 for MFS, and $53,601 to $469,050 for HOH
- 20% for single income exceeding $441,450, exceeding $496,600 for MFJ, exceeding $248,300 for MFS, and exceeding $469,050 for HOH

## Deductions

- Standard Deduction; single $12,400, MFJ $24,800

# Biden Administration Possible Income Tax Rates



# TCJA by Data

- According to IRS statistics of income data analyzed by Americans for Tax Reform, families earning between $50,000 and $100,000 saw their average tax liability drop by over 13% between 2017 and 2018. By comparison, those with income over $1 million saw a far smaller tax cut averaging just 5.8%. (In PA, fed tax liability dropped 13%, 3.1% respectively)
- The tax cuts also repealed the individual mandate tax by zeroing out the penalty. Prior to the passage of the bill, the mandate imposed a tax of up to $2,085 on households that failed to purchase government-approved healthcare. Five million people paid this in 2017, and 75% of these households earned less than $75,000.
- The pro-growth reforms in the law, such as the reduction in the corporate income tax and a provision allowing businesses to deduct the cost of new investments immediately, helped create one of the strongest economies in modern history prior to the onset of the COVID-19 pandemic.
- Because of these policies, the unemployment rate dropped to 3.5% in 2019, a 50-year low. In the same year, median household income increased by $4,440 or 6.8%, the largest one-year wage growth in history.
- Key demographics experienced the growth, including African Americans, Hispanic Americans, and women, with each group seeing their unemployment rates drop to all-time lows and wage growth increasing by record levels. The tax cuts resulted in businesses giving their employees pay bonuses, pay raises, increased 401(k) matches, and new employee benefit programs. The corporate rate reduction also resulted in lower utility bills, including electric bills, gas bills, and water bills, for customers in all 50 states.
- https://www.washingtonexaminer.com/opinion/the-trump-tax-cuts-werent-about-the-rich-they-were-about-you

# The SECURE Act

- Passed December 2019
- Key Provisions for Individuals
  - Eliminated the age limit for making traditional IRA contributions
    - Keeps the spousal IRA option as well, thus, opens up the back-door Roth contribution for both
  - Raised RMD age to 72
  - Allows $5k lifetime penalty free distributions for birth or adoption
  - Eliminates the "stretch IRA", replaces with 10-year payout. Spouses, minor children, disabled individuals, and certain others may be exempt

# COVID Changes – Families First Act

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

## ▸ PAID LEAVE ENTITLEMENTS

**Generally, employers covered under the Act must provide employees:**

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to $511 daily and $5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to $200 daily and $2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅔ for qualifying reason #5 below for up to $200 daily and $12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

## ▸ ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). *Employees who have been employed for at least 30 days* prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

## ▸ QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to **telework**, because the employee:

| | |
|---|---|
| **1.** is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;<br>**2.** has been advised by a health care provider to self-quarantine related to COVID-19;<br>**3.** is experiencing COVID-19 symptoms and is seeking a medical diagnosis;<br>**4.** is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | **5.** is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or<br>**6.** is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |

# COVID Changes – CARES Act Individual Provisions

- $1,200 Recovery Rebate
- Unemployment Benefits Expanded
- Waiver of Required Minimum Distribution (RMD's)
- Waived Penalty for Qualified Early Distributions of Retirement Accounts

# COVID Changes – CARES Act Business Provisions

- PPP Loan Program
- Employee Retention Credit
- Delay of Employer Payroll Taxes
- Modification of Business Losses
- Depreciation Correction on QIP Property
- Increase in Interest Deduction Limitation

# Biden Tax Plan
# Deeper Dive – Stated Provisions

- Expanded Child tax Credit
  - Up to $3,600/child from $2,000/child
- Expand Obamacare premium tax credits
  - Bring the individual mandate back
  - Family cost capped at 8.5% income
- Tax credits for Childcare
  - Up to $8,000 from $6,000
- Tax credits for cost to families for taking care of an aging loved one (new)
- Tax credits for first time home buyers
  - Up to $15K (new)
- Equalizing the tax benefits of retirement plans

# Equalizing the Tax Benefits of Retirement Plans

- Support for a proposal to ending current tax breaks for 401(k)s and replacing them with flat-tax credits. In other words, everyone regardless of income, will get the same percentage credit – possibly 26%
- This credit would be refundable
- May dictate mandatory participation
- Possible new financial transaction tax on buys or sells, although retirement plans may have a carve out

# Biden Tax Plan from the Tax Foundation

- Over $400k individuals
  - Raise individual rates
  - Raise payroll taxes
  - Raise capital gains rates to ordinary rates for over $1M in income (20% becomes 39.6%)
  - Cap itemized deductions at 28% benefit and restore a phaseout range
  - New phaseouts for 199A deduction for over $400k income
- Corporate
  - Raise from 21% to 28% **#1 Tax Revenue Generator**
  - Implement a "minimum book tax" on $100M+ income
- Estate/Gift
  - Eliminates the step-up in basis for capital gains taxation
  - Deemed sale of assets at death
  - Return to 2009 Levels for Estate and Gift Tax Exclusions ($13,000 annual gifts and $3.5 million estate exclusion)

# #2 Revenue Generator
# Raising Payroll Taxes…
# Expanded OASDI Limitation

- Implement the 12.4% Social Security tax on wages over $400k
  - Evenly split (6.2%) between employer and employee
  - Creates a donut hole between current limit $142,800 in 2021 and $400k

# Business Planning

- For S-corporations, consider distributions if wages are over $400K, assuming the donut hole is retained
- Consider converting or electing to be taxes as a C-corporation
  - W2 earners marginal rate 39.6%+12.4%+2.9%+.9%=**55.8%**
  - Dividends could be taxed slightly lower
  - Complicated comparison due to loss of 199A deduction
- Consider Deferred Compensation Plans
  - Can spread wages out over time
  - Possibly take advantage of the donut hole

# Business Planning

- Consider bonuses
- Consider collection of receivables
- Potential to delay bonus and sec 179 depreciation
- Consider using installment sales
  - Spreads out tax if nothing changes, but can elect to pay up front if taxes are increased in future years
    - Can have to 9/15 (or 10/15) to decide
    - Note – PA doesn't recognize installment sales for tax spreading

# Key Individual Planning Strategies

- Accelerate Income and delay deductions
  - Roth Conversions NOW
    - Retired couples should convert to Roths at lower rate if passing on to children (assumed higher brackets)
  - Gain Harvesting
    - At 20% to potential 39.6%
    - No "wash rules" with gains
  - Defer loss harvesting
  - Defer Charitable giving and other itemized deductions
    - However, over $400K individuals may want to accelerate deductions to 2020 (other than SALT) due to potential Itemized limitation (28%)
    - Assume SALT limit of $10K is repealed
    - However, CARES Act allows charitable deductions up to 100% AGI in 2020
      - 100% has to be cash and charity
      - Consider a Donor Advised Fund – not eligible up to 100%

# Key Individual Planning Strategies

- Accelerate Income and delay deductions
  - Exercise any stock options
  - Consider taking RMD, even though it's not required
    - Especially in 10% and 15% brackets

# #3 Tax Revenue Generator
## Proposal to Eliminate the Step Up Basis and Proposed Capital Gains

- Removal of the step up basis is probably the major item to keep an eye on with a Biden Tax Law
- Obviously, a 39.6% capital gains rate will encourage individuals to hold their assets
- If the step-up basis rule is repealed, individuals would then prefer to recognize gains prior to passing. There would be a real possibility of a 20% gain during life, but 39.6% at death due to all assets being recognized at death

# Step Up in Basis Planning

- As of now, there is no guidance if there is an income tax deduction or such for estate taxes paid
- Gifting of assets now
  - The new law could make gifting a recognition event
  - Gifting includes admitting new partners in a family limited partnership (real estate, investments, etc.)
    - Caution on gift tax returns

# Pending PPP Legislation (as of 12/17/20)

- Recent stories prior to this week
  - Republicans – $500B bill/proposal – did not want aid to state and local governments
  - Democrats – $1.4T bill/proposal – did not want COVID related liability protection for businesses
- Recent stories this week of $908B bill – that is now down to $748B (525 page bill)
  - Senate was alerted to work over the weekend
  - There is incredible pressure to pass something before Congress leaves
  - Something could pass any minute

# Pending PPP Legislation (as of 12/17/20) What's Included

- As far as we know:
  - Extension of unemployment assistance for 16 weeks with supplemental $300
  - $300B for second round of PPP
  - $25B for emergency rental assistance and eviction moratorium to January 31
  - $16B for testing, tracing and vaccine development and distribution
  - $45B for transportation sector
  - $10B for broadband
  - $82B for education funding
  - $13B for emergency food assistance
  - $35B for Healthcare provider relief
  - Extension of student interest forbearance to April 1

# Pending PPP Legislation (as of 12/17/20) What's Included

- As far as we know:
  - Simplified loan forgiveness for loans of $150K or less
    - One page form
    - Attest to complying with requirements
  - Simplified loan forgiveness for loans between $150K and $2M
    - No requirement to submit documentation of FTE, payroll, payrates etc.
  - Extension of subsidy by SBA of other 7(a) loans, EIDL Grants, and special grants for shuttered venues (theater, museum, etc.)

# PPP2

- As far as we know, there are two eligible groups:
  - First time borrowers
    - ANY business that has a NAICS code starting with 72 (accommodation and food services) w/500 or fewer employees
    - Nonprofits, including churches
    - 501(c)(6) organizations with 150 or fewer employees, subject to lobbying threshold of 10% receipts, 10% activities)
    - Possibly could be other criteria

# PPP2

- As far as we know, there are two eligible groups:
  - Second draw loans for hardest hit borrowers
    - 300 or fewer employees
    - 30 percent gross receipts decline in any quarter of 2020 compared to same quarter in 2019 (calendar quarter, not 3 month period)
    - Possible tiered system of certification, that is, less documentation for smaller loans

# PP2 Other

- Maximum loan amount is $2M
- Amount = 2.5x average total monthly payroll costs
- Covered Period will be 8 or 24 weeks
- Costs eligible for forgiveness
  - Same as PPP1
  - Adds worker protection expenditures and facility modification costs (PPE and costs to comply)
  - Adds supplier costs – essential to current operations
  - Adds software or cloud computing services
  - Keeps the 60/40 cost allocation for payroll/non-payroll

# Timing of Pending Legislation

- All interwoven with government shutdown, and an unrelated defense bill
  - As of 12/17, the government is due to shut down at end of day Friday
    - Look for a short funding extension. That will give time to iron out the defense bill, funding, and PPP prior to the holidays
    - Even if PPP2 passed today, look for funding in January

# Book and Financial Accounting for PPP Loans

- Non-government entities, including non-profits, will record as a financial liability.
  - Should accrue interest
  - This is the debt model that everyone is familiar with. A vast majority of borrowers are using this method
- Forgiveness amount will be recorded as a "gain on extinguishment" – only when forgiven
- Alternatively, under certain circumstances, it can be accounted for as a grant or contribution by both for profit and not-for-profit entities.
- In either case, there will be disclosure
- Not required, but hopefully separated on tax returns

- https://www.journalofaccountancy.com/news/2020/jun/forgivable-ppp-loans-aicpa-accounting-guidance.html
- TQA 3200.18

# Tax Accounting for PPP Loans and SBA 7(a) Payments

- PPP – IRS recently issued Revenue Rulings and Revenue Procedures essentially making the PPP loan forgiveness taxable in 2020 even if you did not apply for forgiveness
- PPP – "deductibility wording" is included in the current draft legislation. Congress is fighting hard for this.
- 7(a) Subsidies
  - IRS has not issued specific guidance yet
  - However, in prior disasters, the IRS has ruled other government assistance programs were taxable due to a "accession to wealth"
  - However, the IRS has some options to exclude the subsidies from income without specific legislation being passed

# Thank you!

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