

An American flag flies on a tall pole in front of a grand, classical building with a large dome and arched windows. The scene is set against a dramatic sunset sky with orange and red clouds.

Will The Potential Biden Tax Changes Affect You?

wsrp

CERTIFIED PUBLIC
ACCOUNTANTS AND
BUSINESS ADVISORS



Bruce Gulso

Partner

(801) 931-3822
bgulso@wsrp.com



Eric D. Evans

Partner

(801) 931-3904
eevans@wsrp.com



Disclaimer

Today's presentation is intended to provide a high-level overview of certain provisions contained in the new tax law and is not intended to be a comprehensive discussion. For application of the new law to specific cases, a tax advisor should be consulted.



Today's Agenda

- The Road to Tax Legislation
- Individual Tax Increases
- Individual Tax Cuts
- Capital Gains Tax
- Corporate Tax Increases
- Planning & Conclusion



SALT LAKE HARDWARE

Road to Tax Legislation



Road to Tax Legislation

- Over the course of his presidential campaign and through the first several months of his presidency, President Biden publicly announced potential individual and business income tax changes.
- The changes have morphed and modified over time, with several entirely abandoned.



Road to Tax Legislation

- While the President and his Administration are highly influential in shaping tax policy over the coming years. We may view the president as having the final say on tax changes, but he does not have the first say.
- Tax legislation must originate in the House of Representatives according to the Constitution, and, therefore, Congress will be highly influential in determining tax policy.
- However, the President's budget introduced on May 28, 2021, has set the stage for the shape and scope of anticipated tax changes.



Road to Tax Legislation

- The Green Book contained more detail, insight, and a couple of surprise changes to proposals in the American Jobs Plan and the American Families Plan, which President Biden released shortly after he signed into law the American Rescue Plan Act in March.



SALT LAKE HARDWARE

Individual Tax Increases



Individual Tax Increases

- The President's individual income tax proposals are contained in his proposed American Families Plan. (The American Families Plan was announced on 4/28/2021, in conjunction with a Fact Sheet released by the White House.)
- In aggregate, the President seeks just over \$1.5 trillion in tax increases over the 10-year budget window. The actual revenue raised would be more since the tax increases would be permanent.



Individual Tax Increases

- **Ordinary Income.** Restore the top income tax rate to 39.6% in 2022 and after (currently the top rate is 37%) and apply that rate beginning at \$509,300 for couples (\$452,700 for single taxpayers). For 2021, the current 37% top rate applies to income above \$628,300 for couples and \$523,600 for single taxpayers
- **Effective Date.** The President proposes January 1, 2022, as the effective date for the tax bracket and rate changes.



Individual Tax Increases

Capital Gains and Qualified Dividends

- To the extent that a taxpayer has adjusted gross income in excess of \$1 million, capital gains and qualified dividend rates on such excess would increase to ordinary income tax rates – 37% for 2021 (for gains realized as early as April 28) and 39.6% for 2022 at that level of income.
- After factoring in the healthcare surtax, the top rate for such gains (and dividends) would be 40.8% in 2021 (post April 27) and 43.4% in 2022



Individual Tax Increases

Capital Gains and Qualified Dividends

- AGI is not the same as taxable income.
- AGI is income before deducting itemized expenses such as state and local taxes, investment interest and charitable deductions.
- Thus, by pegging a jump in capital gains/dividends rates to AGI rather than taxable income, more taxpayers and more wealth would be subject to the increase rate.



Individual Tax Increases

Deemed Sales & Changes to Step-Up in Basis Rules

- Lifetime transfers by gift and transfers at death of appreciated assets would trigger a “deemed” capital gain at the time of the transfer.
- Transfers at death to a U.S.- citizen spouse or a charity would be excluded. Instead, the spouse would take a carry-over basis, and gain would be recognized when the surviving spouse dies or sooner sells the asset.



Individual Tax Increases

Deemed Sales & Changes to Step-Up in Basis Rules

- A deemed gain would not apply to transfers of certain family businesses, and special rules would apply for non-marketable assets.
- Nor would a gain apply to any tangible items such as furniture and personal effects unless those items were collectibles.



Individual Tax Increases

Deemed Sales & Changes to Step-Up in Basis Rules

- The proposal would even reach other transfers. Transfers of property into, and distributions in-kind from, a trust, partnership, or other non-corporate entity (other than certain grantor trusts), would be recognition events.
- If the above-referenced proposals were enacted they would bring about significant changes with regard to estate planning. For example, instead of planning to have low-basis assets in a decedent's estate in order to be eligible for a step-up, it might be better to retain high-basis assets in the estate to avoid or reduce a deemed sale.
- **Effective Date.** The President proposes January 1, 2022, as the effective date for deemed sales and changes the step-up rules.



Individual Tax Increases

Like-Kind Exchanges

- Allow IRC Section 1031 deferral of gain up to an aggregate amount of \$500,000 for each taxpayer (\$1 million for couples) each year for real property exchanges that are considered like-kind. Currently there is no limitation of the gain that can be deferred. Excess gains would be recognized by the taxpayer in the year the taxpayer transfers the real property subject to the exchange.
- **Effective Date.** Effective for exchanges completed in taxable years 2022 and after.



Individual Tax Increases

3.8% Health Care Surtax

- Taxpayers with adjusted gross income in excess of \$400,000 would generally be subject to a 3.8% surtax on gross income and gain from any trades or businesses that are not otherwise subject to employment taxes.
- This expansion of the Health Care Surtax will particularly affect S Corporation owners who currently are not subject to self employment taxes on pass-through income.
- This 3.8% surtax will equal the payroll tax that would be due if the S corporation pass-through income were paid to the owner in the form of wages instead.
- **Effective Date:** The beginning of 2022



Individual Tax Increases

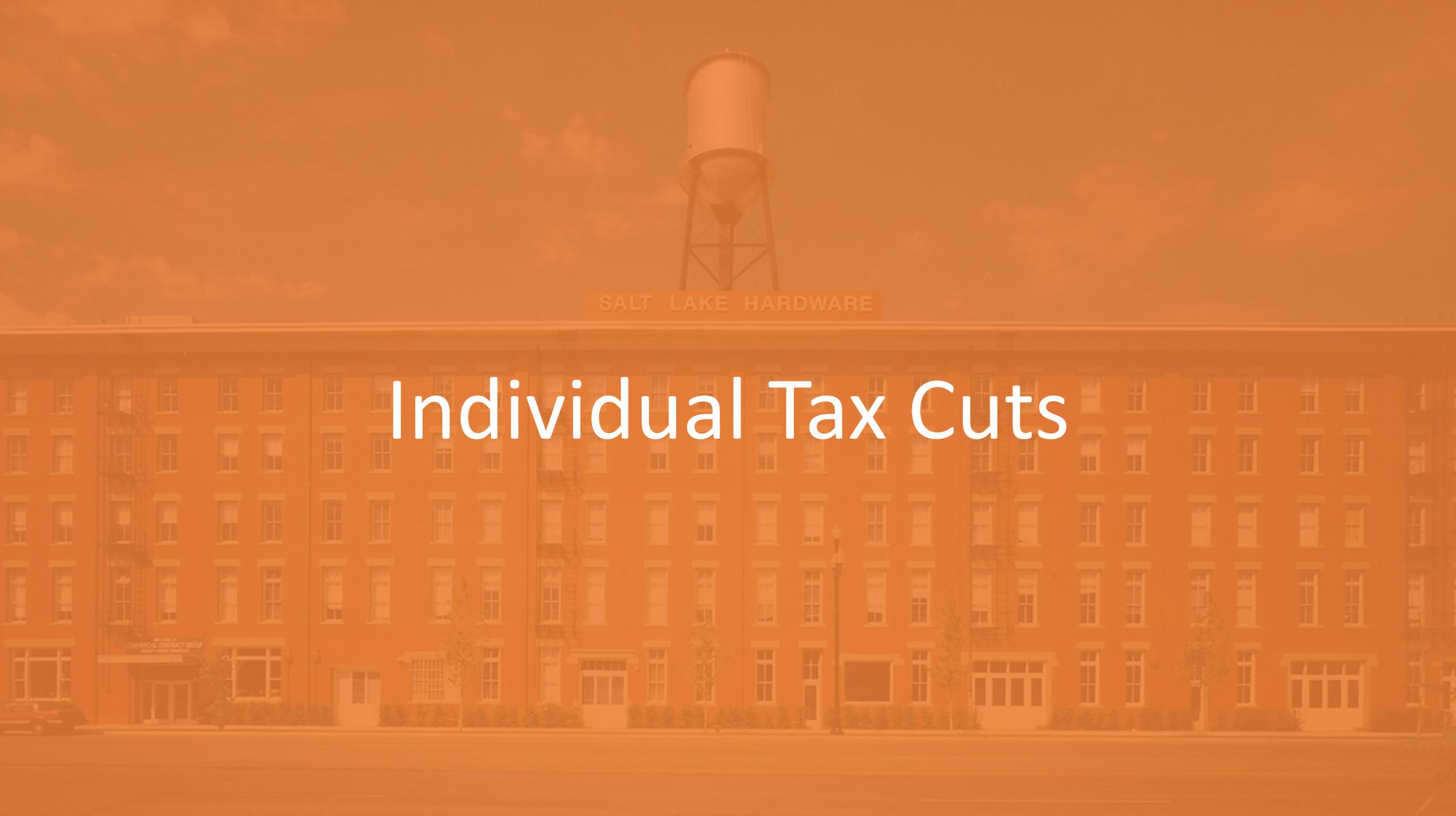
Tax Compliance and Reporting

- The President proposes a multipronged approach to increasing tax revenue through tax compliance measures and new reporting obligations.

IRS Funding

- The President proposes to increase IRS funding by \$6.7 billion (in addition to \$72.5 billion in mandatory funding) and direct the additional resources towards enforcement against taxpayers with income over \$400,000.
- The President would require financial institutions (and crypto asset exchanges and custodians) to report data on personal and business financial accounts in an annual information return.

Effective Date. Effective beginning 2023



SALT LAKE HARDWARE

Individual Tax Cuts



Individual Tax Cuts

Earned Income Tax Credit (EITC)

- This was expanded under the American Rescue Plan Act of 2021 (known to many as the March 2021 Covid-19 Stimulus Bill). The proposal would permanently extend the expansion of the EITC for workers without children.
- **Effective Date.** Beginning in 2022



Individual Tax Cuts

Child and Dependent Care Tax Credit (CDCTC)

- This was expanded under the American Rescue Plan Act of 2021. The proposal would permanently extend the expansion of the CDCTC and would establish reporting requirements appropriate for an expanded refundable tax credit.
- **Effective Date.** Beginning in 2022.



Individual Tax Cuts

Child Tax Credit (CTC)

- This was proposed under the American Rescue Plan Act of 2021. The proposal would:
 1. Extend the changes to the CTC through 2025
 2. Increase the age to qualify for the CTC by one year to include children who are 17 years old
 3. Increase the maximum credit per child to \$3,600 for all qualifying children under 6 and to \$3,000 for all other qualifying children
 4. Allow 50% of the credit to be paid in advance based on information on the previous year's income tax return.
- **Effective Date.** Beginning in 2022



Individual Tax Cuts

Premium Tax Credits for Affordable Care Act

- Expanded under the American Rescue Plan Act of 2021, based on household income and family size. The American Rescue Plan decreased the applicable contribution percentages and extended the credit eligibility for taxable years 2021 and 2022.
- The President's proposal would make permanent the recent decrease in the applicable contribution percentages of household income used for determining the credits.
- The proposal also makes permanent the credit eligibility to taxpayers with household income above 400% of the federal poverty levels
- **Effective Date.** Effective in 2023 and after.



Individual Tax Cuts

Biden's Prior Tax Proposals

- Omitted from Current Proposed Plan
 - Estate, Gift and GST Taxes
 - Qualified Business Income Deduction
 - Social Security Taxes
 - Retirement Plan Contributions



SALT LAKE HARDWARE

Business Tax Increases



Business Tax Increases

Raise the Corporate Income Tax Rate to 28%

- Increase corporate income tax rate from 21% to 28%.
 - For fiscal year taxpayers, the proposal would apply a tax rate of 21% to the months in the fiscal year that fell in 2021 and a tax rate of 28% for the months in the fiscal year that fall in 2022.
- OECD Countries' average 23.59% (26.53% weighted for GDP)
- **Effective Date.** Tax years beginning after 12/31/2021



Business Tax Increases

Global Businesses

- Remove tax deductions for offshoring jobs, offset with a credit for onshoring jobs, **including for manufacturing in the U.S.**
- **Reform the Global Minimum Tax Regime (GILTI).** As part of the overall amendment to the minimum tax on the global intangible low-taxed income (GILTI), the plan proposes:
 - Eliminate the 10% qualified business asset (tangible) income (QBAI) exemption
 - Reduce the Section 250 deduction to double the effective tax rate to approximately 21% in line with the current corporate tax rate, making the US tax regime a world-wide tax system. No current change to FTC 80% limitation.

Tax Foundation Data on proposals shows net revenue generated to be only \$4B so likely to be modified before enacted.

Effective Date. Tax years beginning after 12/31/2021



Business Tax Increases

Global Businesses

- Impose a 15% Minimum Tax on Book Earnings of Large Corporations
 - 15% tax on corporations with worldwide book income in excess of \$2 billion.
 - The Green Book highlights that this would apply to approximately 120 companies that report pre-tax book net income over \$2 billion.
- **Effective Date.** Tax years beginning after 12/31/2021



Other Business Tax Proposals

Industry Business Provisions

- **Funds / Developers / Family Offices** - Carried Interest – Compensation for Services
 - Recent Bills have recently been introduced in various form to treat as ordinary taxable income.
- **Real Estate**
 - Sec. 1031 Like-kind Exchange – limit to \$1M deferred gain per year -- Aug. 11th, 2021 - Non-binding Senate “Voice Vote” removed it from consideration but could be brought back into negotiations in coming months.
 - Support housing and infrastructure through expanded Low-Income Housing Tax Credit and other provisions.
- **Effective Dates.** Tax years beginning after 12/31/2021



Other Business Tax Proposals

Small Business Provisions

- Flow-through (S-Corp / Partnership)- Sec. 199A Small Business 20% Deduction – Expand and Simplify
 - Remove 50% of Salary limitation
 - Allow professional service businesses (Law Firms, CPA's, etc.) to qualify with no income limitations
- No proposals / provisions for changes to Sec. 1202 Qualified Small Business Stock gain \$10M exclusion. Entity Selection
 - Non-Real Estate and non-service businesses should consider C-Corporation structure.



Business / Personal Tax Clean Energy Provisions

- Prioritization of clean energy through repeal of fossil fuel tax preferences and various clean energy tax credits.
 - Eliminate Fossil Fuel Tax Preferences
 - Extend and Enhance Renewable and Alternative Energy Incentives
 - Tax Credit for Electricity Transmission Investments
 - Allocated Credit for Electricity Generation from Existing Nuclear Power
 - Tax Credits for Qualifying Advanced Energy Manufacturing .
 - Tax Credits for Heavy- and Medium-Duty Zero Emissions Vehicles
 - Tax Incentives for Sustainable Aviation Fuel
 - Production Tax Credit for Low-Carbon Hydrogen
 - Extend and Enhance Energy Efficiency and Electrification Incentives.
 - Electric Vehicle Tax Credit / Rebate of up to \$12,500
 - Disaster Mitigation Tax Credit
 - Expand and Enhance the Carbon Oxide Sequestration Credit
 - Extend and Enhance the Electric Vehicle Charging Station Credit .
 - Reinstate Superfund Excise Taxes and Modify Oil Spill Liability Trust Fund Financing
- **Effective Date.** Tax years beginning after 12/31/2021



Planning & Conclusion

- Do you accelerate income into 2021 vs 2022?
- Defer deductions (Elect out of Bonus depreciation, etc.) to 2022?
- Selling assets (i.e. property, business, etc.) before Capital Gains tax rate increases?
- Estate Tax Planning

Tax Planning is the Key!



SALT LAKE HARDWARE

Q&A



Bruce Gulso

Partner

(801) 931-3822
bgulso@wsrp.com



Eric D. Evans

Partner

(801) 931-3904
eevans@wsrp.com

An American flag flies on a tall pole in front of a grand, classical building with a large dome and arched windows. The scene is set against a dramatic sunset sky with orange and red clouds. The building's facade is white with intricate architectural details.

Will The Potential Biden Tax Changes Affect You?

wsrp

CERTIFIED PUBLIC
ACCOUNTANTS AND
BUSINESS ADVISORS