

FEDERAL UPDATE: OVERVIEW OF PROPOSED TAXES AND MANDATES FROM CONGRESS AND THE ADMINISTRATION

Wednesday, September 15, 2021



WEBINAR OVERVIEW

1. Expected Timeline
2. Policy Overview
 - **Taxes**
 - **Mandates**
3. Politics Overview
4. Questions & Answers



Expected Timeline

- September 6 – 20 – House Committees consider Budget Reconciliation
- September 27 – House considers Bipartisan Infrastructure Deal
- September 30 – Federal government funding, other programs expire
- October 4 – House considers Budget Reconciliation
- October – Federal debt limit must be increased
- October / November – Senate amends / considers Budget Reconciliation
- October / November – House considers amended Budget Reconciliation



What taxes are in the House bill?

If you are organized as a pass-through business (S-corporations, sole proprietorships, LLCs, and partnerships) –

- Curtails the Small Business Deduction (Section 199A),
- Increases the top individual marginal tax rate from 37% to 39.6%,
- Lowers the top bracket from \$523,601 (ind.) / \$628,301 (joint) to \$400,001 (ind.) / \$450,001 (joint),
- Imposes a new 3% surtax that includes business income, and
- Imposes the 3.8% net investment income tax (NIIT) on active business income.

These tax changes would create a **top 46.4% federal effective tax rate** on pass-through business income before considering state and local taxes.



What taxes are in the House bill?

Proposed Pass-through Taxes

39.6%	Increases the top individual rate for pass-through business owners from 37% to 39.6%
+ 3.8%	Expands the current law 3.8% Net Investment Income Tax to cover active pass-through business income for the first time
(Deduction)	Caps the Small Business Deduction (Section 199A)
+ 3%	Imposes a new 3% surtax on modified gross income, including pass-through business income, for the first time
= 46.4%	Top rate on pass-through business income under the proposal

What taxes are in the House bill?

Corporate Rate Decrease AND Increase –

Taxable Income:	Tax Rate:
\$0 – \$400,000	18%
\$400,001 – \$5,000,000	21% (current rate)
Over \$5,000,000	26.5%



What taxes are in the House bill?

- Increases the top capital gains tax rate from 20% to 25%.
 - Considering the 3.8% NIIT, effective rate would be 28.8%.
 - For pass-through businesses with modified adjusted gross income exceeding \$5 million, there is an additional 3% surtax, so the rate would be 31.8%.
- Prematurely sunsets the estate tax thresholds.
 - The exemption would be reduced to \$5 million beginning in 2022 (instead of 2026 as scheduled under current law), adjusted for inflation from 2010, from \$11.7 million in 2021.



What taxes do we expect in the Senate bill?

- Further curtail the Small Business Deduction
- Increase IRS Enforcement; access to banking information
- Increase corporate tax rate; eliminate proposed graduated rate
- Repeal stepped-up basis; higher capital gains tax rate
- Treat death as a recognition event for capital gains tax



What mandates are in the House bill?

- Creates Paid Family Leave Program
 - Allows up to 12 weeks of paid family leave per year for ALL workers
 - Benefits will be paid by Treasury Department
 - All businesses must allow employees to take leave or face penalties
 - Differs from current law (FMLA) which exempts businesses with fewer than 50 employees from *UNPAID* family leave requirements
 - Employees must provide employers 7 days notice in order to take the leave

What mandates are in the House bill?

- Creates Paid Family Leave Program (continued)
 - Businesses that currently offer paid family leave benefits equal to or greater than the government benefit would be eligible for partial reimbursement of benefit expenses
 - \$1,000 application fee
 - Small businesses with fewer than 50 employees would be eligible for grants to partially offset the cost of workers on family leave
 - Grant would be equal to 2.5x average weekly wage in state



What mandates are in the House bill?

- Mandates “Automatic Contribution Retirement Plans” (“ACRPs”)
 - Employers with more than 5 employees would be required to enroll employees in an “ACRP” (ex. IRA or 401k)
 - Employers would be required to withhold a percentage of employee earnings from their paychecks to go towards “ACRP”
 - Employers would not have to contribute to the plan
 - Employers who fail to comply would be subject to a \$10/day fine per employee for up to 3 months or until they come into compliance

What mandates are in the House bill?

- Minimum Wage and Overtime violations increased from ***\$1,100*** to ***\$20,740***
- Tipped credit violations increased from ***\$1,100*** to ***\$11,620***
- OSHA fine increases to as high as \$500,000
- National Labor Relations Act violations of \$50,000 – \$100,000
- New regulations prohibiting employers from:
 - permanently replacing striking workers;
 - firing a previously striking worker;
 - trying to lockout, suspend, or otherwise withhold employment from employees to influence in collective bargaining;
 - requiring employees to attend meetings intended to persuade them against voting to unionize;
 - enacting forced arbitration agreements with employees



What mandates do we expect in the Senate bill?

- Add other elements of the Protecting the Right to Organize (PRO) Act?
 - Independent contractor restrictions
- Will some (or all) of new and increased fines be removed?
- Senate Parliamentarian will decide



Politics

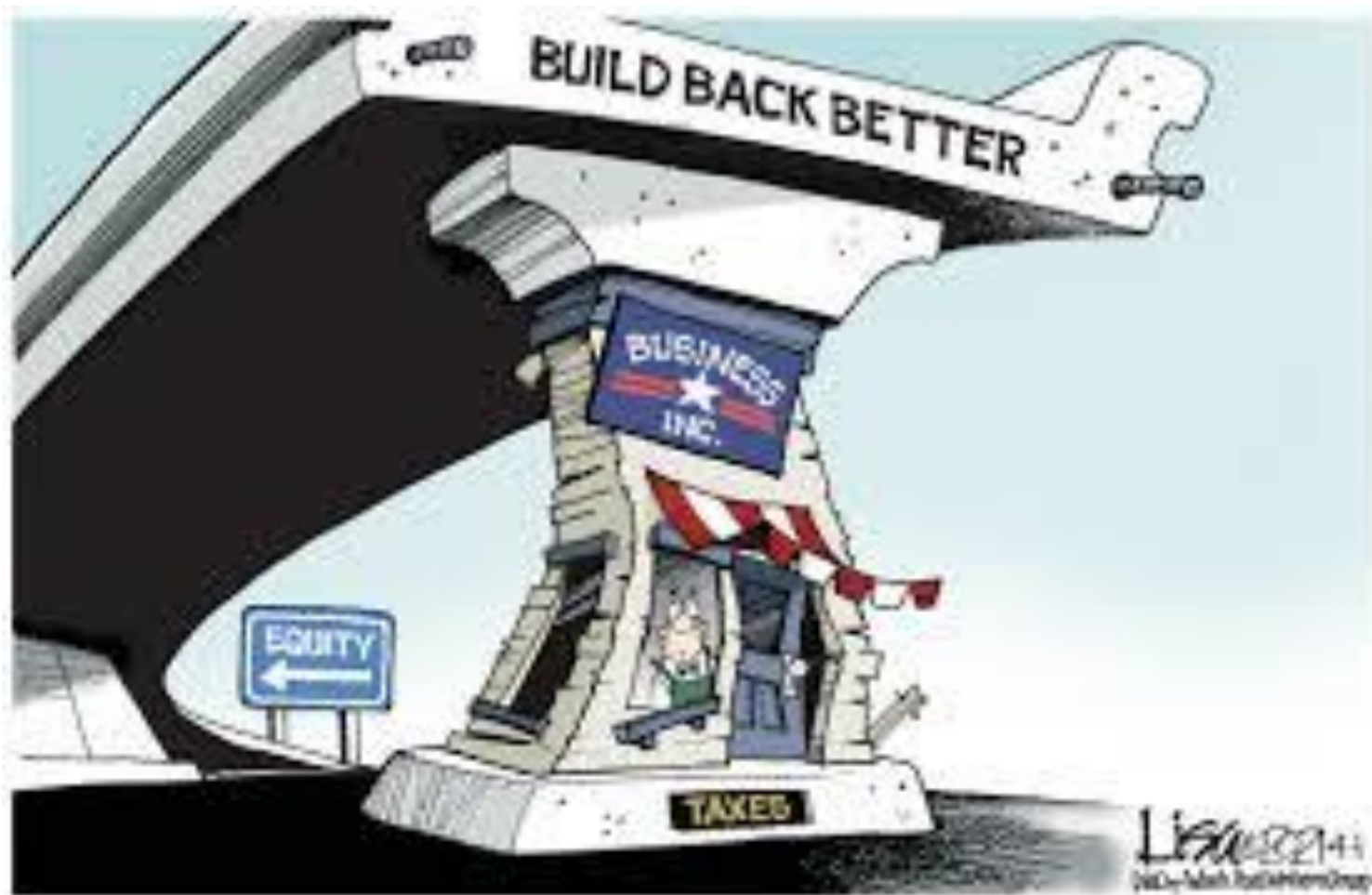
- Themes –
 - Tax increases and mandates
- House –
 - Narrow Democratic majority – no more than 3 votes
 - Disagreement on process, scope, and policies
 - Already modified White House proposed taxes
- Senate –
 - Requires all 50 Senators (and Vice President) to support
 - Disagreement on scope and policies
 - Further modifications will be required



Take Action!

- Share your small business story and concerns!
- Email, call, and meet with your Member of Congress and Senators
- Urge others to advocate!





THANK YOU!

Questions?

