

# CBIZ & MHM Executive Education Series™



## Second Quarter Accounting and Financial Reporting Issues Update

James Comito, Mark Winiarski, Bill Smith, Steve Henley  
July 8, 2021

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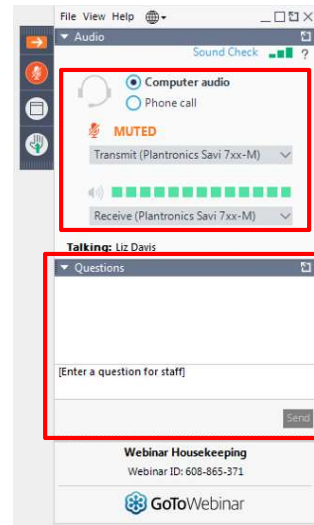
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2

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5



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MHM Shareholder

James is a shareholder in our San Diego office where he has been serving clients since 2005. A Certified Public Accountant, he serves as our National Director of Professional Standards where he is recognized as a national expert in all aspects of revenue recognition, business combinations, impairment of goodwill and other intangible assets, accounting for stock-based compensation, accounting for equity, and debt instruments. Additionally, he has significant experience with a variety of other regulatory and corporate governance issues pertaining to publicly traded companies, including all aspects of internal control. James frequently speaks on accounting and auditing matters at various events for MHM and is actively involved in our national training programs for all levels of staff. He is a frequent external speaker and regular contributor to MHM's publications. Prior to joining MHM, James spent 10 years at a Big Four firm.

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6



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Mark is a member of MHM's Professional Standards Group (PSG) and the Attest Practice Leader for the Kansas City office. Mark's role includes monitoring and technical leadership in the implementation of new accounting standards, instructing in national training programs, presenting as a subject matter expert at webinars and conferences, and preparing MHM publications on accounting and auditing issues.

As a PSG member, Mark consults with clients and engagement teams across the country in many areas of accounting and auditing. Mark has served clients as an auditor, consultant and advisor in numerous industries including manufacturing, distribution, mining, retail sales, services and software.

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7

## Presenters



**William M. Smith, Esq.**  
Managing Director,  
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*Bill Smith is a managing director in the CBIZ National Tax Office. Bill monitors federal tax legislation and consults nationally on a broad range of tax issues for businesses and individuals. He is frequently sought after by a myriad of media outlets to comment on the changing tax environment and its effects on companies and individuals. He has authored numerous tax articles, edits the CBIZ MHM tax newsletters and thought leadership articles, and lectures on a broad range of tax topics across the country.*

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## Presenters



**Stephen C. Henley, CPA**  
Senior Managing Director &  
National Tax Practice Leader

*Steve has over 40 years of experience within the public accounting industry, including serving clients as their primary tax and business advisor, and fulfilling key leadership roles with firms within which he has practiced.*

*In 2006, Steve joined CBIZ as the National Tax Practice Leader. Steve's current responsibilities include leading CBIZ's tax practice nationally, and overseeing the operation of the company's 25-plus tax office locations throughout the country, centralizing all related operational, quality control and tax procedural standards, and providing thought leadership and technical support. In addition, Steve leads the process of identifying and leveraging value-creating tax solutions throughout the firm, as well as recruiting key executive tax talent.*

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9

## Agenda

- 01 Accounting Standards Updates
- 02 Digital Assets
- 03 Consolidation
- 04 Lease Accounting
- 05 Federal Tax update

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10

# Accounting Standards Update

## ASU 2021-04 Accounting for modifications of certain equity-classified warrants

- Clarifies that a modification of a freestanding equity-classified written call options (warrants) that remains equity classified is accounted for as an exchange. Differences between fair value of the warrant before and after modification are accounted for based on the nature of the transaction:

### Issuance of Equity

Any increase in FV is accounted for as equity issuance cost in APIC

### Issuance of Debt

Any increase in FV is accounted for as debt issuance cost/discount

### Modify Existing Debt

If warrant is held by creditor, any change in FV is included in 10% test and considered a fee

If warrant held by third party, the increase in FV is handled in the same manner as a third-party cost

### Other Reason

Increase in FV is accounted for based on other applicable Topic, or if none, treated as a deemed dividend

- Prospectively effective January 1, 2022 (for calendar year end); Early adoption permitted

## FASB Agenda

### Recognition and Measurement

- 17 Projects
- Example: Recognition and measurement of Revenue Contracts in a Business Combination

### Presentation and Disclosure

- 8 Projects
- Example: Segment reporting

### Conceptual Framework

- 3 Projects
- Example: Elements

### Post-Implementation Review

- 3 Projects
- Credits Losses; Leases; Revenue Recognition

### Research Projects

- 6 Projects
- Example: Accounting for and Disclosure of Intangibles

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13

## Selected Recognition and Measurement Projects

### Leases Improvements

- Permitting use of the risk-free discount rate by class of underlying asset
- Targeted improvements to lease modification guidance
- Targeted improvements to lessor accounting for variable lease payments

### Intangible Assets & Goodwill

- Revisit the subsequent accounting for goodwill and identifiable intangible assets

### Consolidation Reorganization and Targeting Improvements

- Reorganize the guidance for Variable and Voting interest entities

### Improving Asset Acquisitions and Business Combinations

- Narrowing differences between asset acquisitions and business combinations

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## The FASB Agenda – When Does the FASB Take On A Project?

Better  
Information

- Provide investors with better, more useful information that will directly influence their decisions and behavior

Reduce Cost

- Remove unnecessary cost and complexity from the system

Maintenance

- Maintain and improve the codification

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15

## Agenda Consultation Topics

Disaggregation of  
Financial Reporting  
Information

Emerging Areas in  
Financial Reporting

Reduction of  
Unnecessary  
Complexity in  
Current GAAP

Improvements to  
FASB Standard-  
Setting Process

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16



# Financial Reporting and Digital Assets

## Digital Assets and Cryptocurrencies

- The continued growth of digital assets and cryptocurrencies
- Operating companies are taking the leap with non traditional investments such as Bitcoin.
  - There are a variety of reasons for investment in digital assets:
    - Digital assets may act as a natural hedge against fluctuating fiat currencies;
    - Strategic desire to adopt modern, open technologies;
    - Consider it part of an overall strategy that includes the desire to begin accepting customer payment in the form of digital assets.

*What is this  
all about?*

## Digital Assets and Cryptocurrencies

- Investment Strategy

- Like all investments; the use of digital assets should fit into the broader investment strategy developed by the company.
  - As regulators and standard setters continue to evaluate the digital asset landscape, some products (i.e., Bitcoin) may be reaching a point where investments are being considered by mainstream companies.
  - While risk assessment an important part of any investment strategy, it is crucial for investments in digital assets and will require constant consideration of market and risk factors.
  - The liquidity of digital assets will need to be evaluated and aligned with the corporate investment strategy.

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## Digital Assets and Cryptocurrencies

- Accounting for Digital Assets

- At the moment, U.S. GAAP as represented by the FASB Codification does not provide specific guidance on the accounting for digital assets.
  - In practice, most accountants have settled on treating digital assets as indefinite lived intangible assets (ASC 350 Intangibles, Goodwill and Other).
    - Accounted for at cost
    - Subsequently evaluated for impairment when required.

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## Digital Assets and Cryptocurrencies

- Accounting for Digital Assets
  - Under that indefinite lived asset model, an impairment might require a write down of the cost basis, but does not allow a “mark up” to fair value even when the digital asset’s price has recovered.
  - Disclosures can be used to provide meaningful information to the users of financial statements. However, it is important that public company's consider the impact of Non GAAP disclosures.

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21

## Digital Assets and Cryptocurrencies

- Tax Considerations
  - Digital assets held for investment purposes are normally deemed a capital asset for tax purposes.
  - Like most everything about digital assets, tax rules are still a “work-in-process” and may differ significantly depending on the jurisdiction.

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## Digital Assets and Cryptocurrencies

- Internal Controls
  - With respect to financial reporting and digital assets, it is hard to overstate the importance of internal control. Given the uncertainty pertaining to many aspects of digital assets, a robust control structure is essential to help mitigate the associated risk.
    - Understanding the specific digital asset investment
    - Custody of the digital asset
    - Authorization of transactions
    - Compliance with developing regulations across multiple jurisdictions

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## Digital Assets and Cryptocurrencies

- Understanding the specific digital asset investment
  - The unique attributes and characteristics of digital assets means that risks may also be unique and vary considerably.
  - It is critical that companies understand the terms and conditions related to each asset and understand exactly how the digital asset operates.
  - It is also necessary to assess related market vulnerabilities.

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## Digital Assets and Cryptocurrencies

- Custody of the digital asset
  - A basic consideration is the custody of the asset. Can or will the company take custody of the asset or will it rely on third-party vendors?
  - Self-custody has certain advantages such as ease of access but it also includes the risk of loss due to accident or error.
  - Additionally, record keeping must be considered, for example, how are transactions initiated, recorded and ultimately monitored.
  - Given the inherent complexity and risk associated with self-custody, it is common to engage third-party custodians. However, effort must be taken to adequately evaluate the control and procedures in place at the third-party vendor. There are a number of risk issues associated with third-party vendors.

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## Digital Assets and Cryptocurrencies

- Authorization of transactions
  - Like all assets, segregation of duties is imperative. A responsibilities matrix that documents the approved “chain of command” remains an essential tool to ensure that only authorized transactions are allowed.
  - Timely monitoring of transactions that are committed to the blockchain must be performed.
  - Remember digital assets are not FDIC insured. Consider the need for other insurance in the event of loss.

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26

## Digital Assets and Cryptocurrencies

- Compliance with developing regulations across multiple jurisdictions
  - Some matter have emerged for legal consideration
  - Compliance with all anti-money laundering laws
  - Customer regulations,
  - Measures related to counterterrorism, and
  - Rules set by the Office of Foreign Assets Control.
- Consistent with tax law, regulations pertaining to digital assets vary by jurisdiction. Hence, to ensure compliance, it is important to engage legal advice from attorneys familiar with the digital asset environment.

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27

## Consolidation Update

## ASU 2018-17 Targeted Improvements to Related Party Guidance for VIEs

- Effective for private companies for annual periods beginning after Dec. 15, 2020 (i.e. calendar yearend Dec. 31, 2021)

Expands the private company accounting alternative

Modifies how related parties impact the assessment of whether decision maker fees are a variable interest

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## Private Company Accounting Alternative

Out with the old, in with the new....

### Old: Common Control Leasing Entities

- Lessor and private company are under common control
- Lease arrangement exists
- Substantially all activity between the entities are related to leasing
- Value of the asset leased is greater than obligations guarantee or collateralized by the private company

### New: All Common Control Entities

- Private company and legal entity are under common control (under the voting model)
- Entities are not under control of a public business entity
- Legal entity is not a public business entity
- Private company does not directly or indirectly have a controlling financial interest in the legal entity (under the voting model)

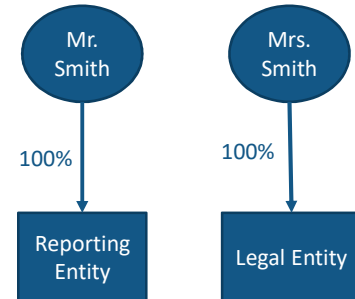
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30

## What is Common Control?

The SEC staff concluded common control exists when:

- An individual or enterprise holds more than 50 percent of the voting ownership of each entity
- A group of shareholders holds more than 50 percent of the voting ownership of each entity and have contemporaneous written evidence of an agreement to vote a majority of the entities' shares in concert exists
- Immediate family members (i.e. married couples and their children, but not their grandchildren) hold more than 50 percent of the voting ownership interest of each entity...and there is no evidence those family members will not vote their shares in concert.



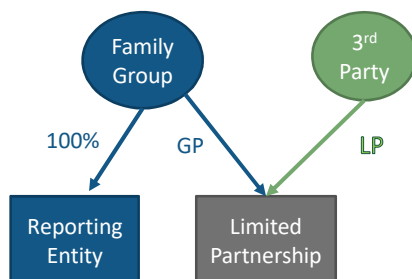
The FASB and PCC have said that the definition of common control is broader than the SEC interpretation.

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31

## However....

- Solely for purposes of the accounting alternative, common control is assessed only under the general subsection of the consolidation guidance...



## Voting Model

The party with more than 50% voting interest is presumed to consolidate an entity

**In a limited partnership voting interests are evaluated as the substantive kick-out rights held by limited partners**

Noncontrolling rights can overcome the presumption when they can prevent the taking of actions in the ordinary course of business

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32



## Disclosures

- The nature and risks associated with a reporting entity's involvement with the legal entity under common control.
- How a reporting entity's involvement with the legal entity under common control affects the reporting entity's financial position, financial performance, and cash flows.
- **The carrying amounts and classification of the assets and liabilities in the reporting entity's statement of financial position** resulting from its involvement with the legal entity under common control.
- **The reporting entity's maximum exposure to loss resulting from its involvement with the legal entity under common control.** If the reporting entity's maximum exposure to loss resulting from its involvement with the legal entity under common control cannot be quantified, that fact shall be disclosed.
- If the reporting entity's maximum exposure to loss (including implicit arrangements) exceeds the carrying amount of the assets and liabilities, qualitative and quantitative information to allow users of financial statements to understand the excess exposure

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33

## Evaluating Service Arrangements

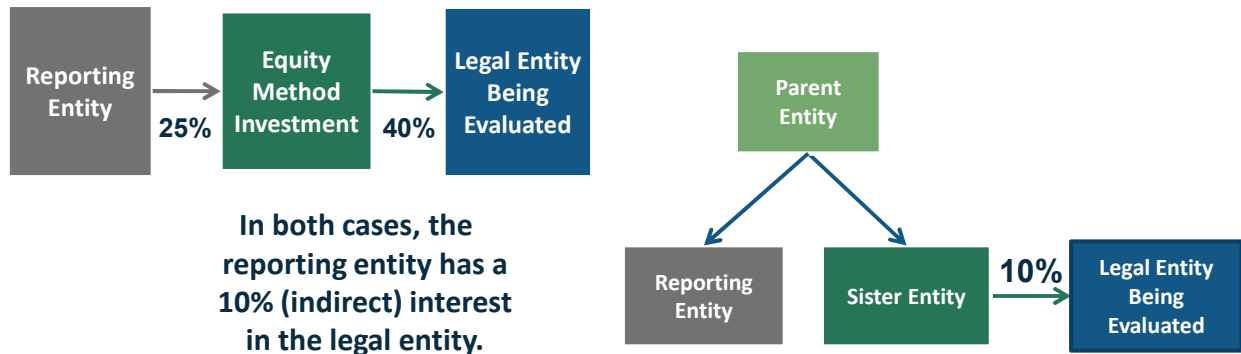
- The RE's arrangement to provide decision maker or other services to a legal entity is not a variable interest if:
  - The fees are compensation for services provided and are commensurate with the level of effort required to provide those services.
  - **The decision maker or service provider does not hold other interests in the VIE that individually, or in the aggregate, would absorb more than an insignificant amount of the VIE's expected losses or receive more than an insignificant amount of the VIE's expected residual returns \***
  - The service arrangement includes only terms, conditions, or amounts that are customarily present in arrangements for similar services negotiated at arm's length.

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34

## Old Guidance

\*Interests of the decision maker include a proportionate share of indirect interests held by related parties, other than employees and employee benefit plans, **and interests held under common control are treated as the RE's own interest.**

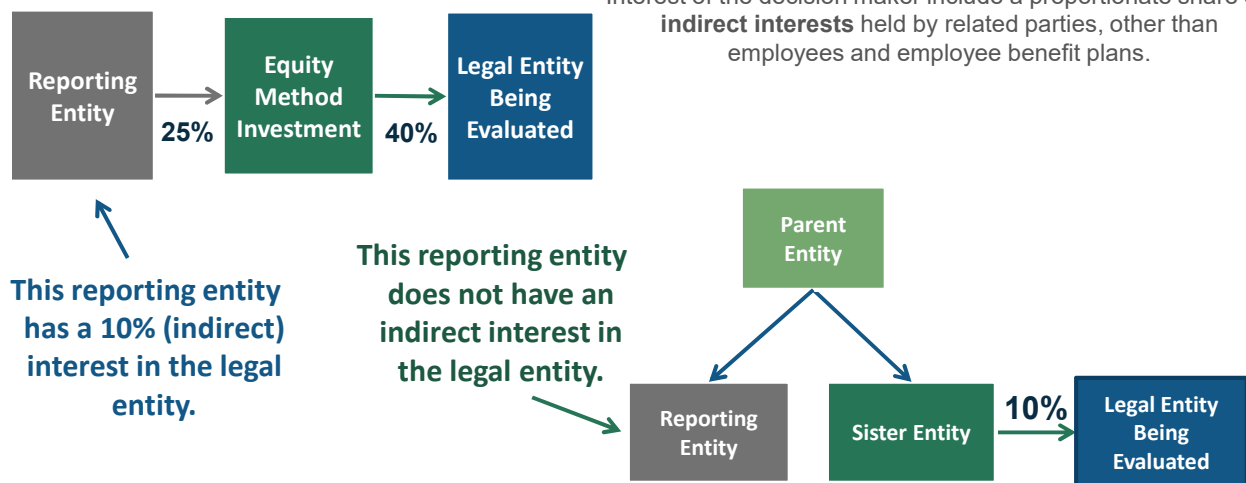


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35

## Revised Guidance

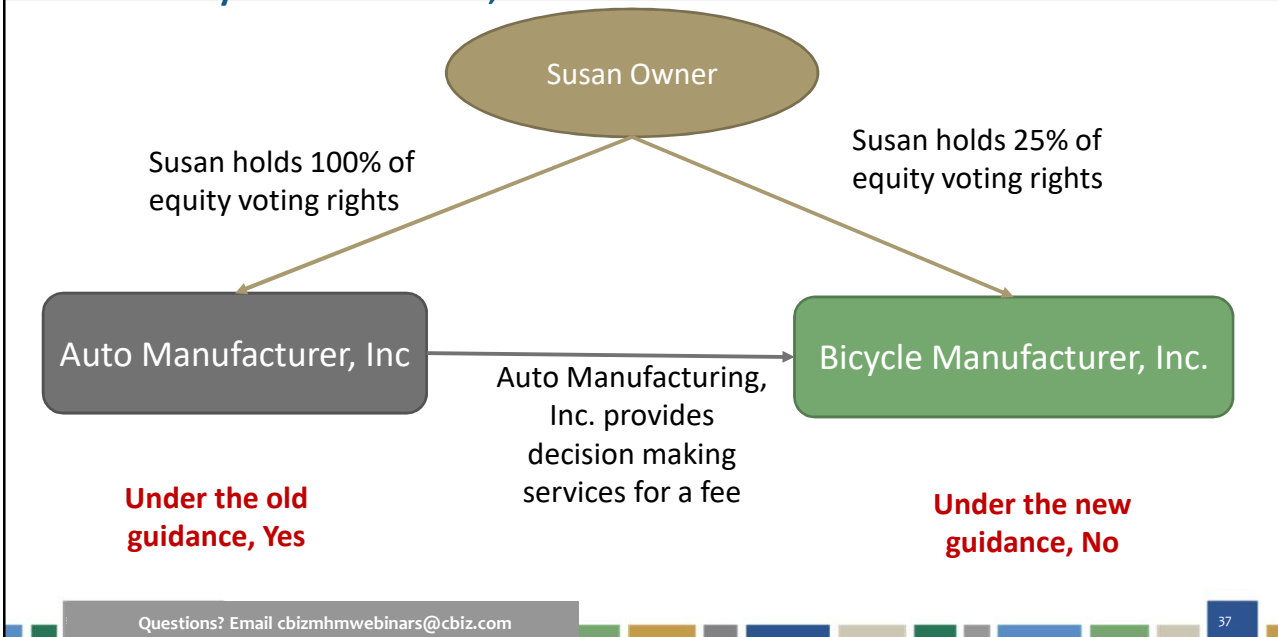
\*Interest of the decision maker include a proportionate share of **indirect interests** held by related parties, other than employees and employee benefit plans.



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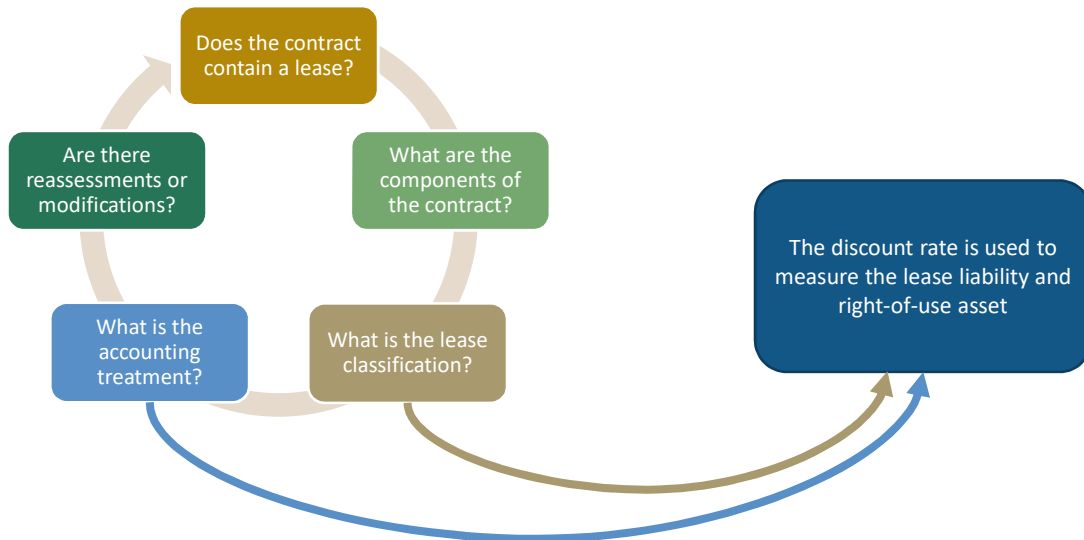
36

**Does Susan Owners interest cause Auto Manufacturer's services to be a variable interest in Bicycle Manufacturer, Inc.?**



## Lease Accounting

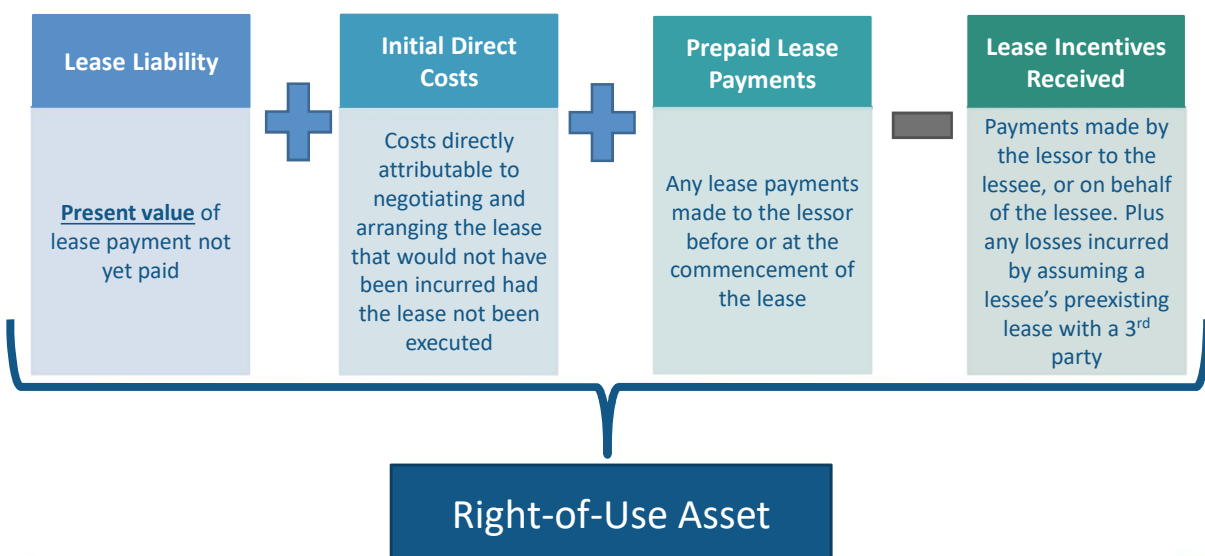
## Focusing on the Discount Rate



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39

## Measuring the Right-of-Use Asset (and Lease Liability)



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40

## Determining the Present Value of Lease Payments

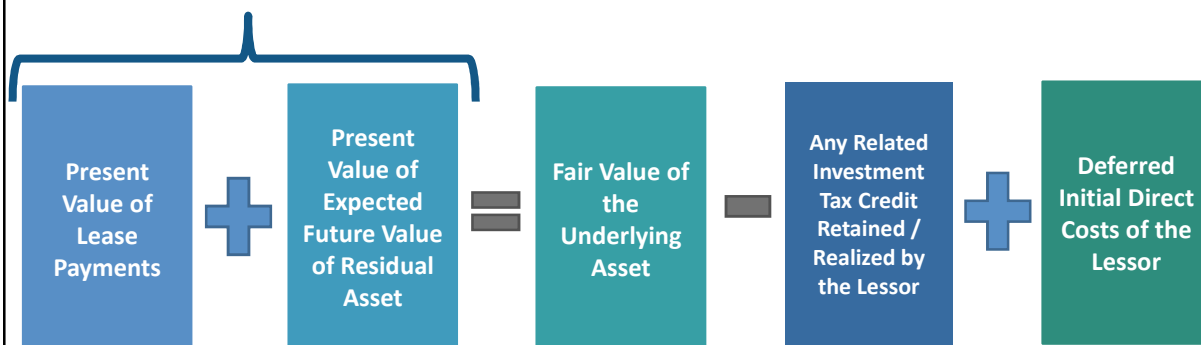
- When a lessee records a lease on the balance sheet, it must recognize a lease liability based on the present value of the future lease payments. The lessee has three options for the discount rate:
  - Rate implicit in the lease, if readily determinable.
  - Lessee's incremental borrowing rate (IBR).
  - Risk-free rate (private companies only).

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## Rate Implicit in the Lease

Rate implicit in the lease is the interest rate used for the present value that makes this formula work



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42

## Incremental Borrowing Rate (IBR)

- IBR is the rate of interest that the lessee would have to pay to borrow on a *collateralized* basis over a *similar term* an amount equal to the lease payments in a *similar economic environment*.

### Existing Debt

- Does the term match?
- Does the collateral match?
- Similar economic environment?

### Comparison to Others

- Do they have the same credit rating?
- Do the term, collateral, and economic environment match?

### Lender Quotes

- Are quotes available?
- Are quotes reliable?

### Adjusted Yield Curve

- May require use of a specialist

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43

## Estimating the Incremental Borrowing Rate (IBR)

- Determine an existing borrowing rate of the company (or a general unsecured borrowing rate)
- Identify a reference rate
- Determine and apply a spread adjustment to the reference rate
- Generate an adjusted yield curve for different term leases



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44

### Recent Exposure Draft: Use of the Risk-Free Rate

- Permits a non-public business entity to elect to use the risk-free rate as the discount rate for leases by class of underlying asset (rather than on an entity-wide basis)
- Clarify that the use of the rate implicit in the lease when it is readily determinable for any individual lease is required even if the risk-free rate is elected for a class of underlying assets

**Risk-Free Rate:**  
Daily Treasury Yield Curve  
(As of July 1, 2.01% for 20 year term)

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### Implementation Dates and Transition

- Effective Date
  - Public business entities - DONE
  - **Private Companies & most not-for-profits:**
    - **Fiscal years beginning after Dec. 15, 2021 (i.e. Dec. 31, 2022)**
  - Earlier application is permitted
- Date of Application
  - Beginning of the earliest comparative period presented
  - Beginning of the reporting period in which the entity first adopts the new standard

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46



## Agenda

01

ERTC Update

02

Biden Plan

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48



## Overview of the ERTC

What is it and who gets it?

49

### Overview of the ERTC – What is it?

- The Employee Retention Tax Credit (ERTC) is a special incentive that encourages employers to retain their workforce during periods of economic disruption caused by the coronavirus pandemic



- The ERTC provides immediate reductions to payroll taxes, and cash refunds for credits in excess of payroll taxes, for both commercial and not-for-profit employers during most of 2020 and all of 2021

50

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## Overview of the ERTC – What is it?

- The ERTC is claimed by eligible employers on their payroll tax filing – Form 941
  - If the ERTC was not claimed on an original Form 941 filing, then the employer simply files an amended return (Form 941-X) to claim the ERTC
- There is still plenty of time to claim the ERTC for 2020 or 2021

**941 for 2021: Employer's QUARTERLY Federal Tax Return** 950121  
OMB No. 1545-0029

Form (Rev. March 2021) Department of the Treasury – Internal Revenue Service

Employer identification number (EIN)  -  -

Name (not your trade name)

Trade name (if any)

Address

Number  Street  Suite or room number

City  State  ZIP code

Foreign country name  Foreign province/county  Foreign postal code

Read the separate instructions before you complete Form 941. Type or print within the boxes.

**Part 1: Answer these questions for this quarter.**

**Report for this Quarter of 2021**  
(Check one.)

☐ 1: January, February, March

☐ 2: April, May, June

☐ 3: July, August, September

☐ 4: October, November, December

Go to [www.irs.gov/Form941](https://www.irs.gov/Form941) for instructions and the latest information.

51

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51

## Overview of the ERTC – What is it?

- The ERTC is a per-employee credit, equal to a percentage of qualified wages and health plan expenses paid to each employee

2020 ERTC	2021 ERTC
Credit percentage = 50%	Credit percentage = 70%
March 13, 2020 through December 31, 2020	January 1, 2021 through December 31, 2021
Small employers = 100 or fewer FTE's during 2019	Small employers = 500 or fewer FTE's during 2019
\$10,000 per-employee maximum qualified wages and health plan expenses, for the <b>year</b> ➤ \$5,000 maximum per-employee credit, for the year	\$10,000 per-employee maximum qualified wages and health plan expenses, for each <b>quarter</b> ➤ \$28,000 maximum per-employee credit, for the year

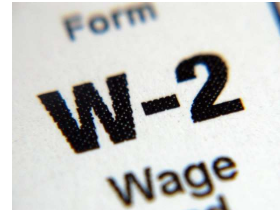
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## Overview of the ERTC – What is it?

- The scope of “qualified wages” depends on the employer’s size
  - For small employers, *all compensation paid* to each employee (plus allocable health plan expenses) during the calendar quarter, subject to the \$10,000 annual (2020) or quarterly (2021) cap
  - For large employers, compensation (plus allocable health plan expenses) paid to employees *who are not working*, subject to the \$10,000 annual (2020) or quarterly (2021) cap




53

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## Overview of the ERTC – What is it?

- How to count the average number of FTE’s during 2019
  - The definition of “full-time” for these purposes follows section 4980H (from the Affordable Care Act)
    - “FTE” means employed on average 30 hours per week
      - The employer already indicates this on Form 1095-C
  - Service performed outside the United States does not count toward the 30 hours per week measurement (Reg. §54.4980H-1(a)(24)(ii))
    - Therefore, “foreign” employees do not count as FTE’s

 The number of FTE’s delineates small employers from large employers, but qualified wages are FICA wages paid to any kind of employee (full or part-time)

54

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## Overview of the ERTC – What is it?

- Qualified wages do not include:
  - ✓ Wages paid to related individuals (family members) of shareholders who own more than 50% of the employer
  - ✓ Mandatory paid sick and family leave wages eligible for the associated credit under the Families First Coronavirus Response Act
  - ✓ Discretionary wages for paid family and medical leave subject to the TCJA credit under section 45S
  - ✓ Wages subject to the work opportunity tax credit
  - ✓ Wages subject to an R&E credit that is treated as a payroll tax credit
  - ✓ All wages subject to the R&E credit (2021 only)
  - ✓ Wages subject to the Indian Employment credit (2021 only)
  - ✓ Wages subject to the Active Duty Uniformed Services credit (2021 only)
  - ✓ Wages subject to the Empowerment Zone credit (2021 only)

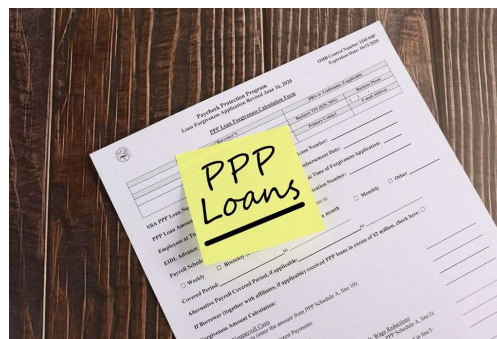
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55

## Overview of the ERTC – What is it?

- Qualified wages:
  - coordination with PPP loans
    - The same wages used to substantiate PPP loan forgiveness cannot also be used to claim the ERTC



- Employers preparing PPP loan forgiveness applications should try to maximize non-payroll cost identification, in order to “reserve” more payroll costs for the ERTC

56

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## Overview of the ERTC – Who gets it?

- The ERTC is available for “eligible employers” that are either commercial businesses, section 501(c) tax-exempt organizations, or certain public instrumentalities
- Eligible employer status is determined discretely for each calendar quarter
- Eligible employers include either of the following:
  - An employer subject to a government shut-down order during the quarter that led to a full or partial suspension of operations
  - An employer that experienced during the quarter a significant decline in gross receipts, when compared to the same quarter during 2019

57

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## Overview of the ERTC – Who gets it?

- Subject to government shut-down orders
  - Includes orders, proclamations, or decrees from the Federal or any State or local government, but only if they limit commerce, travel, or group meetings due to COVID-19 and relate to the suspension of an employer's trade or business
  - Orders that exempt “essential businesses” generally are not considered by those businesses for ERTC purposes, unless more than a nominal portion of business operations are suspended by the order (facts and circumstances test)



58

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58

## Overview of the ERTC – Who gets it?

- Experienced significant decline in gross receipts
  - During 2020, this is the first quarter when gross receipts are **less than 50%** of gross receipts during the same quarter in 2019
    - Ends for the quarter subsequent to the one when gross receipts are >80% of the same quarter in 2019
  - During 2021, this is any quarter when gross receipts are **less than 80%** of the same quarter in 2019
    - Employers may elect to substitute the preceding quarter's data to compute any quarter's percentage test



59

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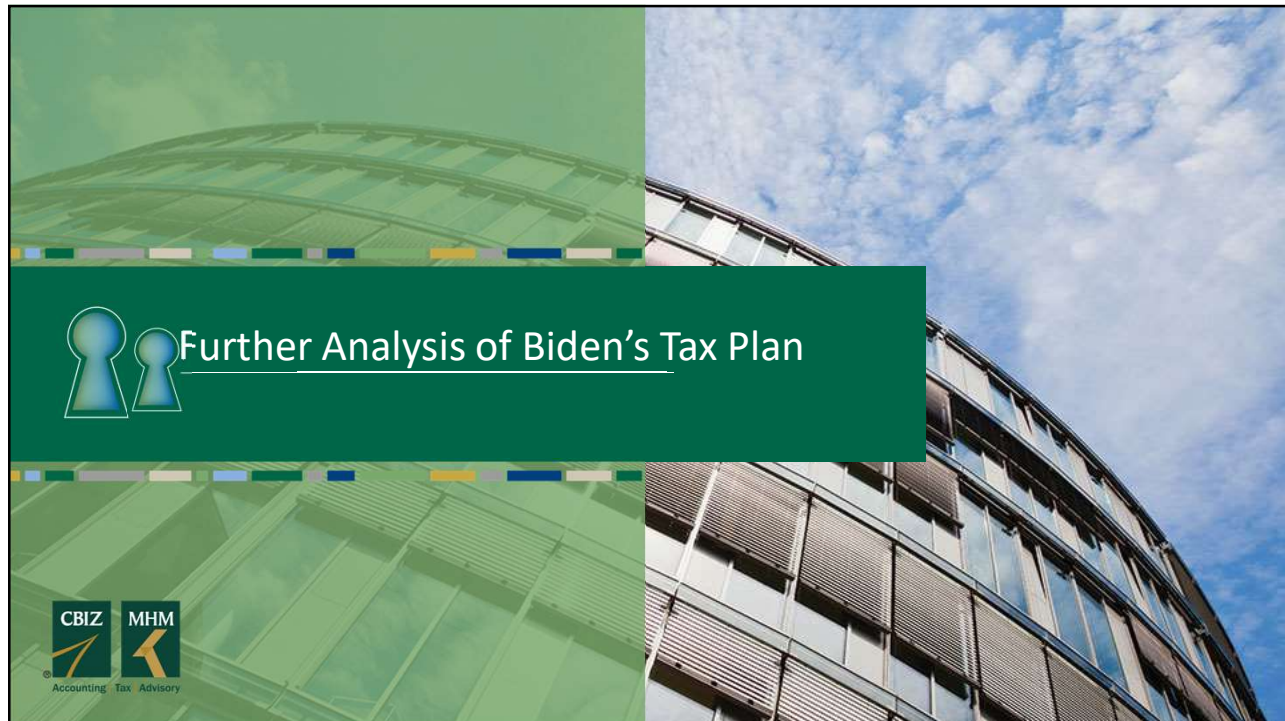
## Overview of the ERTC – Who gets it?

- Two or more employers that belong to a “controlled group” (as defined under sections 52(a), (b) or sections 414(m), (o)) are aggregated and treated as one
  - For purposes of measuring an employer's gross receipts decline test
  - For purposes of measuring the employer's number of FTE's during 2019
- This analysis is extremely complex.

60

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### The Green Book

- In May the Biden Administration released the General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals.
- This document, traditionally known as the Green Book, outlines in greater detail the Administration's tax proposals.
  - This includes more specific details on the provisions the Administration would like to enact.
  - Further details on when specific provisions would be effective.
  - It also serves to highlight key items that are not included in the Administration's plans at present.
- These proposals were initially previewed in the American Jobs Plan and the American Families Plan.



## The Green Book – Business Provisions

- Increase corporate rate from 21% to 28%
  - For fiscal year C corporations, there would be a blended rate in the initial year with the tax being 21% plus an additional 7% tax applied to the portion of the taxable year that begins in 2022.
  - This rate increase would apply to all C corporations regardless of size or whether they are publicly traded or privately held.
  - Joe Manchin (D VA) a key Senate vote, has stated that he would not support a rate increase in excess of 25%
- Proposed effective date: January 1, 2022

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63

## The Green Book – Business Provisions

- Minimum tax of 15% on corps with worldwide book income that exceeds \$2 billion.
  - Taxpayers would calculate book tentative minimum tax (BTMT) equal to 15% of worldwide pre-tax book income (calculated after subtracting any book net operating loss deductions), less General Business Credits (including research and experimentation, clean energy, and housing tax credits) and foreign tax credits.
  - This book income tax would be creditable against the corporation's regular tax in future years.
  - The book income tax bears many similarities to the corporate alternative minimum tax (AMT) that was repealed under the 2017 tax law commonly known as the Tax Cuts and Jobs Act (TCJA).
- Proposed effective date: January 1, 2022

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64



## The Green Book – Business Provisions

- Make the excess business loss limitation permanent
  - The excess business loss limitation prevents individuals from deducting business losses in excess of \$250,000 (\$500,000 for joint return filers).
  - This provision, enacted as part of the TCJA, is set to expire at the close of 2026.
- Proposed effective date: January 1, 2022

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## The Green Book – Business Provisions

- Tax carried interests as ordinary income
  - This proposal would increase the tax rate for hedge fund managers and other taxpayers who provide services to investment partnerships and are allocated income from a profits interest in the investment partnership.
    - An investment partnership generally is one where substantially all of its assets consist of investment-type assets (e.g., certain securities, commodities, real estate, etc.).
  - Such allocations would be subject to ordinary tax rates, as well as self-employment taxes, and would not be eligible for lower capital gains tax rates.
  - The change would be applicable to all taxpayers making more than \$400,000 per year.
- Proposed effective date: January 1, 2022

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66

## The Green Book – Business Provisions

- Business
  - Pass-Through Impact
    - Phase out Qualified Business Income (QBI) (§ 199A 20% deduction) for individuals with income over \$400K (discussed under Individual changes)
    - Attempt to create parity between corporate tax cut and pass-through entity tax

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67

## The Green Book – Business Provisions

- Expand the Net Investment Income Tax (NIIT) and Self-Employment Contributions Act (SECA) tax system
- This would apply either the NIIT or the SECA tax to pass-through income to high income taxpayers.
  - For taxpayers with adjusted gross income over \$400,000, the net investment tax would apply to gross income that is not otherwise subject to self-employment taxes.
  - The classes of income subject to SECA taxes would be expanded to include distributive shares of pass-through income to include limited partners, LLC members, or S corporation shareholders.
- Proposed Effective Date: January 1, 2022

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68

## The Green Book – Business Provisions

- Cap benefits under the like-kind exchange deferral rules
- Gains deferred under like-kind exchanges would be capped at \$500,000 (\$1,000,000 for joint filers) per taxable year. Gains in excess of these thresholds would be recognized and taxed accordingly
  - The \$500,000 (\$1,000,000) exception is determined on an aggregate basis and not a per exchange basis.
  - The wording of the effective date suggests that in-process exchanges commenced prior to Jan. 1, 2022 would still be subject to the new cap.
- Proposed Effective Date: Exchanges “completed” beginning Jan. 1, 2022

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69

## The Green Book – Individual Provisions

- Increase the top tax rate for individuals to 39.6%, up from 37%
  - This rate would be applied to taxable income in excess of the 2017 top bracket threshold, adjusted for inflation.
  - In taxable year 2022, the top marginal tax rate would apply to taxable income over \$509,300 for married individuals filing a joint return, \$452,700 for single individuals.
  - These thresholds would be lower than those that apply under current law to the highest tax bracket (\$628,300 for married individuals filing a joint return, and \$523,600 for single filers).
- Proposed Effective Date: January 1, 2022

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70

## The Green Book – Individual Provisions

- Tax capital gains for high income taxpayers at ordinary income rates
- This proposal would tax capital gains at ordinary income tax rates for taxpayers with adjusted gross income that exceeds \$1 million (\$500,000 for married taxpayers who file separately).
  - The Green Book clarifies that the \$1 million threshold is based on adjusted gross income, and the threshold applies equally to both single filers and married individuals filing a joint return.
- Proposed Effective date: Retroactive to the “date of announcement”
  - This “effective date” creates an additional concern. It is not yet clear whether the “date of announcement” is April 28, the day President Biden released the American Families Plan (AFP), or if it is May 28, the date the Green Book was released, or if a different date might apply when legislation is introduced in the House of Representatives.

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71

## The Green Book – Individual Provisions

- Treat transfers of appreciated property by gift or on death as realization events
  - Transfers of property by gift or on death would no longer be sheltered from taxation at the time of the transfer.
  - Under the proposal, the excess of the property’s fair market value on the transfer date over the transferor’s basis in the property would be deemed realized as capital gains by the transferor.
  - The \$250,000 (\$500,000 MFJ) exclusion from capital gains on a principal residence would be maintained.
  - Gains from transfers of tangible personal property, such as household furniture and personal effects (excluding collectibles), would be exempt.
  - There would also be a \$1 million per-person (indexed for inflation) exclusion for gifts and transfers at death.
    - This exclusion would be per spouse and any unused portion is transferrable from one spouse to the other upon the death of a spouse.
- Proposed Effective Date: January 1, 2022

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72

## The Green Book – Omitted Provisions

- Repeal of the \$10,000 state and local tax cap is not mentioned in the Green Book.
  - Some legislators from high-tax states have stated that they will not support tax law changes without a repeal of the SALT cap.
  - In light of the fierce advocacy for repeal by these legislators, it is notable that repeal is not mentioned.
  - A full repeal of the SALT cap would require additional offsetting tax increases and would benefit wealthier individuals, which likely weighed against inclusion.

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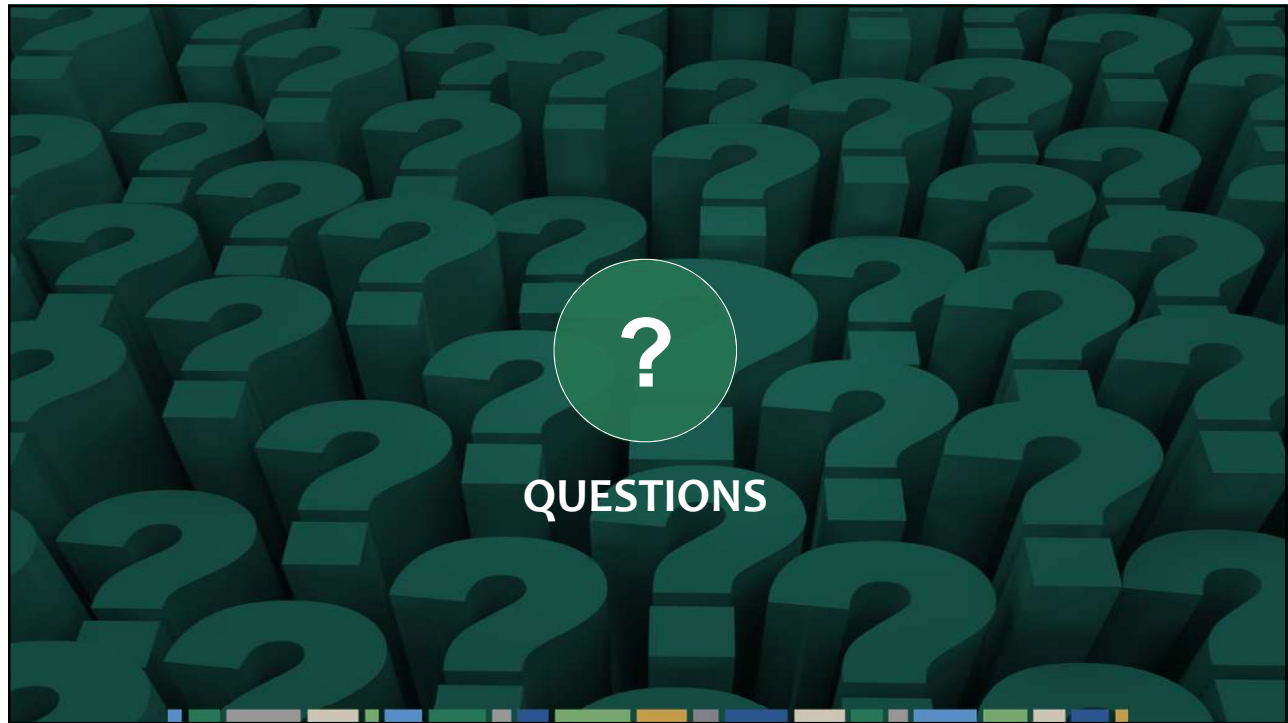
73

## The Green Book – Omitted Provisions

- A cap on or repeal of the Qualified Business Income Deduction.
  - Repealing QBI benefits for individuals making more than \$400,000 was part of President Biden's campaign.
  - Because this would be a substantial revenue raiser, it may later emerge if other revenue raisers prove to be unfeasible.
  - It is also possible that changes to the QBI deduction could be proposed as an offset to pay for the repeal of the SALT cap.

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74



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76

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77

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