

# Preparing & Planning for Tax Policy Changes

November 9, 2021



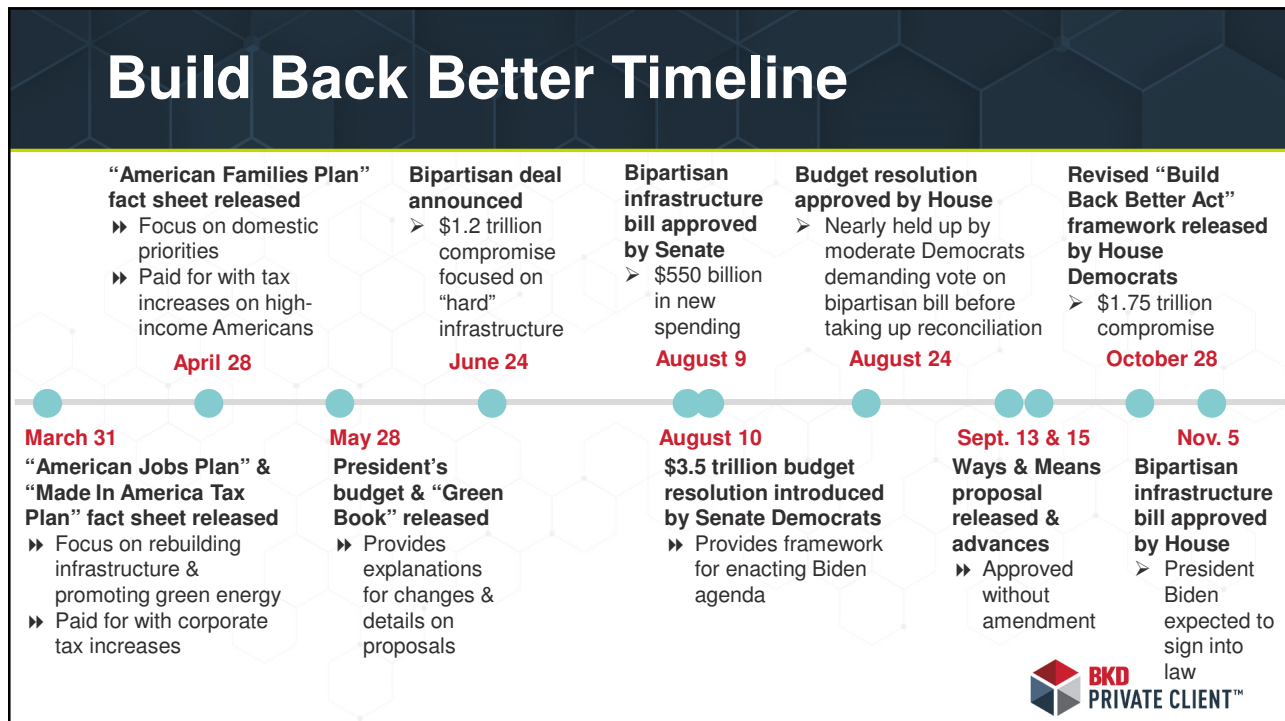
## What We'll Cover Today

- › Legislative Outlook
- › Current Proposals
- › Strategies & Planning Considerations
- › Contractor vs. Employee
- › 2021 Information Reporting Reminders





# Legislative Outlook



# Outlook Is Uncertain

## Momentum

- › Biden Administration sees this as one shot to enact agenda with increasing likelihood Democrats lose majority in House in November 2022 election
- › Budget reconciliation resolution

## Headwinds

- › Slim margin of control by Democrats in House (three seats) & Senate (zero seats)
- › Widening divide between moderate & progressive Democrats on number of key issues



## Select Current Proposals



## Infrastructure Investment & Jobs Act

- \$550 billion in new spending paid for in following ways:
  - Restrict availability of the Employee Retention Credit to wages paid prior to **October 1, 2021** (three months early), except for recovery start-up businesses
  - Strengthen tax enforcement on transactions involving digital assets
  - Reinstate the Superfund Tax, which imposes excise tax on chemical manufacturers through 2032
  - Repurpose unused COVID-related relief funds
  - Lean on state & local investment in broadband infrastructure



## Build Back Better Act Tax Proposals

Topic	Current Law	"Green Book"	Ways & Means	Latest Framework
<b>Corporate tax rate</b>	➤ 21% flat rate	➤ 28% flat rate	<ul style="list-style-type: none"> <li>➤ <b>26.5%</b> top rate for corporations with incomes of \$5 million while reducing rate to <b>18%</b> for corporations with incomes less than <b>\$400,000</b></li> <li>➤ Effective for taxable years beginning after <b>Dec. 31, 2021</b></li> </ul>	<ul style="list-style-type: none"> <li>➤ Same as current</li> <li>➤ Create new <b>15% Corporate minimum tax</b> for corporations with adjusted financial statement income in excess of \$1 billion effective for taxable years beginning after <b>Dec. 31, 2022</b></li> </ul>



## Build Back Better Act Tax Proposals

Topic	Current Law	"Green Book"	Ways & Means	Latest Framework
<b>Excise tax on repurchase of corporate stock</b>	<ul style="list-style-type: none"> <li>➤ None</li> </ul>	<ul style="list-style-type: none"> <li>➤ Not addressed (same as current law)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Not addressed (same as current law)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Impose <b>new 1% excise tax</b> on publicly traded U.S. corporations for value of any of its stock repurchased by the corporation</li> <li>➤ Applies to repurchases after <b>Dec. 31, 2021</b></li> </ul>

\*Exclusions provided for certain repurchases



## Build Back Better Act Tax Proposals

Topic	Current Law	"Green Book"	Ways & Means	Latest Framework
<b>Individual rates on ordinary income</b>	<ul style="list-style-type: none"> <li>➤ Seven brackets with top rate of <b>37%*</b> for taxable income over \$523,600 single &amp; head of household (HOH); \$628,300 married filing jointly (MFJ) in 2021</li> <li>➤ Expires after <b>Dec. 31, 2025<sup>^</sup></b></li> </ul>	<ul style="list-style-type: none"> <li>➤ Increase top marginal rate to <b>39.6%</b> for taxable income over <b>\$400,000</b> single (\$450,000 MFJ)</li> <li>➤ Effective for taxable years beginning after <b>Dec. 31, 2021</b></li> </ul>	<ul style="list-style-type: none"> <li>➤ Same as "Green Book" proposal</li> </ul>	<ul style="list-style-type: none"> <li>➤ Not addressed (same as current law)</li> </ul>

\*Plus 3.8% net investment income tax on unearned income when modified gross income exceeds certain thresholds  
<sup>^</sup>thresholds continue to be indexed for inflation using chained measurement of consumer price index where applicable  
 #indexed annually for inflation



## Build Back Better Act Tax Proposals

Topic	Current Law	“Green Book”	Ways & Means	Latest Framework
<b>Surcharge on certain high-income taxpayers</b>	<ul style="list-style-type: none"> <li>➤ None</li> </ul>	<ul style="list-style-type: none"> <li>➤ Not addressed (same as current law)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Create <b>new 3% surtax</b> on individuals with modified adjusted gross income (MAGI)<sup>^</sup> exceeding <b>\$5 million</b> (\$2.5 million MFS)<sup>*</sup></li> <li>➤ Effective for taxable years beginning after <b>Dec. 31, 2021</b></li> </ul>	<ul style="list-style-type: none"> <li>➤ Create <b>new 5% surtax</b> on individuals with MAGI exceeding <b>\$10 million<sup>#</sup></b> (\$5 million MFS) with additional <b>3% tax</b> for MAGI over <b>\$25 million<sup>#</sup></b></li> <li>➤ Effective for taxable years beginning after <b>Dec. 31, 2021</b></li> </ul>

<sup>\*</sup>\$100,000 for trusts & estates

<sup>^</sup>Adjusted gross income reduced by any deductions allowed for investment interest

<sup>#</sup>\$200,000 & \$500,000 for trusts & estates, respectively



## Build Back Better Act Tax Proposals

Topic	Current Law	“Green Book”	Ways & Means	Latest Framework
<b>Net investment income tax (NIIT) &amp; Self-Employment Contributions Act (SECA) tax</b>	<ul style="list-style-type: none"> <li>➤ <b>3.8%</b> on certain net investment income with MAGI over <b>\$200,000</b> (<b>\$250,000 MFJ</b>)<sup>^</sup></li> <li>➤ Self-employment earnings &amp; wages subject to 12.4% Social Security tax split between employer &amp; employee on earnings up to \$142,800 in 2021<sup>*</sup></li> </ul>	<ul style="list-style-type: none"> <li>➤ All pass-through business income of high-income taxpayers subject to either NIIT or SECA tax</li> <li>➤ Apply SECA to ordinary business income of high-income nonpassive S corporation owners</li> </ul>	<ul style="list-style-type: none"> <li>➤ Expand NIIT to cover net investment income derived in ordinary course of trade or business for taxpayers with taxable income greater than <b>\$400,000</b> single (<b>\$500,000 MFJ</b>) as well as <b>trusts &amp; estates</b></li> </ul>	<ul style="list-style-type: none"> <li>➤ Same as Ways &amp; Means proposal</li> </ul>

<sup>\*</sup>\$100,000 for trusts & estates

<sup>^</sup>Adjusted gross income reduced by any deductions allowed for investment interest

<sup>#</sup>\$200,000 & \$500,000 for trusts & estates, respectively



# Polling Question #1

> What is the latest framework for a change to the corporate tax rate?

- a. 28% flat rate
- b. 26.5% flat rate
- c. Same as current but create a new 15% corporate minimum tax for corporations with adjusted financial statement income in excess of \$1 billion effective for taxable years beginning Dec. 31, 2022
- d. No change (same as current law)



## Build Back Better Act Tax Proposals

Topic	Current Law	"Green Book"	Ways & Means	Latest Framework
<b>Capital gains rate (including qualified dividends rate)</b>	<ul style="list-style-type: none"> <li>➤ Top rate of 20%*</li> </ul>	<ul style="list-style-type: none"> <li>➤ <b>Top marginal tax rate</b> for taxpayers with adjusted gross income more than <b>\$1 million (\$500,000 MFS)</b><sup>^</sup></li> <li>➤ Effective for gains recognized after <b>date of announcement (April 28, 2021)</b></li> </ul>	<ul style="list-style-type: none"> <li>➤ Top rate of <b>25%</b> effective for any transactions completed after <b>September 13, 2021</b>, subject to binding contract exception</li> </ul>	<ul style="list-style-type: none"> <li>➤ Not addressed (same as current law)</li> </ul>

\*\$100,000 for trusts & estates

<sup>^</sup>Adjusted gross income reduced by any deductions allowed for investment interest

#\$200,000 & \$500,000 for trusts & estates, respectively



## Build Back Better Act Tax Proposals

Topic	Current Law	"Green Book"	Ways & Means	Latest Framework
<b>Exclusion on qualified small business stock (QSBS)</b>	<ul style="list-style-type: none"> <li>➤ Allows noncorporate shareholders to exclude all or portion of gain from sale of QSBS held for at least five years</li> </ul>	<ul style="list-style-type: none"> <li>➤ Not addressed (same as current law)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Current <b>75% &amp; 100% exclusion rates not available</b> for taxpayers with adjusted gross incomes of <b>\$400,000 or more, or any estate or trust</b></li> <li>➤ Effective for sales or exchanges after <b>Sept. 13, 2021</b><sup>#</sup></li> </ul>	<ul style="list-style-type: none"> <li>➤ Same as Ways &amp; Means proposal</li> </ul>

\*Amount of gain that can be excluded on per-issuer basis generally limited to greater of \$10 million\* or 10 times aggregate basis of stock minus any amount excluded with respect to that corporation's stock in prior years

<sup>#</sup>Subject to a binding contract exception





## Build Back Better Act Tax Proposals

Topic	Current Law	"Green Book"	Ways & Means	Latest Framework
<b>Qualified business income deduction (QBID)</b>	➤ Deduction of <b>20%</b> of domestic qualified business income subject to limitations	➤ Not addressed (same as current law)	➤ Limit maximum deduction to <b>\$400,000</b> single ( <b>\$500,000</b> MFJ) & <b>\$10,000</b> for trusts & estates	➤ Not addressed (same as current law)
<b>Tax carried (profits) interests</b>	➤ Capital gains rate after <b>three-year holding period</b>	➤ Eliminate if partner's taxable income exceeds <b>\$400,000</b>	➤ Capital gains rate after <b>five-year holding period*</b>	➤ Not addressed (same as current law)

\*Three-year holding period for real property trades or businesses & taxpayers with AGI less than \$400,000



## Build Back Better Act Tax Proposals

Topic	Current Law	"Green Book"	Ways & Means	Latest Framework
<b>Deferral of gain from like-kind exchanges</b>	➤ Real property can be exchanged on tax-free basis	➤ Eliminate for gains greater than <b>\$500,000</b> per taxpayer ( <b>\$1 million</b> for MFJ)	➤ Not addressed (same as current law)	➤ Not addressed (same as current law)
<b>Excess business loss limitation of noncorporate taxpayers</b>	➤ Limit trade/business deductions over amount of trade/business gross income & gain to <b>\$250,000*</b> with excess treated as NOL	➤ Permanently extended	<ul style="list-style-type: none"> <li>➤ Disallow excess business losses<sup>^</sup></li> <li>➤ Effective to tax years beginning after <b>Dec. 31, 2020</b></li> </ul>	➤ Same as Ways & Means proposal

\*Threshold adjusted annually for inflation

<sup>^</sup>Taxpayers whose losses are disallowed are able to carry those losses forward to the next succeeding taxable year



## Build Back Better Act Tax Proposals

Topic	Current Law	“Green Book”	Ways & Means	Latest Framework
<b>Basis “step-up”</b>	<ul style="list-style-type: none"> <li>➤ Tax basis in assets acquired from decedent adjusted to fair market value</li> </ul>	<ul style="list-style-type: none"> <li>➤ Donor or deceased owner of appreciated asset transferred* would realize capital gain <b>at time of transfer</b></li> <li>➤ Unrealized appreciation recognized if property has not been subject of recognition event within <b>prior 90 years</b><sup>^</sup></li> </ul>	<ul style="list-style-type: none"> <li>➤ Not addressed (same as current law)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Not addressed (same as current law)</li> </ul>

\*Transfer defined under gift & estate tax provisions. Valued using methodologies used for gift or estate tax purposes subject to newly created limitations  
<sup>^</sup>Beginning Dec. 31, 2030



## Build Back Better Act Tax Proposals

Topic	Current Law	“Green Book”	Ways & Means	Latest Framework
<b>Estate &amp; gift lifetime exemption</b>	<ul style="list-style-type: none"> <li>➤ \$10 million per person*<sup>^</sup></li> </ul>	<ul style="list-style-type: none"> <li>➤ Not addressed (same as current law)</li> </ul>	<ul style="list-style-type: none"> <li>➤ <b>\$5 million</b> per person*</li> <li>➤ Apply to estates of decedents dying &amp; gifts made after <b>Dec. 31, 2021</b></li> </ul>	<ul style="list-style-type: none"> <li>➤ Not addressed (same as current law)</li> </ul>

\*Adjusted annually for inflation. Currently \$11.7 million in 2021; would be approximately \$6.3 million in 2022 if enacted  
<sup>^</sup>Expires after Dec. 31, 2025



## Polling Question #2

> What is the latest framework for a change to the Qualified business income deduction (QBID)?

- a. Limit maximum deduction to \$400,000 single (\$500,000 MFJ) & \$10,000 for trusts & estates
- b. Limit maximum deduction to \$500,000 single (\$600,000 MFJ) & \$20,000 for trusts & estates
- c. Limit maximum deduction to \$300,000 single (\$400,000 MFJ) & \$10,000 for trusts & estates
- d. No change (same as current law)



## Build Back Better Act Tax Proposals

Topic	Current Law	“Green Book”	Ways & Means	Latest Framework
“Grantor trusts” – income tax treatment	<ul style="list-style-type: none"> <li>➤ Ignored for income tax purposes</li> </ul>	<ul style="list-style-type: none"> <li>➤ Not addressed (same as current law)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Sale of assets by deemed owner to grantor trust treated as recognition event*</li> <li>➤ Applies to transfers after <b>date of enactment</b></li> </ul>	<ul style="list-style-type: none"> <li>➤ Not addressed (same as current law)</li> </ul>

\*Losses attributable to such sales would generally be disallowed



## Build Back Better Act Tax Proposals

Topic	Current Law	“Green Book”	Ways & Means	Latest Framework
“Grantor trusts” – transfer tax treatment	<ul style="list-style-type: none"> <li>➤ <b>Excluded</b> from decedent’s taxable estate with proper planning, <i>i.e.</i>, intentionally defective grantor trusts</li> </ul>	<ul style="list-style-type: none"> <li>➤ Not addressed (same as current law)</li> </ul>	<ul style="list-style-type: none"> <li>➤ <b>Included</b> in decedent’s taxable estate when decedent is deemed owner of trust*</li> <li>➤ Distributions to beneficiaries other than grantor/their spouse treated as gift made by grantor*</li> </ul>	<ul style="list-style-type: none"> <li>➤ Not addressed (same as current law)</li> </ul>

\*Applies to transfers after date of enactment



## Polling Question #3

> What is the latest framework for a change to the estate & gift lifetime exemption?

- a. \$5 million per person. Apply to estates of descendants dying & gifts made after Dec. 31, 2021A.
- b. \$8 million per person. Apply to estates of descendants dying & gifts made after Dec. 31, 2021
- c. \$15 million per person. Apply to estates of descendants dying & gifts made after Dec. 31, 2021
- d. No change (same as current law)



## Other Notable Framework Updates

- › Provide additional funding for IRS enforcement for taxpayers with taxable incomes of \$400,000 & above
  - \$1.93 billion for taxpayer services
  - \$44.89 billion for enforcement
  - \$27.38 billion for operations support
  - \$4.75 billion for business systems modernization



## Other Notable Framework Updates

- › Increase limitation on deduction for state & local taxes to \$72,500 (36,250 for MFS & trusts/estates) for 2021 - 2031
- › Delay requirement to capitalize & amortize R&D expenditures from taxable years beginning after December 31, 2021 to 2025
- › Expand & modify wash sale rules to include digital assets
- › Provide expanded clean energy tax credits for 10 years



## Strategies & Planning Considerations



### Proposed Top Tax Rates Compared

Type of Entity	Current Law	“Green Book”	Ways & Means	Latest Framework
Pass-through				
<u>With</u> QBID	➤ <b>33.4%</b> (37% * 80% + 3.8%)	➤ <b>35.5%</b> (39.6% * 80% + 3.8%)	➤ <b>37.9%</b> ((39.6% + 3%) * 80% + 3.8%)	➤ <b>39.8%</b> ((37% + 5% + 3%) * 80% + 3.8%)
<u>Without</u> QBID	➤ <b>40.8%</b> (37% + 3.8%)	➤ <b>43.4%</b> (39.6% + 3.8%)	➤ <b>46.4%</b> (39.6% + 3% + 3.8%)	➤ <b>48.8%</b> (37% + 5% + 3% + 3.8%)



## 3 Steps to Plan Amid Uncertainty

1. Review your current tax situation
2. Model possible outcomes & strategies
  - Assess timing of income, gains & deductions
  - Evaluate choice of entity & structure
  - Revisit your estate & philanthropic plans
3. Maintain flexibility & keep options open

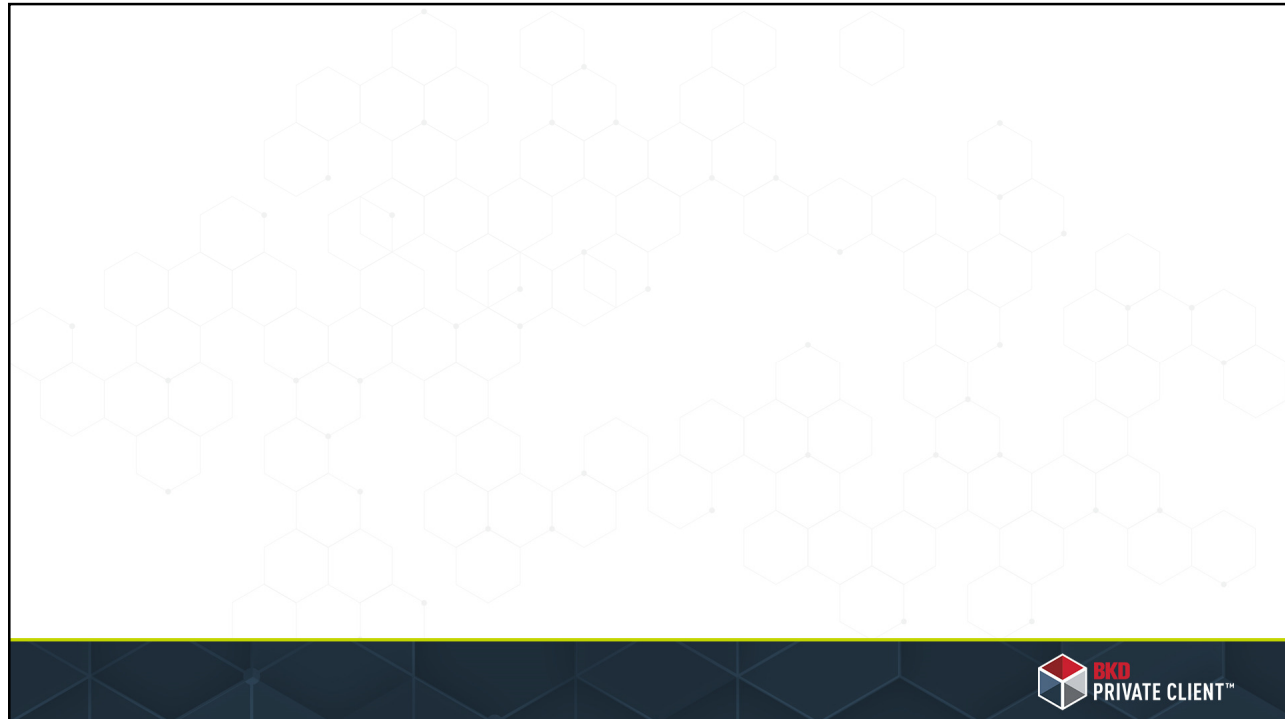


## Polling Question #4

- › What is the latest proposal to change the limitation on the deduction for state & local taxes?
- a. Keep it at the current law of \$10,000
  - b. Change it to \$72,500 (\$36,250 for MFS & trusts/estates)
  - c. Change it to \$100,000 (\$50,000 for MFS & trusts/estates)
  - d. Change it to \$150,000 (\$75,00 for MFS & trusts/estates)







## 2021 Year-End Tax Planning for Individuals

- › 1) Above-the-line Charitable Contribution deduction
  - For 2021, taxpayers who don't itemize can take advantage of a \$300 (\$600 for MFJ) above-the-line deduction for cash contributions to qualified charitable organizations
- › 2) Increased limit for Cash Contributions
  - For 2020 & 2021, taxpayers who itemize can now take up to 100% (formerly 60%) of AGI in cash contributions to qualified charities
  - Excludes contributions to:
    - › Donor-advised funds
    - › Supporting organizations
    - › Private foundations

## 2021 Year-End Tax Planning for Individuals

- › 3) Child Tax Credit (CTC) – For eligible taxpayers in 2021, the CTC was increased and became fully refundable.
  - Increased by \$1,600 (\$3,600 total) for children under age 6 and by \$1,000 (\$3,000 total) for ages 6 to 17
  - The increase starts to phase out for joint filers and qualifying widow(er)s with AGI of more than \$150,000 (\$112,000 head of household, \$75,000 for all other taxpayers)
  - To allow families an immediate benefit, six advanced monthly payments of the credit started in July. The payments do not exceed more than 50% of the projected CTC. Taxpayers can opt out of these payments, which may be better, depending on the situation



## 2021 Year-End Tax Planning for Individuals

- › Standard Deduction 2020 vs. 2021
  - MFJ               \$24,800 vs. \$25,100
  - MFS/Single   \$12,400 vs. \$12,550
  - HOH             \$18,650 vs. \$18,800
- › Charitable contributions allowed if you take the standard deduction 2020 vs. 2021
  - \$300 or \$150 (MFS) vs. \$600 or \$300 (MFS)



## 2021 Year-End Tax Planning for Individuals

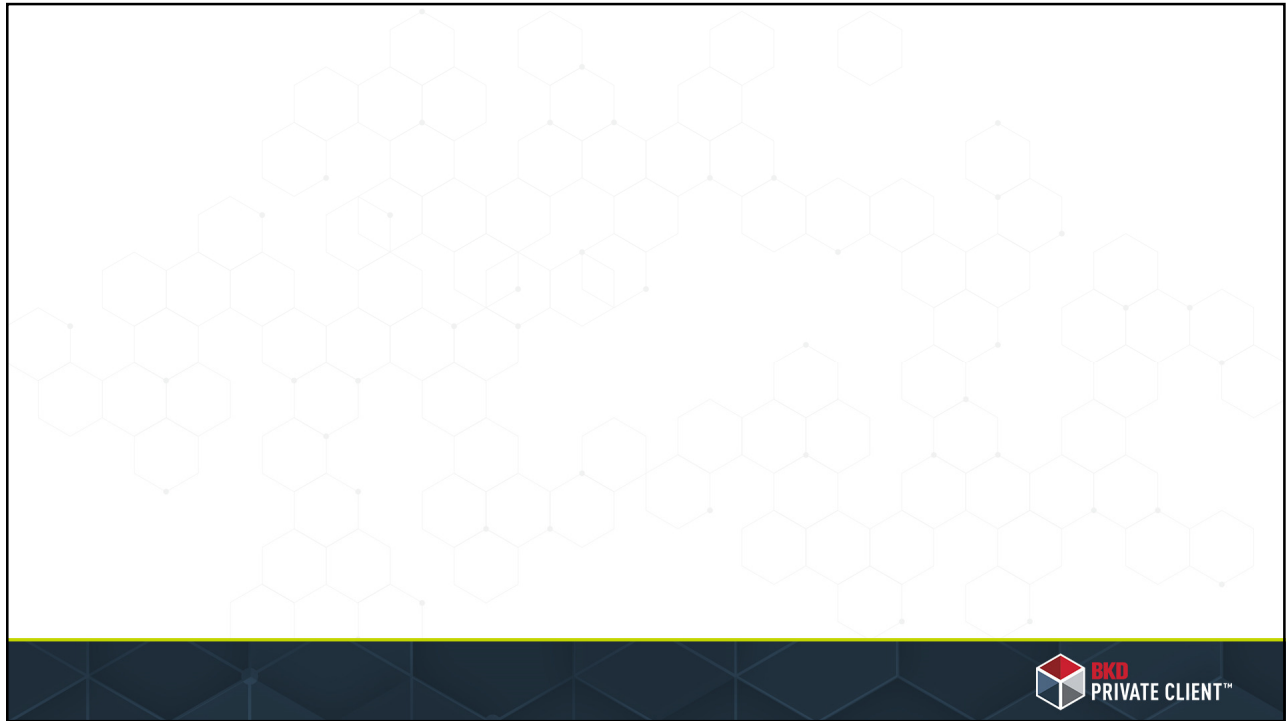
- › 401(k) contribution limits
  - 2020 and 2021 \$19,500
  - 2022 \$20,500
- › Annual IRA Contribution Limits
  - Unchanged at \$6,000
  - Additional catch-up contribution for individuals aged 50 and over \$1,000



## Polling Question #5

- › How much in above-the-line charitable contribution deductions can be taken in 2021 for married filing joint filers?
  - a. \$300
  - b. \$400
  - c. \$600
  - d. None





## Contractor or Employee

- › In 1987, the IRS developed a list of 20 items to be used in the determination of an employer-employee relationship, known as the “20-Factor Test”
- › Over the years the IRS has condensed the 20 factors into three main categories
  - Behavioral control
  - Financial control
  - Type of relationship



## Contractor or Employee

- › Behavioral control
  - focuses on the amount of control the company has over how, what, and when tasks are to be performed by the worker. The more control the company has over details of tasks to be performed, the more likely that the worker is an employee and not a contractor. This category also puts focus on the amount of training provided by the company to the worker. An employee would be trained on site to perform services in the manner set forth by the company. An independent contractor would seek training by their own manner outside the guidance of the company.



## Contractor or Employee

### › Financial Control

- focuses on the amount of control the company has over the financial aspects related to completing tasks performed by the worker. This category puts focus on how the worker is compensated (hourly or flat rate based on job), whether the worker is reimbursed for expenses related to supplies/materials, and if services provided by the worker are available to the general public. A worker who is paid an hourly rate takes on the appearance of an employee, while a worker who gets paid a flat rate based on job takes on the appearance of a contractor. Independent contractors are more likely to incur unreimbursed expenses such as supplies/materials. In general, an employee only works for one company. However, an independent contractor seeks to provide services to multiple companies.



## Contractor or Employee

### › Type of relationship

- focuses on the relationship established between the company and worker. This category puts focus on written contracts between parties, whether the company provides the worker with employee-type benefits, the length of the relationship, and the extent to which the services performed by the worker are a key aspect of company. A company that provides employee-type benefits, such as vacation pay, sick pay, insurance, and pension plan, has workers deemed to be employees.



# Contractor or Employee

› It is critical the business makes the proper determination in order to know what type of taxes will need to be withheld and paid on behalf of service provider.

- **Employees**

- › Must have Social Security and Medicare tax withheld and businesses pay matching Social Security and Medicare tax, as well as unemployment taxes.
- › Withholding of income taxes is optional depending on how the individual fills out their W-4

- **Contractors**

- › Businesses are usually not required to withhold or pay taxes on amounts paid to contractors
- › Form 1099-NEC is required for most payments made to contractors that total \$600 or more per year
- › It is just as important to obtain identification and Social Security information for contractors as it is for employees
- › Businesses can request this information from contractors using Form W-9



## 2021 Information Reporting Reminders

Form	Reported Information	Reporting Threshold*	Due Date (Electronic Filers)**	Due Date (Paper Filers)
1099-MISC	Box 1 – Rents Box 2 – Royalties Box 3 – Other Income Box 9 – Crop Insurance Proceeds Box 10 – Gross Proceeds to an Attorney, e.g., in a settlement agreement	Payments of \$600 or more  \$10 or more for royalties	Payments of \$600 or more  \$10 or more for royalties	To IRS: February 28  To Recipient: January 31
1099-NEC	Nonemployee compensation (NEC) and attorneys' fees of \$600 or more, e.g., legal fees	Payments of \$600 or more	To IRS & Recipient: January 31	To IRS & Recipient: January 31
1099-INT	Interest paid on a business debt	Payments of \$10 or more***	To IRS: March 31  To Recipient: January 31	To IRS: February 28  To Recipient: January 31
1099-DIV	Ordinary, qualified, capital gain, and exempt-interest dividends	Payments of \$10 or more***	To IRS: March 31  To Recipient: January 31	To IRS: February 28  To Recipient: January 31

# Questions?



# Thank You!

**Chris Bishop** [cbishop@bkd.com](mailto:cbishop@bkd.com)  
**Chelsea Engel** [cengel@bkd.com](mailto:cengel@bkd.com)







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