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2022 Tax Update

November 7, 2022
Philadelphia

Agenda: 2022 Tax Update

8:30 a.m. – 9:00 a.m.	|	**Registration and Continental Breakfast**
9:00 a.m. – 9:10 a.m.	|	**Welcome and Introduction** Andrew J. Haas, Blank Rome LLP
9:10 a.m. – 10:00 a.m.	|	**Estate Planning in a Down Market** Lawrence S. Chane, Blank Rome LLP Andrew J. Haas, Blank Rome LLP Andrew M. Logan, Blank Rome LLP
10:00 a.m. – 10:50 a.m.	|	**Opportunity Zones, Other Tax Credits and Exempt Organizations Update** Michael I. Sanders, Blank Rome LLP Andrew M. Logan, Blank Rome LLP
10:50 a.m. – 11:05 a.m.	|	**Break**
11:05 a.m. – 11:55 a.m.	|	**Federal Voluntary Disclosures** David J. Moise, Blank Rome LLP
11:55 a.m. – 12:10 p.m.	|	**Lunch Break**
12:10 p.m. – 12:45 p.m.	|	**Washington Update – What to Expect in Midterm Elections** Scott D. Hatch, Blank Rome Government Relations LLC Michael I. Sanders, Blank Rome LLP
12:45 p.m. – 1:00 p.m.	|	**Break**
1:00 p.m. – 1:45 p.m.	|	**NCCPAP Update — Cryptocurrency Tax** Jason Wright, SkyBridge Capital
1:45 p.m. – 2:35 p.m.	|	**Mobile Workforce: Prepare for the New Normal** Nicole L. Johnson, Blank Rome LLP Mitchell A. Newmark, Blank Rome LLP
2:35 p.m. – 3:25 p.m.	|	**The Accountant's Role in M&A Transactions** Joseph T. Gulant, Blank Rome LLP Cory G. Jacobs, Blank Rome LLP Jeffrey M. Rosenfeld, Blank Rome LLP
3:25 p.m. – 3:40 p.m.	|	**Break**
3:40 p.m. – 4:30 p.m.	|	**Executive Compensation and Employee Benefits Update** Andrew J. Rudolph, Blank Rome LLP Michael A. Kadlec, Blank Rome LLP
4:30 p.m.	|	**Tax Update Concludes**

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ESTATE PLANNING IN A DOWN MARKET

Presenters:
Lawrence S. Chane, Blank Rome LLP
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THE EFFECT OF INFLATION ON TRANSFER TAX EXEMPTIONS

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INFLATION’S EFFECT ON TRANSFER TAX EXEMPTIONS

- Current Exemption/Exclusion Amounts:
  - Estate Tax/Gift Tax Exemption: $12,060,000
  - GST Tax Exemption: $12,060,000
  - Annual Exclusion Amount: $16,000
- On January 1 of each year, the estate, gift and GST tax exemption amounts, and the annual exclusion amount, are adjusted for inflation.
- High inflation environment, coupled with high exemption amounts, means massive inflation adjustments.

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INFLATION’S EFFECT ON TRANSFER TAX EXEMPTIONS (CONTINUED)

- Rev. Proc. 2022-38:
  - The estate, gift and GST tax exemption amounts will rise to $12,920,000 per individual ($25,840,000 for a married couple) in 2023, with an inflation adjustment of $860,000.
  - The annual exclusion amount will raise up to $17,000 per donee in 2023.
- IRC §1(f)(3) contains the formula the IRS uses to make annual inflation adjustments.
  - Includes a built-in time lag, so that it may take several years for real-world inflation to be reflected in higher exemption amounts.
  - Large inflation adjustments are expected through 2024.

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INFLATION'S EFFECT ON TRANSFER TAX EXEMPTIONS - CONTINUED

- The chart to the right shows the projected increase in the exclusion amount under three different scenarios:
  - The first scenario, indicated by the green line, assumes 6% inflation through at least August 2024
  - The second scenario, indicated by the purple line, assumes 4% inflation through at least August 2024
  - The third scenario, indicated by the red line, assumes inflation drops by 2%
- High Inflation: exemption amount increases by $900,000 in 2024 and $860,000 in 2025
- Medium Inflation: exemption amount increases by $850,000 in 2024 and $560,000 in 2025
- Low Inflation: exemption amount increases by $610,000 in 2024 and $270,000 in 2025

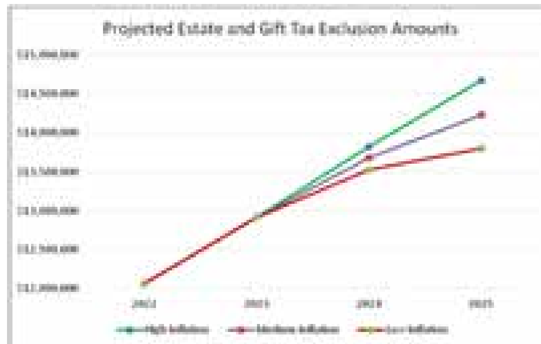

Chart created by Peter Tucci of Proskauer and distributed in Steve Leimberg's Estate Planning Email Newsletter – Archive Message #2980

VALUATION OPPORTUNITIES IN A DOWN MARKET

GIFTING

- Economic downturn presents an ideal time for making both annual exclusion and lifetime exemption gifts.
- Gifting while asset values are depressed allows clients to give away more of their property at a lower transfer tax cost.
- Assets whose values are expected to rebound are ideal candidates for gifting strategies, since all appreciation following the date of the gift will escape transfer taxation.
- The benefits of gifting in a down market must be weighed against the loss of a step-up in basis at death.

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ALTERNATE VALUATION DATE FOR ESTATES

- Generally, estate assets are valued as of the Decedent's date of death.
- If the Executor properly elects, estate assets may be valued as of the date six months after the Decedent's date of death.
- The alternate valuation date election is available only if:
  - A federal estate tax return is required to be filed;
  - The election reduces the value of the gross estate; and
  - The election reduces the estate and GST tax due on the property included in the estate.
- Once made, the election is generally irrevocable.
- The election applies to all property included in the estate and cannot be applied on an asset-by-asset basis.

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ALTERNATE VALUATION DATE FOR ESTATES - CONTINUED

- Timing and Manner of Making the Alternate Valuation Date Election
  - The election can be made by the Executor on a timely-filed federal estate tax return.
  - If the return is not timely-filed, the Executor can make the election on the first return filed after the due date, provided the return is filed no more than one year after the due date (including extensions).
  - If a return is filed within one year of the due date (including extensions), but the election is not made, the Executor can seek an extension of time under Regs. § § 301.9100-1 and 301.9100-3.
  - No election can be made after the 1-year grace period expires.

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LATE ALLOCATION OF GST EXEMPTION

- A down market presents a great opportunity for making late GST allocations to prior gifts.
- A late allocation of GST exemption is applied to the value of the trust assets on the date of the allocation, rather than the date of the gift.
- If asset values have declined since the date of the gift, making a late GST allocation will allow a trust to obtain a zero-inclusion ratio using less exemption.
- In the case of a gift to a “GST trust,” clients must opt-out of automatic allocation on a timely-filed Federal Gift Tax Return.

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EXERCISING POWER OF SUBSTITUTION

- Most intentionally defective grantor trusts give the settlor of the trust the power to take assets out of the trust and substitute in assets of equal value.
- In a down market, clients can strategically utilize the substitution power to swap assets at low values.
- Clients should substitute assets with greater appreciation potential with assets having less growth potential.

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ESTATE PLANNING TECHNIQUES IN A HIGH INTEREST RATE ENVIRONMENT

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QUALIFIED PERSONAL RESIDENCE TRUSTS

- A QPRT is an irrevocable trust that is used to transfer a personal residence to trust beneficiaries.
- QPRT lasts for a term of years, during which the grantor may continue to reside in the residence rent-free.
- After the term expires, the residences passes to the remainder beneficiaries (either outright or in further trust).
- If the grantor wishes to continue to reside in the residence after the QPRT term expires, the settlor may do so provided he or she pays fair market value rent to the remainder beneficiaries.
  - The payment of rent is not considered a gift to the remainder beneficiaries, and it reduces the grantor's taxable estate.
  - Continuation trusts at the end of a QPRT term are generally structured as grantor trusts, so the rent payments are income tax-free.

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QUALIFIED PERSONAL RESIDENCE TRUSTS - CONTINUED

- The initial transfer of the residence to the QPRT is a taxable gift of the value of the remainder interest, calculated at the §7520 rate.
- The higher the §7520 rate, the higher the value of the grantor's right to use the residence during the QPRT term, and the lower the value of the gift of the remainder interest.
- As the §7520 rate increases, the amount of the taxable gift decreases, so the QPRT is a more attractive strategy when interest rates are high.

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CHARITABLE REMAINDER TRUSTS

- A CRT lasts for a term of years or a lifetime, during which annual payments are made to one or more persons (which may include the grantor).
- After the term expires, the remaining assets of the CRT pass to a designated charity.
- There are two types of CRTS:
  - Charitable Remainder Annuity Trusts (CRATs): Pays a fixed income stream based on a percentage of the initial FMV of the gifted assets. The payment must be least 5% but no more than 50% of the initial FMV of the gifted assets must be paid out each year.
  - Charitable Remainder Unitrusts (CRUTs): Pays an income stream equal to a fixed percentage of the value of the trust's assets, which are revalued annually. The fixed percentage must be at least 5% but no more than 50% of the FMV of the trust assets based on the annual valuation.

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CHARITABLE REMAINDER TRUSTS - CONTINUED

- Upon the creation of the CRT, the grantor claims an income tax charitable deduction for the charitable portion of the gift.
- In order to pass IRS review, the charity must receive at least 10% of the initial FMV of the gifted assets upon the CRT's expiration.
- A CRT's remainder interest is valued at its present value using the §7520 rate.
- The higher the §7520 rate, the higher the value of the remainder interest, and the more likely the CRT is to meet the 10% remainder trust.
- A higher value of the remainder interest also means a higher charitable deduction is available to the grantor.

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WHEN IS A TRUST A GRANTOR TRUST?

GRANTOR TRUST RULES

- Grantor Trust Rules are located at IRC § § 671-679.
- IRC §671 provides that the income, deduction and credits of a grantor trust are reported on the grantor's personal income tax return.
- Please note that Pennsylvania's income tax law does not recognize grantor trust status. As a result, a grantor trust **is** a taxable entity for Pennsylvania income tax purposes.
- Important Terms
  - **Grantor**: Includes any person to the extent such person either creates a trust, or directly or indirectly makes a gratuitous transfer (i.e., a transfer not made for fair market value) of property to a trust.
  - **Related or Subordinate Party**: Includes the Grantor's spouse, ancestors, descendants, siblings, employee of the Grantor or company in which the Grantor's voting control is significant or in which the Grantor is an executive.
  - **Adverse Party**: A person: (i) who has a beneficial interest in a trust, (ii) whose interest in the trust is substantial; and (iii) whose interest would be adversely affected by the exercise or nonexercise of the power held by the Grantor or a nonadverse party.
  - **Nonadverse Party**: A person who does not meet the definition of an adverse party.

GRANTOR TRUST TRIGGERS

- §673 – Right of Reversion: Reversionary interest in trust at the time of inception exceeds 5% of the trust's value.
- §674 – Power to Control Beneficial Enjoyment: Subject to certain exceptions, grantor or non-adverse party has control over distributions.
  - Exception for certain powers of independent trustees
- §675 – Administrative Powers: Depending on the power, such power is held by either (a) the grantor or a nonadverse party, or (b) any person in a nonfiduciary capacity.
  - Grantor's power to substitute assets is most often used to make a Grantor Trust.
- §676 – Power to Revoke: Grantor or nonadverse party has power to revoke the trust.
- §677 – Income for Benefit of Grantor: When income is, or in the discretion of the grantor or nonadverse party, may be, without the approval or consent of an adverse party: (a) distributed or accumulated for future distribution to the grantor or the grantor's spouse, or (b) applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse.
- §678 – Person Other Than Grantor Treated as Substantial Owner: When a person other than the grantor has the power exercisable solely by him/her to vest the corpus or the income in the power holder.

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EXAMPLES OF UNINTENTIONAL GRANTOR TRUSTS

- **Example #1 – Grantor's Spouse is a Trustee**
  - G creates an irrevocable trust for the benefit of his three children A, B and C.
    - The trust instrument provides that the trustees may make discretionary distributions of income and/or principal to any one or more than one of A, B and C.
  - G's spouse, S, and G's friend, F, are serving as co-trustees of the trust and F is not related or subordinate to G.
  - The trust instrument does not contain a power of substitution or a power to add charitable beneficiaries.
- How to "turn off" grantor trust status?
  - S must be removed as a co-trustee of the trust.
  - The exception under IRC §674(c) applies only if none of the trustees is the grantor.
    - For purposes of IRC §674 (c), the term "grantor" includes the grantor's spouse (within the meaning of IRC §672(e)(2)).

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EXAMPLES OF UNINTENTIONAL GRANTOR TRUSTS - CONTINUED

- **Example #2 – Power to Control Beneficial Enjoyment is Held by a Nonadverse Party**:
  - G creates an irrevocable trust for the benefit of his daughter, A.
    - The trust instrument provides that the trustee may make discretionary distributions of income and/or principal to A during her lifetime.
  - G's brother, B, is serving as the sole trustee of the trust.
  - The trust instrument does not contain a power of substitution or a power to add charitable beneficiaries.
- How to "turn off" grantor trust status?
  - Add a trustee who is not a related or subordinate party to serve with B (IRC §674(c)); or
  - Modify the dispositive provisions so that B may only make discretionary distributions for health, education, maintenance or support (IRC § § 674(b)(5) and 674(d)).

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EXAMPLES OF UNINTENTIONAL GRANTOR TRUSTS - CONTINUED

- **Example #3 – Grantor's Spouse is a Beneficiary**:
  - G creates an irrevocable trust for the benefit of his spouse, S, and his three children, A, B and C.
    - The trust instrument provides that during the lifetime of S, the trustee may make discretionary distributions of income and/or principal to any one or more than one of S, A, B, and C.
  - G's friend, F, is serving as sole trustee of the trust and F is not related or subordinate to G.
  - The trust instrument does not contain a power of substitution or a power to add charitable beneficiaries.
- How to "turn off" grantor trust status?
  - Add an adverse party (e.g., A, B and/or C) to serve as a co-trustee of the trust and require that any discretionary decisions to make distributions to S or to accumulate income for S's benefit must be approved by the adverse party (IRC §677(a)).

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TAX TREATMENT OF SLATS

- A SLAT is an irrevocable trust created by one spouse for the benefit of the other.
  - This typically results in treatment as a grantor trust for income tax purposes under IRC §677.
- In order to "turn off" grantor trust status of a SLAT under IRC §677, there must be an "adverse party" who must consent before any distributions are made to the spouse.
- An "adverse party" is any person:
  - Who has a beneficial interest in the trust (including a power of appointment over the trust);
  - Whose interest is substantial; and
  - Whose interest would be adversely affected by the exercise or nonexercise of the power held by the grantor or a nonadverse party (IRC §672(a)).

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TAX REIMBURSEMENT OF GRANTORS

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TAX REIMBURSEMENT OF GRANTORS

- Rev. Rul. 2004-64
  - When the grantor of a trust, who is treated as the owner of such trust under the grantor trust rules, pays the income tax attributable to the trust's assets, the grantor is not treated as making a gift of the amount of the tax to the trust beneficiaries.
  - A trustee's discretionary authority (whether or not exercised), under the trust instrument or local law, to reimburse the grantor for the grantor's income tax liability attributable to trust assets will not, by itself, cause inclusion in the grantor's federal gross estate.
    - Inclusion may result if such discretion is coupled with other facts indicating control by the grantor, including: a pre-existing arrangement with the trustee, power to remove the trustee and appoint the grantor as replacement, or local law subjecting the trust assets to the claims of the grantor's creditors.
  - Inclusion will result if local law or the trust instrument mandates that the grantor be reimbursed for income taxes
- All grantor trusts should include language negating any right of reimbursement provided under applicable local law.

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TAX REIMBURSEMENT OF GRANTORS – PENNSYLVANIA

- Pennsylvania case law suggests that a grantor may have a right of reimbursement.
  - *French Trust*, 23 Fid. Rep. 296, 61 D.&C. 654 (O.C. Philadelphia 1963): The trustee of an irrevocable trust distributed principal to the grantor to reimburse her for taxes paid on capital gains. The Court held that "[e]quity similarly requires that although the Internal Revenue Code and Regulations impose upon the settlor-beneficiary the income tax liability on capital gains realized and retained by the trustees, the ***principal*** of the trust should be applied in relief of such tax." (emphasis in original)
  - *Mathey Trust*, 1 Fid. Rep. 2d 96, 19 D.&C.3d 43 (O.C. Montg. 1981): The Court approved the reformation of an irrevocable trust to direct principal distributions to the grantor-beneficiary to reimburse the grantor for taxes paid on capital gains. Citing French Trust, the Court held "[a]s between the trust and the settlor, however, equity requires that the fund bear the ultimate responsibility for the tax."
- Discretionary power to reimburse the grantor for taxes does not expose trust assets to creditors (20 Pa. C.S §7745(2)).

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TAX REIMBURSEMENT OF GRANTORS – NEW YORK

- The trustee of an express trust, unless other provided in the trust instrument, may, from time to time, pay from principal to the creator of such trust an amount equal to any income taxes on any portion of the trust principal with which he is charged (EPTL § 7-1.11(a)).
  - Note that the default reimbursement power is limited to capital gains from the principal of the trust.
  - The reimbursement power can be expanded in the trust instrument to include taxes on income.
- Discretionary power to reimburse the grantor for taxes does not expose trust assets to creditors (EPTL §7-3.1(d)).

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TAX REIMBURSEMENT OF GRANTORS – NEW JERSEY

- N.J.S.A. §3B:11-1b.:
  - Modeled after EPTL §7-3.1(d)
  - "A trustee's discretionary authority to pay trust income or principal to the creator of such trust in an amount equal to the income taxes on any portion of the trust principal chargeable to the creator shall not be considered to be a right of the trust creator to receive trust income or principal within the meaning of subsection a. of this section. The trust creator shall not be considered to have the right to receive income or principal of the trust solely because the trustee is authorized under the trust instrument or any other provision of law to pay or reimburse the creator for any tax on trust income or trust principal that is payable by the creator under the law imposing such tax or to pay any such tax directly to the taxing authorities. No creditor of a trust creator shall be entitled to reach any trust property based on the discretionary powers described in this subsection."
- Reimbursement must be authorized under the trust instrument.

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TAX REIMBURSEMENT OF GRANTORS – FLORIDA

- Unless otherwise prohibited in the trust instrument, the trustee of a grantor trust may reimburse, or pay the grantor's income tax liability directly to the taxing authority, related to the trust (Fla. Stat. § 736.08145(1)(a)).
  - The power of reimbursement may only be exercised by a trustee who is not a beneficiary or an individual related or subordinate to the settlor (Fla. Stat. § 736.08145(3)).
- Discretionary power to reimburse the grantor for taxes does not expose trust assets to creditors (Fla. Stat. § 736.0505(c)).

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RECENT DEVELOPMENTS

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EXTENDING TIME FOR PORTABILITY ELECTION, AGAIN

- Under Section 2010(c)(5)(A), a portability election is effective only if made on an estate tax return that is filed within the time prescribed by law (including extensions) for filing such return.
- The IRS previously issued Rev. Proc. 2017-34, which provided a simplified method for the Executor of a decedent's estate that did not meet the threshold for filing an estate tax return to elect portability under Section 2010(c)(5)(A) within two years after the decedent's death.
- To reduce the number of requests for private letter rulings, the IRS issued Rev. Proc. 2022-32 which extends the two-year period to five years.

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EXTENDING TIME FOR PORTABILITY ELECTION, AGAIN - CONTINUED

- Rev. Proc. 2022-32
  - Section 9100 relief to make a late portability election may be granted if the following requirements are met:
    - Decedent was survived by a spouse, died after December 31, 2010 and was a citizen of the United States;
    - The Executor is not required to file an estate tax return under Section 6018(a);
    - The Executor has not filed a timely estate tax return; and
    - The Executor files a complete and properly prepared Form 706 by the fifth annual anniversary of the Decedent's death.
  - An extension of time to elect portability does not extend the period during which the surviving spouse or his/her estate may make a claim for credit or refund under Section 6511(a).

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GRAT RETROACTIVELY DISQUALIFIED FOR INTENTIONALLY LOW VALUATION

- CCA 202152018
  - IRS held that taxpayer's reliance on valuation of shares made seven months prior to funding a GRAT was not reasonable given potential sale of company at a higher price.
  - Timeline:
    - At the end of Year 1: Donor (D) contacted two Investment Advisors to find a possible outside buyer for the Company which D owned.
    - Six Months Later: The Investment Advisors presented D with an offer from each of five corporations (the "Corporations").
    - Three Days Later: D created a two-year GRAT that required annuity payments to D of a sum equal to a fixed percentage of the initial FMV of the trust property.
      - D funded the GRAT with shares of the Company, the value of which was determined based on an appraisal dated approximately seven months prior, the purpose of which was to satisfy the reporting requirements for a nonqualified deferred compensation arrangement.
    - Three Months Later: D received final offers from the Corporations, four of whom had raised their offers. Thereafter, D gave shares of the Company to a CRT, valuing the shares, per a qualified appraisal, at three times the value used for the GRAT.
    - Three Months After Receiving the Final Offers and Several Weeks After Funding the CRT: D accepted one of the offers for some of the outstanding shares at the value used in funding the CRT.
    - Several Years Later (approximately six months after the end of the two-year GRAT term): the purchasing corporation purchased the balance of the Company's shares at a price-per-share almost four times the value used for the GRAT.

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GRAT RETROACTIVELY DISQUALIFIED FOR INTENTIONALLY LOW VALUATION - CONTINUED

- CCA 202152018
  - Holding:
    - GRAT annuity was not a qualified interest under Section 2702 because the Trustee made the payments based on an intentionally low valuation of the Company's shares.
    - On the date the GRAT was funded, the hypothetical willing buyer would have been aware of the ongoing negotiations and anticipated that the Company's share value was above the valuation amount.
  - Observations:
    - The IRS did not allow the Trustee of the GRAT to take advantage of the "savings clause" feature authorized by the GRAT regulations, which allow basing the annuity payments on a percentage of the initial FMV of the trust assets, as finally determined for federal tax purposes (Reg. § 25.2702-3(b)(1)(ii)(B)).
      - If the trust assets are initially undervalued, the annuity payments are automatically adjusted based on the finally determined FMV.
    - In order to avoid similar issues, a new appraisal should always be obtained in connection with making a gift to a GRAT.

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QUESTIONS?

Lawrence S. Chane
Partner
Tax, Benefits, and Private Client
215.569.5721
larry.chane@blankrome.com

Andrew J. Haas
Partner
Tax, Benefits, and Private Client
215.569.5479
andrew.haas@blankrome.com

Andrew M. Logan
Associate
Tax, Benefits, and Private Client
215.569.5606
andrew.logan@blankrome.com

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OPPORTUNITY ZONES, OTHER TAX CREDITS AND EXEMPT ORGANIZATIONS UPDATE

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Michael I. Sanders, Blank Rome LLP
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QUALIFIED OPPORTUNITY ZONES AND TAX CREDITS: INCLUDING WORKING CAPITAL SAFE HARBOR; LEGISLATIVE OUTLOOK

PART I: INTRODUCTION TO THE OPPORTUNITY ZONES INCENTIVE

New Section 1400Z-1 and 1400Z-2

- Encourages Economic Growth in Distressed Communities
- Expired Temporary Deferral of Inclusion in Gross Income for Capital Gains Invested in a QOF
- Primary Benefit: Exclusion from Gross Income on Investments in QOFs Held for at Least 10 Years.
- OZ Reforms Anticipated Regarding Reporting, Modification of Certification Process, Extension of Deferral of Inclusion of Gross Income, Allow Feeder Funds, Elimination of Higher-Income Census Tracts, Task Treasury With Proper Oversight
- Working Capital Safe Harbor, a valuable tool including 2021 Corrective Amendment, Impact on Substantiality Test
- How to stimulate investment in affordable housing

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2 TAX INCENTIVE BENEFITS

1. Gain Deferral	2. Forgiveness of additional gains

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ELIGIBLE BUSINESSES

1. New Businesses *Forming* in an Opportunity Zones, Great Flexibility
   (a) Rental Real Estate
   (b) Operating Businesses
2. Existing Businesses *Expanding* in an Opportunity Zone
   (a) Rental Real Estate – Renovations > Building Cost
   (b) Operating Businesses – Additions > Existing Tangible Property
3. Existing Businesses *Moving* into an Opportunity Zone
   (a) Operating Businesses

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OPPORTUNITY ZONES INCREMENTAL BENEFIT

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BENEFITS TO BUSINESSES

Practical Effect:

10 year wait

Query: impact of stock market, bear market less equity available for QOFs.

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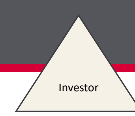
GAINS, ATTRIBUTES OF GAINS, AND TAXPAYERS



Eligible Gains

- Limited to gains treated as *capital gains* for Federal income tax purposes
  - Recognized before January 1, 2027 (need legislation to expand scope of program)
  - Multiple elections can be made for various parts of a single source of gain (important planning)
- Gains from offsetting-position transactions (e.g., straddles) do not qualify
- Impact of capital gains at death (estate as eligible taxpayer)

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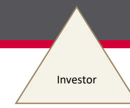
QOF CONTRIBUTIONS



QOF Contributions

- Investments in QOFs must be cash, or property, and cannot include services
- Property contributions – deferral election is limited to tax basis of property contributed
- Value received by an investor for appreciated property or provision of services is treated as property contributed for which an election is not made
  - Results in a mixed funds investment
- Distributions, especially within two years of a capital contribution, can be deemed disguised sales of partnership interests and not qualify for a deferral of gain or other opportunity zone benefit (inclusion event)

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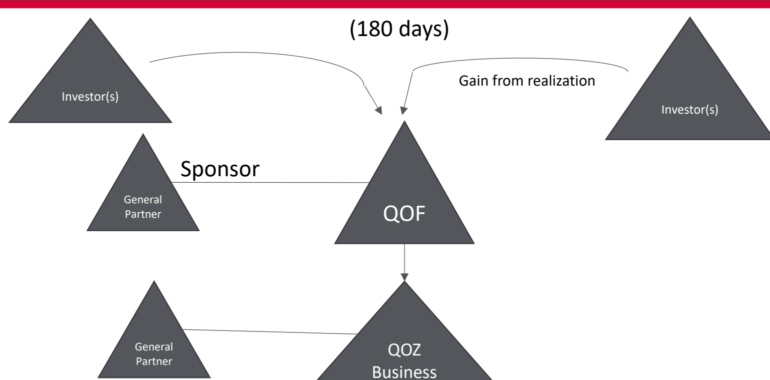
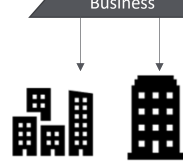
STRUCTURE



Operating Business

- New business
- Existing business expanding into Opp. Zone
- Improving existing business



Rental real estate

- New construction (original use commences with Taxpayer
- Substantial improvement (100%) of basis

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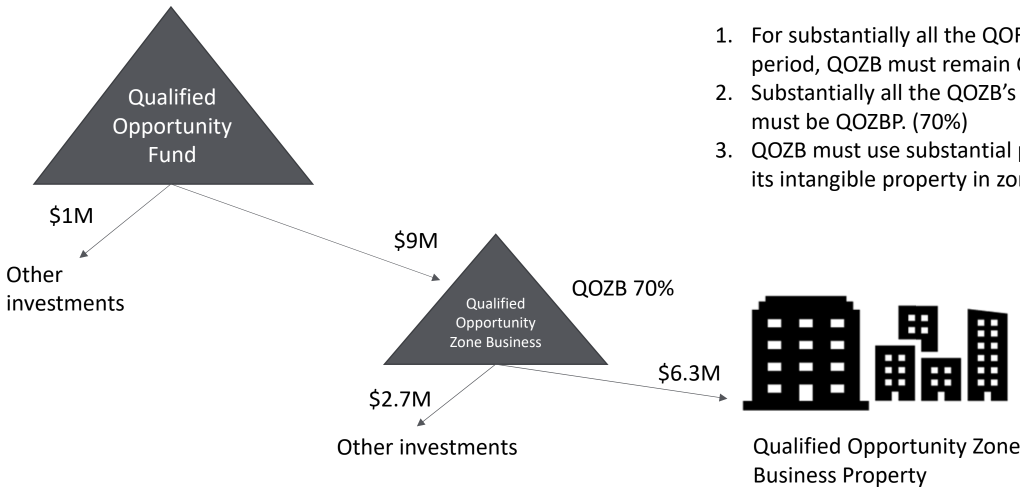
TYPICAL STRUCTURE – $10M INVESTMENT

1. For substantially all the QOF holding period, QOZB must remain QOZB
2. Substantially all the QOZB's property must be QOZBP. (70%)
3. QOZB must use substantial portion of its intangible property in zone.



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QUALIFIED OPPORTUNITY ZONE BUSINESSES (QOZB)

QOZB

A trade or business in which substantially all (70% per Final Regulations) of the tangible property owned or leased by the taxpayer is qualified opportunity zone business property (QOZBP) and:

- At least 50% of Income derived from Active Conduct
- Substantial portion, at least 40%, of intangible property used in active conduct of business
- < 5% average aggregate unadjusted basis of property is nonqualified financial property

*Non-qualified financial property is, generally, debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, etc. that do not relate to the OZ investment.
**Active conduct of business includes the ownership and operation (including leasing) of real property but merely entering into a NNN lease is not the active conduct of a business, although typical in industrial warehouse selling.

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QUALIFIED OPPORTUNITY ZONE BUSINESS PROPERTY (QOZBP)

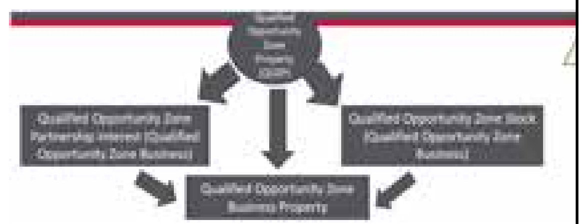
QOF & QOZB

√ Tangible property used in a trade or business
√ Acquired by purchase from an unrelated party (20% standard) after December 31, 2017, so underlying property may be tainted
√ During substantially all of holding period, substantially all the use is in a QOZ – now defined as 70%
√ Original use in the QOZ commences with the taxpayer (PIS date for depreciation or amortization purposes)

OR

√ Taxpayer substantially improves the property

- √ During any 30-month period after acquisition, additions to basis exceed an amount equal to the adjusted basis of such property/building at the beginning of such period



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CERTIFICATION OF QOF

QOF

- Entity classified as a corporation or partnership for Federal tax purposes is eligible – LLCs taxed as corporations or partnerships OK
- Self-certification using Form 8996
  - Identify first taxable year the entity wants to be a QOF
  - Identify the first month the entity wants to be a QOF
  - Listing by census tract of all property directly owned
  - Listing by census tract of investments in QOZBs and property owned by QOZBs
- Investments received before “first month” not eligible for deferral
- QOFs have 6-months to invest proceeds, even if QOF investment is made during second half of QOF tax year
- Penalty doesn’t apply to months before the “first month”
- No legal barrier to pre-existing entities becoming a QOF (or QOZB)

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WORKING CAPITAL SAFE HARBOR

- QOZBs are allowed a safe harbor to treat working capital as property actively used in a trade or business for a period of up to 31 months (possibly 62 months), if:
  - There is a written plan for the development of a trade or business in a qualified opportunity zone,
  - There is written schedule consistent with the ordinary business operations of the business that the property will be used within 31-months, and
  - The business is substantially consistent with the writing and schedule. Delay waiting for governmental action not counted for 31-month period. Taxpayers required to retain any written plan in their records.
  - Modification is essential over the period; however, no real guidance as to timing.

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WORKING CAPITAL SAFE HARBOR - CONTINUED

- **Federally declared disasters**. If the qualified opportunity zone business is located in a qualified opportunity zone within a federally declared disaster (as defined in section 165(i)(5)(A)), the qualified opportunity zone business may receive not more than an additional 24 months to consume its working capital assets, as long as it otherwise meets the requirements of paragraph (d)(3)(v) of this section.

- **Ability of a single business to benefit from more than a single application of the safe harbor**. A business may benefit from multiple overlapping or sequential applications of the working capital safe harbor, provided that each application independently satisfies all of the above requirements.

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WORKING CAPITAL SAFE HARBOR - CONTINUED

- Single most important concept: a very valuable tool
- The final regulations provide a 62-month safe harbor rather than the simple 31-month safe harbor (as was provided under the proposed regulations applicable to OZs).
  - Assuming certain conditions are met, a QOZB can chose to apply a second 31-month working capital safe harbor to tangible property for a maximum 62-month period. That is, a QOZB can chose to "piggyback" two successive 31-month safe harbors.
- A QOZB must receive multiple cash infusions during the initial 31-month period to qualify for the maximum 62-month safe harbor. The QOZB must satisfy two conditions:
  1. the subsequent cash infusion must be independently covered by an additional working capital safe harbor, and
  2. the working capital safe harbor plan for the subsequent cash infusion must form an integral part of the working capital safe harbor plan that covered the initial cash infusion.

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WORKING CAPITAL SAFE HARBOR - CONTINUED

- 2021 Corrective Amendment provides that for "start-up" businesses only (which are not defined) that meet the working capital safe-harbor referenced above, said entity would satisfy the 70-30 "substantiality" test during such period. **Query:** does the 50 percent gross income requirement still apply? I think not. Secondly, how is a start-up business defined when the QOZB is engaged in multiple businesses or development activities? When may the businesses be combined?
- Merger consideration – if one of the QOZB businesses can't meet the 70-30 test.

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PART II: FOR PLANNING PURPOSES: COMPARISON OF SECTION 1031 VERSUS OZ TAX BENEFITS

- OZBP investments are not restricted to real estate; available to all capital gains, such as hedge funds
- However, Section 1031 deferral relate only to real estate with permanent basis step-up at death.
- Under Section 1031, the investment needs to cover the “gross” sales proceeds; in OZ only deal with the “capital gain” portion. Don’t need to offset by capital loss.

FOR PLANNING PURPOSES: COMPARISON OF SECTION 1031 VERSUS OZ TAX BENEFITS

- While OZ allows permanent basis step-up (without the need to die if held for ten years).
- Good strategy in the event if there is a “busted” 1031; an OZ option may be available assuming the 180-day period has not expired.
- QOF or QOZB may do a 1031 rollover, but need to meet the “substantial improvement test” which may be difficult to satisfy at a later point.

REVISITING THE APPLICATION
FOR EXEMPTION

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APPLICATION FOR TAX EXEMPT STATUS UNDER IRC § 501(C)(3)

- 501(c)(3)s must file either Form 1023, Application for Recognition of Exemption, or Form 1023-EZ, Streamlined Application for Recognition of Exemption, with the IRS
  - Both Form 1023 and 1023-EZ are filed electronically at www.pay.gov
- Form 1023-EZ is only available to small organizations
  - Small = annual gross receipts over the next 3 years will not exceed $50,000 and FMV of all assets less than $250,000
  - Even small organizations may be better served filing the "long" Form 1023
    - *E.g.*, organizations that intend to apply for grants from private foundations
- If Form 1023/1023-EZ is filed within 27 months of formation or funding, tax exempt status will be retroactive to the date of formation or funding
  - If not filed within 27 months, tax exempt status will be retroactive to the date of filing

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FORM 1023 VS. FORM 1023-EZ – FUNDAMENTAL DIFFERENCES

Form 1023

- 26 pages
- $600 filing fee
- Requires narrative responses and attachments, including:
  - Copies of organizational documents
  - Narrative description of activities
  - Budget of revenue and expenses

Form 1023-EZ

- 3 pages
- $275 filing fee
- Must meet the certain criteria, including projected gross receipts and asset values
- Consists mostly of “check the box” attestations

FORM 1023 VS. FORM 1023-EZ – PROCESSING TIMES

- The time it takes the IRS to process a Form 1023 versus a Form 1023-EZ is drastically different
- The table to the right was taken from the IRS website and last updated on October 17, 2022
- It is clear that the IRS is able to process EZ forms much faster than standard Form 1023s

Form Number	Your application has not been assigned if postmarked after this date:
Form 1023-EZ	[illegible]
Form 1023	[illegible]

FORM 1023-EZ – CHANGES MAY BE COMING

- The Form 1023-EZ has been criticized for allowing potentially ineligible organizations to obtain tax-exempt status with little pushback from the IRS
- On September 8, 2022, Sunita Lough, Commissioner of the IRS's Tax Exempt and Government Entities Division, posted "A Closer Look" article, "Streamlining the 1023—A Success Story"
  - To address the risk associated with a streamlined application, the IRS maintains a pre-determination review process and a post-determination compliance program
  - In 75% of post-determination exams, the IRS did not need to propose any changes to the organization's operations
    - Better outcome than in organizations filing the long Form 1023, where no changes are needed in only 67% of organizations

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FORM 1023-EZ – CHANGES MAY BE COMING (CONTINUED)

- On October 3, 2022, Treasury Inspector General for Tax Administration ("TIGTA") released Audit Report No. 2023-10-001
  - "[T]he information provided on the Form 1023-EZ is insufficient to make an informed determination about tax-exempt status and does not educate applicants about eligibility requirements for tax exemption"
  - TIGTA was able to obtain tax-exempt status for four of five nonexistent organizations
  - TIGTA identified inaccuracies in online guidance for the Form 1023-EZ
- TIGTA's Recommendations to the IRS: (1) revise the activities description narrative in the Form 1023-EZ, (2) assess whether it is feasible to have EZ applicants attach their organization documents to the Form, (3) notify applicants when additional time is needed to process EZ forms, and (4) update online guidance with accurate information
  - The IRS agreed with recommendations (2) and (4)
  - IRS will consider recommendation (3)
    - Sunita Lough stated in her article: "[W]e will consider adding the organizational documents to Form 1023-EZ"
  - The IRS does not believe more detailed activity descriptions are necessary to make determination decisions
- Form 1023-EZ is not going anywhere, though changes may be coming

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CONSIDERATIONS WHEN FILING FORM 1023

- Given the long processing times for the Form 1023, organizations should err on the side of providing greater detail to avoid further delays in responding to IRS information requests
- In our experience, certain items on the Form 1023 are subject to greater IRS scrutiny than others, including:
  - The narrative description of the organization's activities (Part IV, Line 1)
  - Whether the organization will purchase/sell goods, services or assets from or to "disqualified persons" (Part V, Line 4)
  - Whether the organization will enter into contracts with "disqualified persons" (Part V, Line 5)

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FORM 1023 – PART IV, LINE 1

- Describe completely and in detail your past, present, and planned activities. Do not refer to or repeat the purposes in your organizing document.
- For each past, present, or planned activity, include information that answers the following questions:
  - What is the activity?
  - Who conducts the activity?
  - Where is the activity conducted?
  - What percentage of your total time is allocated to the activity?
  - How is the activity funded (for example, donations, fees, etc.) and what percentage of your overall expenses is allocated to this activity?
  - How does the activity further your exempt purposes?

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FORM 1023 –NARRATIVE DESCRIPTION OF ACTIVITIES

- The narrative of activities is a critical part of the Form 1023 – it is whether the organization can "make its case" to the IRS for exemption
- Frequently, applicants complete the activities narrative by simply stating their mission (or restating the purposes in the organizing document) and providing a short description of their programs
  - May lead the IRS reviewing agent to believe that the IRS does not have sufficient information to make an exemption determination, which can cause delays or denial of exemption
  - The Form 1023 is a public document, and an incomplete narrative of activities may lead to skepticism from prospective funders and supporters
- If the organization has a website, assume that the IRS will be reviewing it for consistency with the narrative of activities

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FORM 1023 –NARRATIVE DESCRIPTION OF ACTIVITIES (CONTINUED)

- It is important to respond to each of the questions presented:
  - **What is the activity** - If the organization is still working out exactly what its activities will be, err on the side of overinclusion and use conditional language (*e.g.*, Applicant may conduct the following program/activity…)
  - **Who conducts the activity** – The answer to this will usually be a combination of the directors/trustees, officers, employees and/or volunteers
  - **Where is the activity conducted** – If the activities will initially be conducted in a certain area, but are expected to expand in the future, state that
  - **What percentage of your total time is allocated to the activity** – Make sure to respond to this and estimate if needed
  - **How is the activity funded (for example, donations, fees, etc.) and what percentage of your overall expenses is allocated to this activity** – If the organization's fundraising program is not finalized, state that and mention any anticipated funding sources. This response should agree with the financial data provided later in the Form 1023
  - **How does the activity further your exempt purposes** – Citing to authority can be helpful but is not required

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FORM 1023 – PART V, LINES 4 AND 5

- (4) Do you or will you purchase or sell any goods, services, or assets from or to: (i) any of your officers, directors, or trustees; (ii) any family member of any of your officers, directors, or trustees; (iii) any organizations in which any of your officers, directors, or trustees are also officers, directors, or trustees, or in which any individual officer, director, or trustee owns more than a 35% interest; (iv) your highest compensated employees; or (v) your highest compensated independent contractors? If "Yes," describe any such transactions that you made or intend to make, with whom you make or will make such transactions, how the terms are or will be negotiated at arm's length, and how you determine you pay no more than fair market value or you are paid at least fair market value.
- (5) Do you or will you have any leases, contracts, loans, or other agreements with: (i) your officers, directors, or trustees; (ii) any family member of any of your officers, directors, or trustees; (iii) any organizations in which any of your officers, directors, or trustees are also officers, directors, or trustees, or in which any individual officer, director, or trustee owns more than a 35% interest; (iv) your highest compensated employees; or (v) your highest compensated independent contractors? If "Yes," describe any written or oral arrangements that you made or intend to make, with whom you have or will have such arrangements, how the terms are or will be negotiated at arm's length, and how you determine you pay no more than fair market value or you are paid at least fair market value.

FORM 1023 – TRANSACTIONS WITH "DISQUALIFIED PERSONS"

- What's the rationale behind these questions?
  - The IRS is trying to gauge how the organization will handle excess benefit transactions and, in the case of private foundations, acts of self-dealing
- Common scenarios where these issues arise:
  - **Shared Services Agreements**: Nonprofits frequently enter into Shared Services Agreements with other organizations that have common directors, officers, and/or employees (a "related organization") and that address the sharing of office space, equipment, and administrative services (*e.g.*, accounting, HR, and IT)
  - **Start-Up Loans**: In order to help a newly-formed nonprofit cover start-up costs, a founder or director may loan funds to the organization
  - **Licensing Agreements**: A nonprofit may receive a license to use certain intellectual property owned by a related organization

FORM 1023 – TRANSACTIONS WITH "DISQUALIFIED PERSONS" (CONTINUED)

- Response considerations:
  - Gather as much information as possible from the client regarding any known contracts/transactions
    - *E.g.*, agreement terms including pricing and who will be negotiating the arrangement on behalf of each party
  - The organization should comply with all policies it has in place that are intended to deal with excess benefit and self-dealing issues (*e.g.*, Conflict of Interest Policy and Compensation Policy)
    - Reference that such policies will be complied with in connection with entering into a proposed transaction/contract
  - Consider attaching representative copies of agreements mentioned in the response to Form 1023
  - Remember that the self-dealing rules are often counterintuitive
    - Even transactions that seemingly benefit a private foundation can be acts of self-dealing

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QUESTIONS?

Michael I. Sanders
Partner
Tax, Benefits, and Private Client
202.772.5808
michael.sanders@blankrome.com

Andrew M. Logan
Associate
Tax, Benefits, and Private Client
215.569.5606
andrew.logan@blankrome.com

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OFFSHORE VOLUNTARY DISCLOSURE PROGRAM

Presenter:
David J. Moise, Blank Rome LLP

November 7, 2022
Philadelphia

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OFFSHORE VOLUNTARY DISCLOSURE PROGRAM

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OFFSHORE VOLUNTARY DISCLOSURE PROGRAM

- **OLD PROGRAM THAT CLOSED ON 9/28/18**
  - Penalty between 27.5% and 50% - depends on where the taxpayer banked and whether the taxpayer acted willfully.
  - Look back period of 8 years.
  - Penalty is on non-compliant assets (e.g., foreign accounts, income producing real estate, artwork purchased with funds escaping U.S. taxation, foreign businesses, etc.)
  - Best Option for:
    - FBARs and information returns not filed.
    - Significant taxable income to pick up.

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NEW VOLUNTARY DISCLOSURE PRACTICE (VOLUNTARY DISCLOSURE RECEIVED AFTER 9/28/18)

- In general:
  - Six-year disclosure period
  - Disclosure period will require examinations of the most recent six tax years.
  - Disclosure and examination periods may:
    - (1) be longer if the voluntary disclosure is not resolved by agreement;
    - (2) be shorter if the noncompliance is less than six years; and
    - (3) if the taxpayer wants to expand beyond six years to clean up a prior issue (e.g., on a sale of the company).
- Taxpayers must submit all required returns and reports for the disclosure period.

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NEW VOLUNTARY DISCLOSURE PRACTICE (VOLUNTARY DISCLOSURE RECEIVED AFTER 9/28/18)

- Penalties:
  - Absent special circumstances, the civil penalty under I.R.C. § 6663 for fraud or the civil penalty under I.R.C. § 6651(f) for the fraudulent failure to file income tax returns will apply to the one tax year with the highest tax liability. This penalty can be as high as 75% of the underpayment of tax.
  - Willful FBAR penalties will be asserted in accordance with existing IRS penalty guidelines under IRM 4.26.16 and 4.26.17. This is generally a 50% penalty on the highest account balance over the preceding 6 years.
  - A taxpayer is not precluded from requesting the imposition of accuracy related penalties under I.R.C. § 6662 instead of civil fraud penalties or non-willful FBAR penalties instead of willful penalties.

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NEW VOLUNTARY DISCLOSURE PRACTICE (VOLUNTARY DISCLOSURE RECEIVED AFTER 9/28/18)

- Penalties (continued):
  - Given the objective of the voluntary disclosure practice, granting requests for the imposition of lesser penalties is expected to be exceptional. Where the facts and the law support the assertion of a civil fraud or willful FBAR penalty, a taxpayer must present convincing evidence to justify why the civil fraud penalty should not be imposed.
  - Penalties for the failure to file information returns will not be automatically imposed.
  - Taxpayers retain the right to request an appeal with the Office of Appeals.

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NEW VOLUNTARY DISCLOSURE PRACTICE (VOLUNTARY DISCLOSURE RECEIVED AFTER 9/28/18)

- Process:
  - Preclearance: complete and submit Part I of *Form 14457, Voluntary Disclosure Practice Preclearance Request and Application.*
    - Disclose more during preclearance than taxpayers historically have been required to disclose. Previously it was just basic identifying information and now much more information is required to be disclosed.
    - As part of this information submission process taxpayers are voluntarily offering information to the IRS before knowing if they are eligible to make a voluntary disclosure.
    - IRS can ultimately use this information against a taxpayer if not accepted into the program.
  - Upon receipt of preclearance confirmation, submit Part II of *Form 14457* within 45 days or submit a written request for additional time.
  - Submit all required returns and reports for the disclosure period.

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FORM 14457

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FORM 14457 - CONTINUED

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FORM 14457 - CONTINUED

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FORM 14457 - CONTINUED

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FORM 14457 - CONTINUED

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FORM 14457 - INSTRUCTIONS

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FORM 14457 – INSTRUCTIONS - CONTINUED

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FORM 14457 – INSTRUCTIONS - CONTINUED

BLANKROME

QUESTIONS?

David J. Moise, Esq
Partner
Tax, Benefits, and Private Client
212.885.5049
david.moise@blankrome.com

BLANKROME

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ELECTION OUTLOOK

2022 Midterms and
2024 Presidential Election

Presenters:
Scott D. Hatch, Blank Rome
Government Relations LLC
Michael I. Sanders, Blank Rome LLP

November 7, 2022
Philadelphia

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ELECTION OUTLOOK

2022 Midterms and 2024 Presidential Election

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November 7, 2022
Philadelphia

2022 MIDTERMS – WHO'S ON THE BALLOT?

- All 435 House Seats
- 35 of the 100 Senate Seats
- 36 out of 50 Governorships

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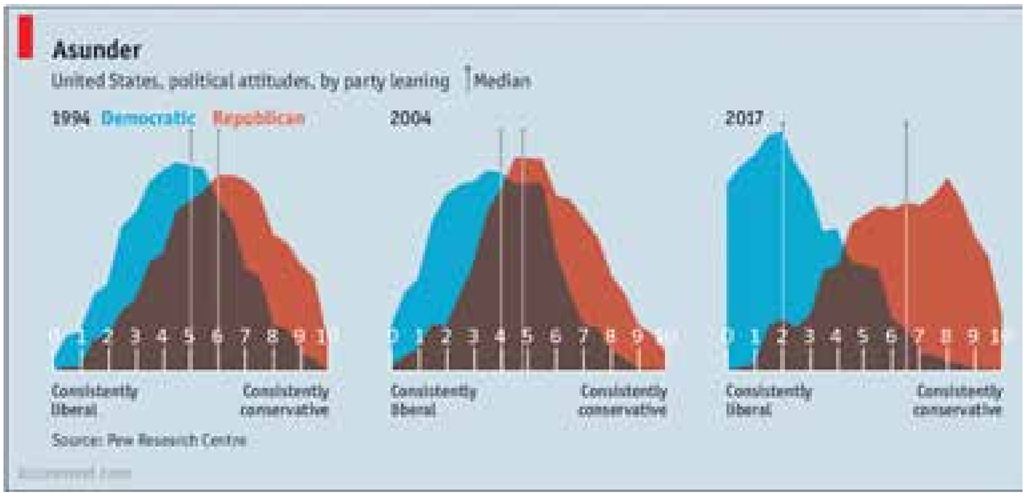
BIG PICTURE- POLARIZATION IN THE ELECTORATE



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ELECTION ENVIRONMENT – THE BIG PICTURE

AMERICA'S ISSUE PRIORITIES

Extremely important	Oct	Sep
Inflation	46%	37%
Elections & voting	38%	37%
Crime	37%	34%
Immigration	34%	30%
Jobs, unemployment	32%	28%
Abortion	30%	31%
Racial inequality	25%	27%
Gun control	24%	27%
Climate change	23%	24%

MONMOUTH UNIVERSITY

National poll of adults Oct. 13-17, 2022

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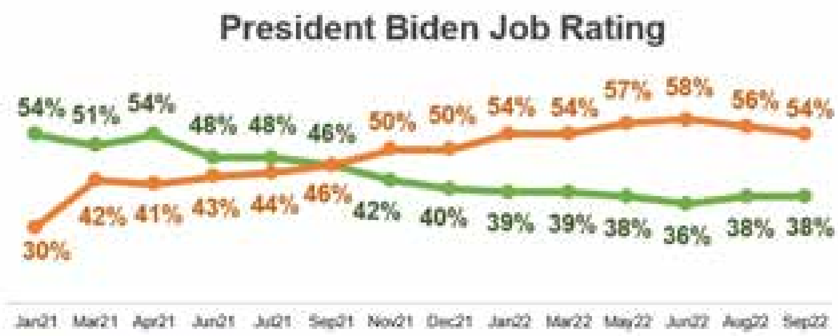
2022 MIDTERMS – KEY DATA POINT



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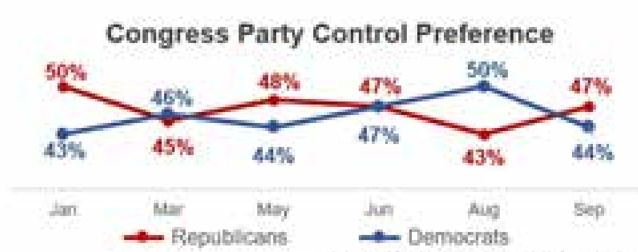
2022 MIDTERMS – KEY DATA POINT



MONMOUTH UNIVERSITY

National poll of adults
Sept. 21-25, 2022

Very important that preferred party controls Congress		
2022	Rep	Dem
Sep	62%	58%
Aug	59%	63%
Jun	63%	66%
May	61%	67%
Mar	64%	59%
Jan	56%	61%

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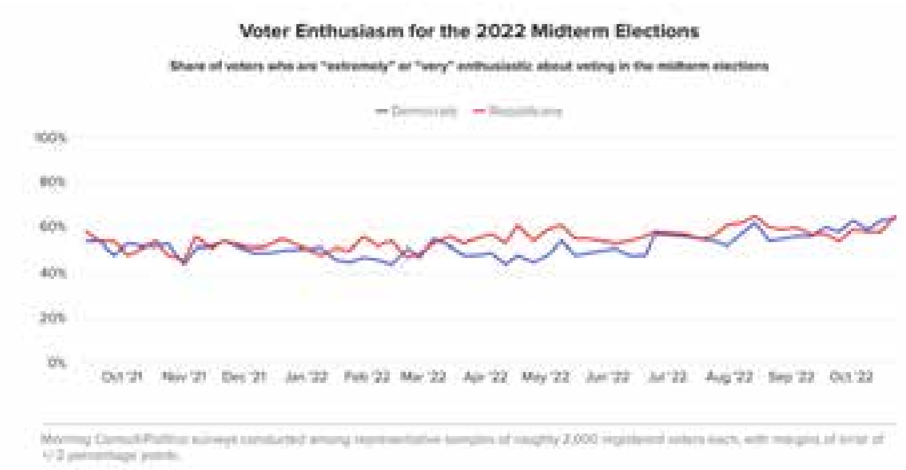
2022 MIDTERMS – KEY DATA POINT



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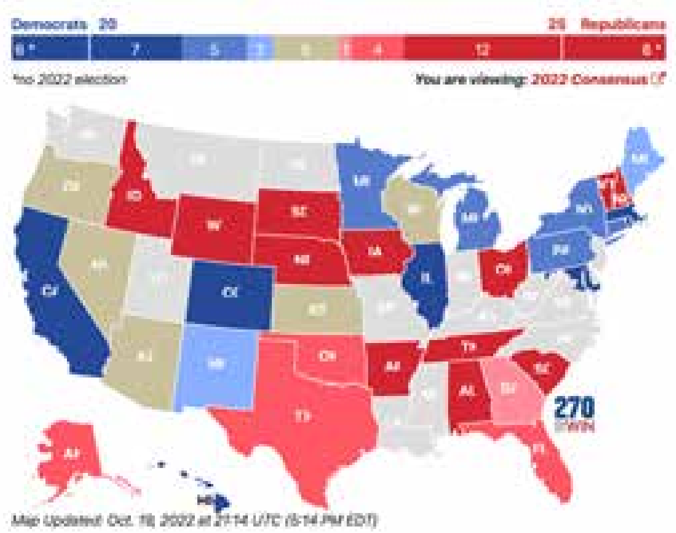
2022 MIDTERMS – GOVERNORSHIPS IN PLAY



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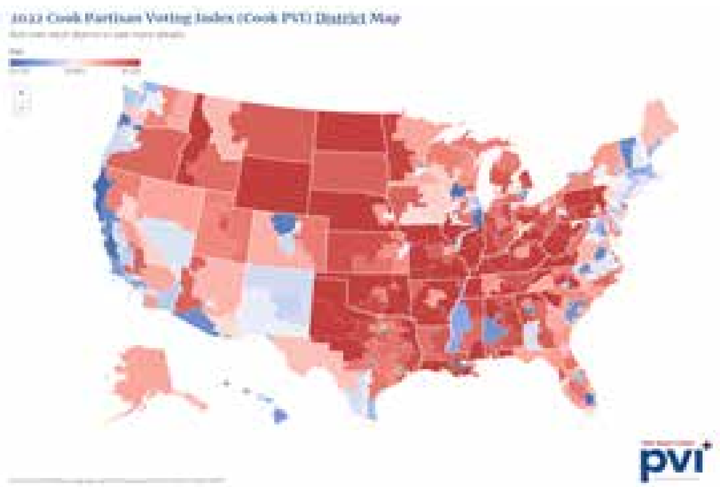
2022 MIDTERMS - US HOUSE OF REPRESENTATIVES



Current Membership Breakdown:

- 220 – Democrats
- 211 – Republicans
- 4 - Vacancies

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2022 MIDTERMS – HOUSE COMPETITIVE RACES


The Cook Political Report: 2022 House Race Ratings

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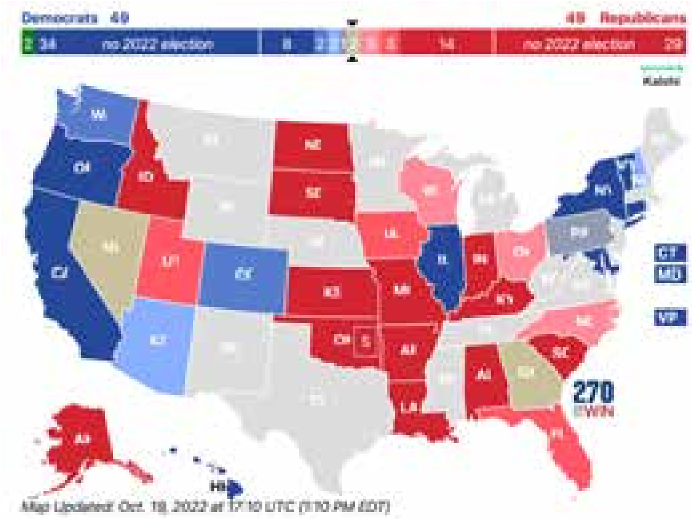
2022 MIDTERMS – SENATE RACES OVERVIEW



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2022 MIDTERMS – SENATE COMPETITIVE RACES

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ELEPHANT IN THE ROOM - 2024 PRESIDENTIAL ELECTION

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2024 PRESIDENTIAL ELECTION AROUND THE CORNER

Republicans

Top Candidate:
Trump

If not Trump…

- Ron DeSantis
- Tim Scott
- Glenn Youngkin
- Ted Cruz
- Nikki Haley
- Mike Pompeo
- Mike Pence
- Tom Cotton

Democrats

Top Candidate:
Biden

If not Biden…

- Gavin Newsome
- Phil Murphy
- JB Pritzker
- Elizabeth Warren
- Amy Klobuchar
- Pete Buttigieg
- Gretchen Whitmer

BLANKROME

QUESTIONS?

Scott D. Hatch
Senior Advisor
Blank Rome Government Relations LLC
202.772.5898
scott.hatch@blankrome.com

Michael I. Sanders
Partner
Tax, Benefits, and Private Client
202.772.5808
michael.sanders@blankrome.com

BLANKROME

BLANKROME

NCCPAP UPDATE

Presenter:
Jason Wright, SkyBridge Capital

November 7, 2022
Philadelphia

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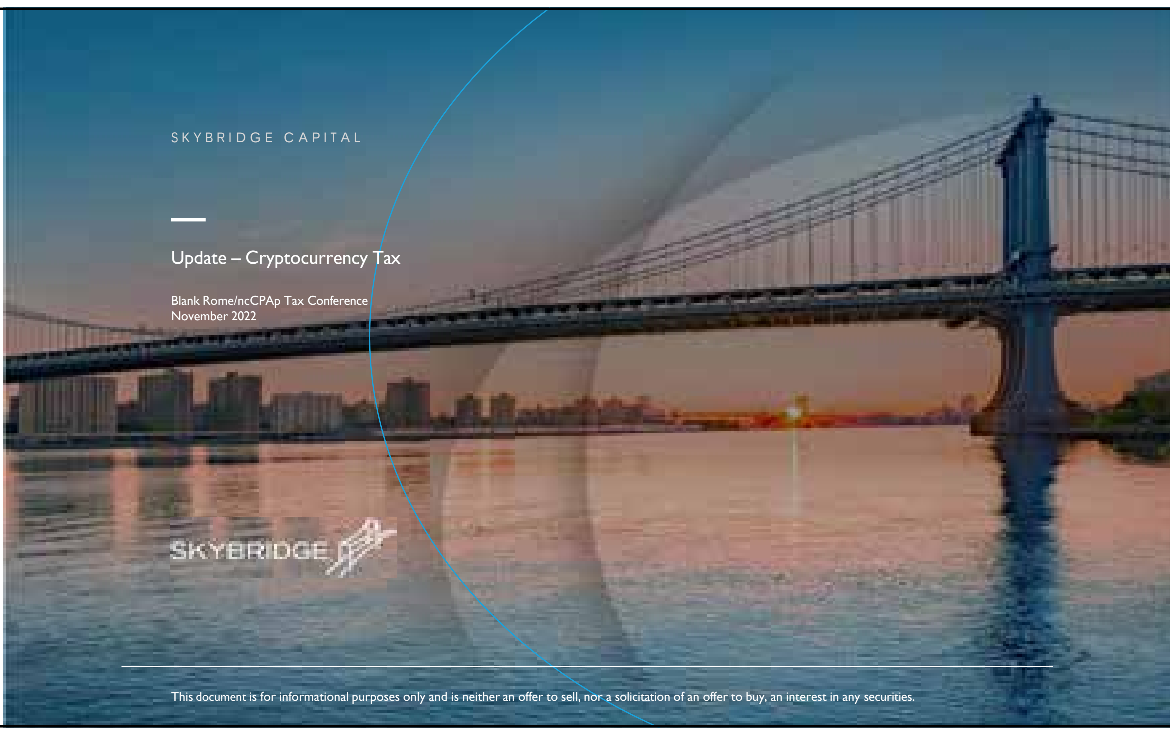
ncCPAp UPDATE

Presenter:
Jason Wright, SkyBridge Capital

November 7, 2022
Philadelphia



Taxation of Digital Assets

Per the IRS, Digital Assets include:

- Virtual currencies such as Bitcoin or Ether
- Stablecoins such as Tether and USDC
- Non-Fungible Tokens (NFTs)

Common digital assets transactions taxed as **capital gains** (taxed as property subject to capital gains rates):

- Sale of digital assets for fiat
- Exchange of digital assets for another digital asset
- Exchange of digital assets for property
- Use of digital assets to pay for goods or services

Common digital assets transactions taxed as **ordinary income**:

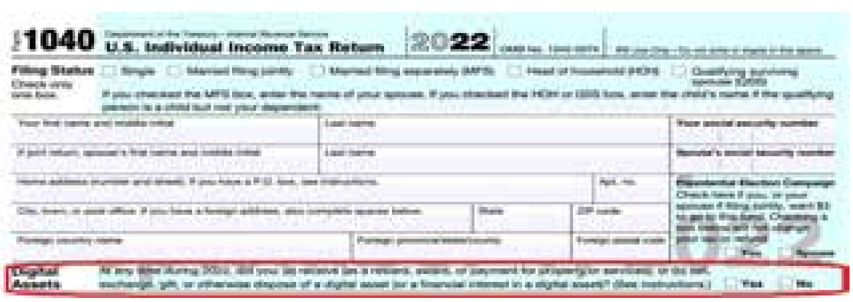
- Mining or staking cryptocurrency
- Payments received in the form of digital assets

Non-taxable digital assets transactions:

- Buying and holding digital assets
- Transferring digital assets between exchanges or wallets

Tax reporting – Digital Assets Transactions

Below is an excerpt from the draft Form 1040 for tax year 2022 (instructions not released):



The IRS first required taxpayers to answer a question about digital asset/virtual currency transactions in 2020.

Key changes from previous Form 1040:

- The IRS appears to have expanded the question to encompass transactions involving all forms of digital assets and earned rewards.

Tax reporting – Digital Assets Transactions

Infrastructure Investment and Jobs Act ("Infrastructure Bill"):

- Beginning with tax year 2023, cryptocurrency exchanges and custodians will be required to collect taxpayer information from customers, to properly issue Form 1099s.

Many widely used exchanges are already sending Form 1099s to customers, including:

- Coinbase
- Binance
- Gemini
- Kraken
- Bitstamp
- Crypto.com

Wash Sale Rule – Digital Assets

Wash Sale – occurs when you sell or trade a security at a loss and then acquire a substantially identical security within 30 days.

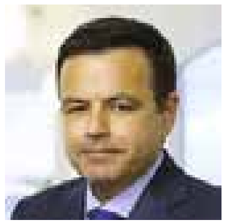
Wash Sale Rule – Digital Assets

- The IRS currently defines digital assets as property, not securities.
- As a result, the wash rule doesn't technically apply to digital assets.

Build Back Better Bill

- Included language applying wash sale rules to digital assets but was not enacted.
- Future legislation may propose that digital assets be subject to wash sale rules.

Questions



Jason Wright
Senior Partner
Global Head of Marketing,
Skybridge Capital
212.485.3100
JWright@skybridge.com

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MOBILE WORKFORCE: PREPARE FOR THE NEW NORMAL

Presenters:
Nicole L. Johnson, Blank Rome LLP
Mitchell A. Newmark, Blank Rome LLP

November 7, 2022
Philadelphia

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WHAT IS A MOBILE WORKFORCE?

- Telecommuters
  - Employees working from home on a permanent or semi-permanent basis
- Mobile Employees
  - Employees travelling for work purposes
- COVID-19
  - Employees required to work from home

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SCENARIO DISCUSSION

- Scenario 1 – Cross-State Telecommuter
- Scenario 2 – Cross-State Telecommuter
- Scenario 3 – In-State Telecommuter
- Scenario 4 – Cross-State Traveler

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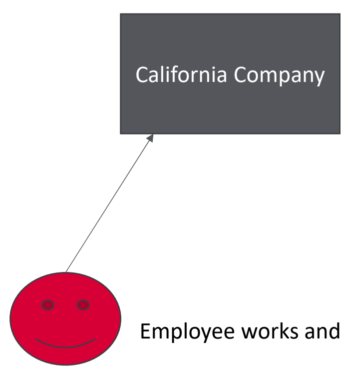
SCENARIO 1: CROSS-STATE TELECOMMUTER

- California-Based Company
- Employee works from home full-time in Oregon



Employee works and lives in Oregon

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CONSIDERATIONS – CORPORATE TAXES

- Employee based in the State can create nexus for:
  - Corporate income taxes;
    - *Matter of Appeal of Warwick McKinley, Inc., Cal. SBE No. 489090*
      - Marketing company with home office employee (and no other California activities) had a "regular, systematic and substantial connection" with the State.
    - *Telebright* (N.J. Super. Ct. App. Div., 2012)
      - Software engineer working at home creates nexus for employer
    - Possible Exception: PL 86-272
  - Unemployment taxes;
  - Sales and use taxes; and
  - Tax Credits.

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CONSIDERATIONS – WITHHOLDING

- Default is to withhold based on where employee services are performed
- Employer withholding requirements differ widely among the states.
  - California – withholding required when in-state wages above set threshold
  - Oregon – withholding required when in-state wages above set threshold
  - New York – withholding required when employee in-state more than 14 days
  - New Jersey – withholding required on day 1

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CONSIDERATIONS – WITHHOLDING - CONTINUED

- Reciprocal Agreements

STATE	RECIPROCITY STATES
Arizona	California, Indiana, Oregon and Virginia
Illinois	Iowa, Kentucky, Michigan and Wisconsin
Indiana	Kentucky, Michigan, Ohio, Pennsylvania and Wisconsin
Iowa	Illinois
Kentucky	Illinois, Indiana, Michigan, Ohio, Virginia, West Virginia and Wisconsin
Maryland	Pennsylvania, Virginia, Washington, D.C. and West Virginia
Michigan	Illinois, Indiana, Kentucky, Minnesota, Ohio and Wisconsin
Minnesota	Michigan and North Dakota
Montana	North Dakota
New Jersey	Pennsylvania
North Dakota	Minnesota and Montana
Ohio	Indiana, Kentucky, Michigan, Pennsylvania and West Virginia
Pennsylvania	Indiana, Maryland, New Jersey, Ohio, Virginia and West Virginia
Virginia	Kentucky, Maryland, Pennsylvania, Washington, D.C. and West Virginia
Washington, D.C.	Maryland and Virginia
West Virginia	Kentucky, Maryland, Ohio, Pennsylvania and Virginia
Wisconsin	Illinois, Indiana, Kentucky and Michigan

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CONSIDERATIONS – EMPLOYEE

- Resident state can tax 100% of your income.

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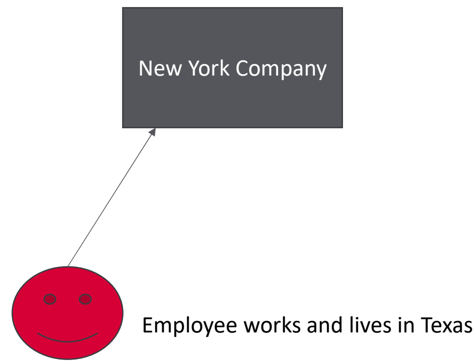
SCENARIO 2: CROSS-STATE TELECOMMUTER

- New York-Based Company
- Employee works from home full-time in Texas



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CONSIDERATIONS – CONVENIENCE OF THE EMPLOYER

- New York's "Convenience of the Employer" Test
  - If a nonresident is employed in New York, days worked outside the State are considered non-New York workdays only if the nonresident worked outside the State out of necessity rather than convenience.
    - Similar rules in Pennsylvania, Delaware and Nebraska.
- New York's "Bona Fide Office" Safe Harbor
  - Home office can qualify as a "bona fide employer office" if certain factor-based tests are met.
    - Primary Factor: "special facilities" nearby
    - Secondary/Other Factors: requires significant cooperation between employer/employee to meet
- Exception: if no days worked in New York during the calendar year, then the convenience rule doesn't apply.

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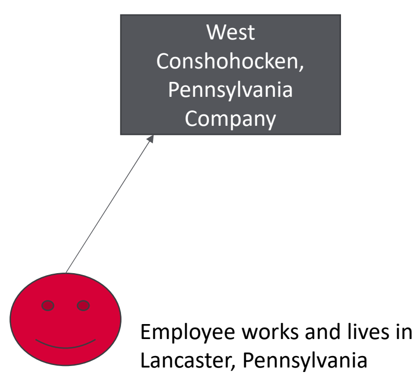
CONSIDERATIONS – CONVENIENCE OF THE EMPLOYER - CONTINUED

- New York is sending audit notices to taxpayers who previously allocated all of their income to New York or whose allocation percentage decreased from 2019-2020.
- Some of the notices state:
  - *"We have determined that you were unable to access your office located in New York due to a temporary office closure resulting from Covid-19. If an employee's assigned or primary work location was New York prior to Covid-19 temporary office closure, and the employer continues to maintain the New York office for the employee, the employer's assigned and primary work location is still New York. The fact that the New York office is not used during the Covid-19 office closure does not affect the conclusion."*

SCENARIO 3: IN-STATE TELECOMMUTER

- West Conshohocken, Pennsylvania-Based Company
- Employee regularly works from her home in Lancaster, Pennsylvania



CONSIDERATIONS – LOCAL TAXES

- Pennsylvania Local Taxes
  - Earned Income Tax
  - Local Service Tax
  - If employee works from home, then employer now has a worksite at the employee’s home.

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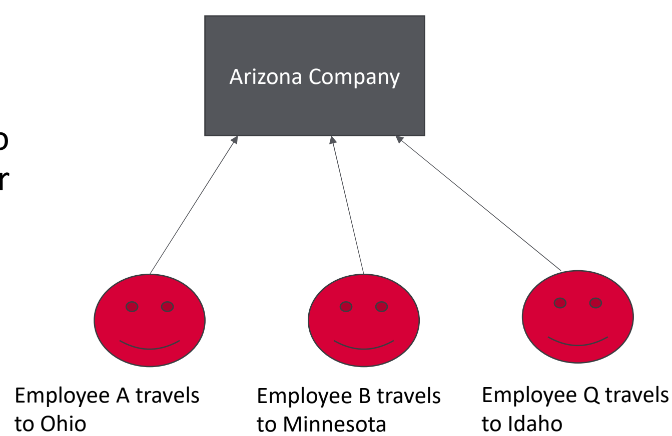
SCENARIO 4: CROSS-STATE TRAVELER

- Arizona-Based Company
- Employees live in Arizona
- Employees frequently travel to Ohio, Minnesota and Idaho for work



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CONSIDERATIONS – CORPORATE TAXES

- Employees traveling to a State can create nexus for corporate income taxes and sales and use taxes.
- Company may now have a filing obligation in State depending on the frequency and purpose of the travel.
  - New York
    - *Orvis* (N.Y. 1995)
      - New York Court of Appeals held that the State could require an out-of-state company to collect sales/use tax based on roughly 12 visits to the State by employees over a 3-year period.
  - Kansas
    - *In re Intercard* (Kan. 2000)
      - Kansas Supreme Court held that the State could *not* require an out-of-state company to collect sales/use tax based on 11 visits to the State by employees over a 4-year period.

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CONSIDERATIONS – WITHHOLDING

- Default is to withhold based on where employee services are performed.
- Tracking the employee's travel is the primary issue.

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CONSIDERATIONS – EMPLOYEE

- Resident state can tax 100% of your income
  - Domicile Test – Permanent/Primary Home
  - Statutory Resident Test – 183 days and living quarters
- Nonresident states can tax income earned in that state.
  - Need to determine where income earned.
    - Generally done by a day count.

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COVID-19 CONSIDERATIONS

- A number of states have advised that during the COVID-19 stay-at-home orders, the presence of telecommuters in the State will not create nexus.
  - Caution: order can be limited to when stay-at-home order in place.
  - New Jersey's temporary suspension of nexus standards for temporary workers ended on September 30, 2021.
- Connecticut legislation recently enacted.
  - Cannot consider telecommuters for nexus purposes, BUT;
    - Only for 2020
    - Telecommuting must be solely due to COVID-19

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HOW TO PREPARE

- Companies should examine their presence based on employee locations to see if additional registrations/filings are necessary.
  - Use voluntary disclosures to clean-up any issues.
- Set a policy regarding work from home.
  - Ensure that employee's request in advance.

QUESTIONS?

Nicole L. Johnson
Partner
Tax, Benefits, and Private Client
212.885.5286
nicole.johnson@blankrome.com

Mitchell A. Newmark
Partner
Tax, Benefits, and Private Client
212.885.5135
mitchell.newmark@blankrome.com

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THE ACCOUNTANTS ROLE IN M&A TRANSACTIONS

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OVERVIEW

- Due Diligence
- Tax Structuring
- Allocation of Purchase Price
- Tax Gross-Ups
- Tax Accounting Method
- Purchase Price Adjustments

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DUE DILIGENCE: BUYER CONSIDERATIONS

- Buyer Considerations
  - Purchase business in tax-efficient manner
    - Is target a good S corporation for federal and state income tax purposes? F Reorganization? (see later slide)
    - If target is a limited liability company, has it made an S corporation election?
  - Tax liabilities resulting from Seller's pre-closing operations
    - I.e., current/deferred taxes payable, tax contingency reserves, FIN 48, transfer taxes, etc.
  - Seller has appropriately followed tax compliance procedures prior to closing
    - I.e., timely and accurately filed tax returns, complied with payroll requirements, accounting methods, completed and/or ongoing audits, accountant workpapers, prior deal documents, proper characterization of employees vs. independent contractors, etc.
  - SALT Issues
    - Sales, Use, and Payroll taxes with respect to State jurisdictions
      - Wayfair
      - Nexus for sales, payroll, and income taxes, etc.
  - Representation and Warranty Insurance

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DUE DILIGENCE: SELLER CONSIDERATIONS

- Seller Considerations
  - Sell business in tax-efficient manner
  - Be responsive and provide sufficient information to Buyer's follow-up regarding tax compliance concerns
  - Tax representations and warranties are true and correct
  - Audit Risks
  - Tax calculations and managing client expectations

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OVERVIEW

- Due Diligence
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TAX STRUCTURING: STOCK SALE VS. ASSET SALE

- Tax Effect of Stock Sale (No 338(h)(10) or 336(e) Election)
  - Seller has capital gain/loss
  - Buyer has cost basis in stock
    - Not depreciable – when stock is sold, basis is recovered
  - SALT Implications
    - Generally sourced to residence of shareholder
- Tax Effect of Asset Sale (338(h)(10) or 336(e) Election)
  - Purchase Price Allocation (discussed later)
  - Seller has capital gain and/or ordinary income depending on the allocation
  - Buyer takes a cost basis in the assets purchased
  - Tax benefit is generally recovered through amortization and depreciation
  - SALT Implications
    - Generally sourced based on apportionment and allocation factor of target

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TAX STRUCTURING: BUYER VS. SELLER AND OTHER ISSUES

- Competing Interests Between Seller and Buyer
  - Seller prefers stock sale to ensure capital gains treatment, but Buyer gets no depreciation/amortization deduction
  - Buyer prefers an asset sale to maximize depreciation/amortization deductions

- Other Structuring Issues
  - Tax-Deferred Rollovers
    - Changes of Structure – valid S corp. remains in place
    - S corp. Issues – if concerns regarding compliance for S corp. status, effect an “F” Reorganization (see next slides)
    - Goodwill Anti-churning (Section 197)
  - QSBS Considerations (see next slides)

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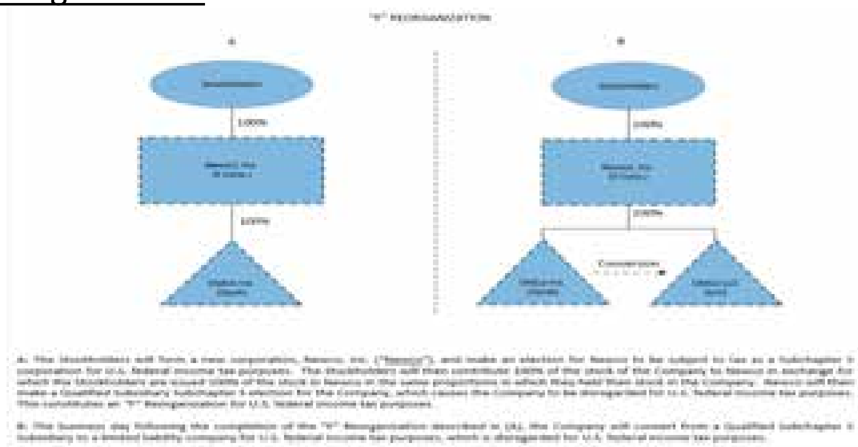
TAX STRUCTURING: BUYER VS. SELLER AND OTHER ISSUES

- F Reorganization



TAX STRUCTURING: BUYER VS. SELLER AND OTHER ISSUES

- Sale of Qualified Small Business Stock
  - Eligible taxpayer may exclude up to 100% of their capital gain derived from the sale of qualified small business stock
  - Qualified Small Business Stock Requirements
    - Domestic C corporation
    - Gross Asset Dollar Amount Threshold
    - Active Trade or Business
    - Disqualifying Redemptions
  - Shareholder Requirements
    - An individual and any entity except a C corporation (pass-through entity rules)
    - Holding Period
    - Acquire the stock on original issuance (not from another shareholder)

TAX STRUCTURING: ACCOUNTANT'S ROLE

- Accountant's Role
  - Prepare spreadsheets to model after-tax return for client under various transaction structures. Accountants are typically closer to the facts than attorneys on items like tax basis, depreciation, etc., and will be in a better position to crunch numbers.
  - Assist attorney in understanding the tax consequences and pressure points under various transaction structures.
  - On buy side, determine after-tax cash flow of client's business to ensure client has properly modeled tax consequences under various transaction structures.

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OVERVIEW

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ALLOCATION OF PURCHASE PRICE: CLASS OF ASSETS

Class of Assets and how each Class of Asset is treated (Form 8594):

	Asset Type	Allocation Method
I	Cash and Cash Equivalents	The portion of the Purchase Price allocated to the Class I Assets will be based on the fair market value of the Class I Assets. The parties agree that the fair market value of the Class I Assets will be equal to the amount set forth on the Final Closing Balance Sheet.
II	Actively Traded Personal Property	The portion of the Purchase Price allocated to the Class II Assets will be based on the fair market value of the Class II Assets. The parties agree that the fair market value of the Class II Assets will be the amount set forth on the Final Closing Balance Sheet.
III	Accounts Receivable	The portion of the Purchase Price allocated to the Class III Assets will be based on the fair market value of the Class III Assets. The parties agree that the fair market value of the Class III Assets will be the amount set forth on the Final Closing Balance Sheet (net of any allowance for doubtful accounts).
IV	Inventory	The portion of the Purchase Price allocated to the Class IV Assets will be based on the fair market value of the Class IV Assets. The parties agree that the fair market value of the Class IV Assets will be the amount set forth on the Final Closing Balance Sheet.
V	Property Plant and Equipment; Other Tangible Assets	The portion of the Purchase Price allocated to the Class V Assets will be based on the fair market value of the Class V Assets. The parties agree that the fair market value of the Class V Assets will be the [adjusted tax basis OR book value] as of the Closing Date.
VI, VII	Intangible Assets; Goodwill; Going Concern Value	Remainder of the Purchase Price.

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ALLOCATION OF PURCHASE PRICE: CLASS OF ASSETS

- Class III - A/R
  - Accrual Method vs. Cash Method
    - Accrual – seller should not have gain (because seller should have full basis in A/R)
    - Cash - seller has ordinary income on amounts allocated to account receivables
- Class IV – Inventory
  - allocation to inventory in excess of tax basis is subject to ordinary income tax rates
- Class V – FF&E (tangible assets)
  - assets that have been depreciated may have to be recaptured at ordinary income rates
- Class VI & VII – Intangible Assets, Goodwill, Going Concern Value
  - Covenants Not to Compete
  - Careful consideration for self-created intangibles
- Non-compete allocation

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ALLOCATION OF PURCHASE PRICE: ACCOUNTANT'S ROLE

- Accountant's Role
  - Identify assets within each asset class for Form 8594
  - Assist attorneys in understanding the significance of different allocation methodologies
  - Determine the acceptable tax implications to the client in an asset sale, 338(h)(10)/336(e), or sale of partnership interests, and communicate with attorneys so that attorneys can negotiate accordingly
  - Review the purchase price allocation methodology reflected in the purchase agreement to ensure its accuracy
  - Prepare allocation statement post-closing
  - State Income Tax Differences

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OVERVIEW

- Due Diligence
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TAX GROSS-UPS

- Buyer and Seller might desire different transaction structures and allocation methodologies. Seller may be willing to accommodate the Buyer's desired structure in exchange for a tax "gross-up"
- Additional consideration paid to Seller from Buyer to put Seller in a tax-neutral position for accommodating Buyer's structure (i.e., make Seller whole)
- Particular Considerations:
  - Ordinary Income vs. Capital Gains
  - Impact of State Tax
  - 199A
  - Pass-Through Entity Level Tax
  - Cash vs. Accrual
  - Change in Accounting Method

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TAX GROSS-UPS

- Accountant's Role
  - Prepare/review gross-up calculations
  - Assist attorneys in evaluating risk of different gross-up methodologies
    - Fixed Number?
    - Methodology?
      - If so, help determine proper methodology

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OVERVIEW

- Due Diligence
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TAX ACCOUNTING METHOD: 481(a)

- 481(a) Adjustments
  - Relates back to due diligence and is typically uncovered during this process
  - Are seller's tax accounting methods accurate? Are changes needed?
- Potential Ramifications
  - Subject to the eligible acquisition transaction (Rev. Proc. 2015-13); allows acceleration of adjustment leaving the tax burden with the Seller
  - Otherwise, spread over 4 years, starting with the year Form 3115 is filed, leaving the tax effects of the change with the Buyer
  - Agreement may need to be modified to give Buyer the ability to prepare tax returns that are not consistent with the past practice of the company

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TAX ACCOUNTING METHOD: DEFERRED REVENUE

- Deferred Revenue Treatment
  - Fragmentation Approach – seller includes balance of deferred revenue and receives offsetting deduction in the amount of the deferred revenue. The fragmentation approach assumes a fictional payment from buyer to seller in the amount of the deferred revenue and a second fictional payment from the seller to the buyer to compensate the buyer for assuming the deferred revenue. Therefore, buyer is considered to acquire assets of target for cash and the assumption of the deferred revenue, and takes full basis in assets acquired (i.e., cash plus deferred revenue). Buyer is either subject to immediate tax on the second fictional payment or is entitled to deferral to the same extent as the original prepayment from the customer. Buyer deducts (does not capitalize) costs of fulfilment.
  - Assumption Approach – treated like a contingent liability. Seller includes as amount realized except in "rare and extraordinary case" when the contingent liability is not readily ascertainable. Seller usually takes an offsetting deduction or increase in basis. Buyer capitalizes the fulfilment costs in its basis when and if paid.
  - Pro-buyer – treated as a debt-like item for purchase price purposes
  - Pro-seller – included as part of target net working capital

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TAX ACCOUNTING METHOD: ACCOUNTANT'S ROLE

- Accountant's Role
  - Determine if target has affected or is required to affect a change in accounting method and its impact on the transaction and the post-closing costs associated with the transaction
  - Calculate tax impact of a potential 481(a) adjustment so that council can negotiate how to account for it in the purchase agreement
  - Identify if any deferred revenue is part of the transaction

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OVERVIEW

- Due Diligence
- Tax Structuring
- Allocation of Purchase Price
- Tax Gross-Ups
- Tax Accounting Method
- Purchase Price Adjustments

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PURCHASE PRICE ADJUSTMENTS: WORKING CAPITAL/OTHER ADJUSTMENTS

- <u>Target Working Capital vs. Actual Working Capital</u>
  - Working Capital = Current Assets less Current Liabilities
  - Target Working Capital is calculated pre-closing and negotiated between Buyer and Seller
    - Documented in purchase agreement
  - Actual Working Capital is calculated post-closing
    - If Actual Working Capital exceeds Target Working Capital, Seller receives additional consideration
    - If Target Working Capital exceeds Actual Working Capital, Buyer receives a refund of the purchase price
- <u>Other Adjustments (similar to Working Capital)</u>
  - Indebtedness
    - Estimated Indebtedness vs. Closing Indebtedness and inclusion of Income Taxes
  - Cash
    - Estimated Closing Cash Amount vs. Closing Cash Amount

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PURCHASE PRICE ADJUSTMENTS: ACCOUNTANT'S ROLE

- <u>Accountant's Role</u>
  - Define the assets and liabilities included in Working Capital
    - <u>i.e.</u>, A/R, Inventory, Prepaid Expenses, Tax Assets, A/P, Accrued Expenses, Tax liabilities, etc.
  - Calculate Target Working Capital pre-closing
  - Calculate Actual Working Capital post-closing
  - Define all tax liabilities included in working capital? Just "ordinary course" taxes?

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QUESTIONS?



Joseph T. Gulant
Partner
Tax, Benefits, and Private Client
212.885.5304
joseph.gulant@blankrome.com

Cory G. Jacobs
Partner
Tax, Benefits, and Private Client
215.569.5481
cory.jacobs@blankrome.com

Jeffrey M. Rosenfeld
Partner
Tax, Benefits, and Private Client
215.569.5752
jeffreym.rosenfeld@blankrome.com

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EXECUTIVE COMPENSATION AND EMPLOYEE BENEFITS UPDATE

Presenters:
Andrew J. Rudolph, Blank Rome LLP
Michael A. Kadlec, Blank Rome LLP

November 7, 2022
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INDIVIDUAL RETIREMENT ARRANGEMENTS UPDATE 2022

GENERAL IRA REVIEW TAX PLANNING FOR ROTH IRAs
HOW LONG WILL THE ROTH IRA OPPORTUNITY ENDURE?

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AGENDA

- Review – Types of individual retirement arrangements
- Traditional IRA – Regular contribution IRA
- Roth contribution IRA
- Rollover IRA
- Should I stay or should I go?
- Roth conversions
- Proposed legislation – Potential impact on ROTH availability
- “Famous” Roth IRAs

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REVIEW – TYPES OF IRAs

- Contribution IRAs
  - Traditional – Pre-tax or after-tax depending on income level
  - Roth – After tax contribution, tax-free distribution
  - Spousal – For a spouse with no compensation income
- Rollover IRAs – transfer from a qualified retirement plan
  - Traditional rollover IRA
  - Roth rollover IRA
- Small business retirement programs – generally, direct contributions by the employer to an employee-owned IRA
  - Sep: Simplified employee pension – employee contribution only
  - Simple – Analogous to a small business 401(k) with employee contributions and employer matching contributions

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TRADITIONAL IRA – REGULAR CONTRIBUTION IRA

- Annual contribution opportunity
  - o Deductible contribution, subject to income phase out
  - o Distribution of pre-tax contributions and earnings includible
  - o Tax-tax deferred growth
- Funding deadline – Unextended due date for federal income tax return (i.e., April 15)
- Deductibility depends on:
  - o Employer retirement plan eligibility of IRA owner and spouse, if married
  - o Income levels – Deductibility phase out for 2022 begins at
    - $68,000 if single
    - $109,000 if married filing jointly
  - o Traditional IRA contribution limits

	2022	2023
Under age 50	$6,000	$6,500
Age 50 or older	$7,000	$7,500

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ROTH CONTRIBUTION IRA

- Annual contribution opportunity
  - After-tax contribution
  - Tax-free growth
  - Tax-exempt distribution
- Funding deadline – Unextended due date for federal income tax return (i.e., April 15)
- Roth annual contribution limit – Same limit as traditional contribution IRA, subject to income-related phase out
- 2022 phase out:
  - $129,000-$144,000 if single
  - $204,000-$214,000 if married/filing jointly

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ROLLOVER IRA

- Rollover from qualified plan or 403(b) plan
- Rollover contribution defers tax on plan distribution until distribution from IRA account
- Direct rollover avoids withholding tax (20%) on qualified plan distribution
- If qualified plan account balance > $5,000, the participant has the right to stay in the qualified plan until death or plan's normal retirement age (usually age 65)
(see IRC §411(a)(11))

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SHOULD I STAY OR SHOULD I GO?

- Rollover opportunity as fiduciary event for rollover IRA manager
- Decision factors: Stay or go
  - o Protection of retirement benefits from creditors
  - o Investment management
    - fees
    - fund availability
  - o Plan loan repayment opportunity
  - o Minimum required distribution – Delay opportunity for working participants who own less than 5% of the plan sponsor
  - o Roth conversion opportunity

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ROTH CONVERSIONS

- Advantages of transfer of rollover to Roth rollover IRA or conversion of existing rollover IRA to Roth
  - No minimum required distributions
  - No penalty for early withdrawal of contributions (after 5-year hold)
  - No federal income tax at distribution
  - Cost: Prepayment of retirement income tax bill
  - Avoids:
    - Risk of future tax increases
    - Longevity risk of minimum required distributions
    - Tax decision with each retirement distribution
    - MRD income impact on taxability of social security benefits
    - MRD income impact on income-based Medicare premiums
    - Retirement income tax consequences to heirs

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PROPOSED LEGISLATION – POTENTIAL IMPACT ON ROTH AVAILABILITY

- "Secure Act 20" – Phased in delay of required beginning date to age 75:
  - Historically, RBD = age 70-1/2
  - Currently, RBD = age 72
  - 2023: increase to age 73
  - 2030: increase to age 74
  - 2033: increase to age 75
  - Prospects?
- Democratic legislative agenda, as originally proposed as part of "Build Back Better" legislation
  - Prohibition on Roth conversion by taxpayers with income > $400,000 (single) or $450,000 (MFJ)
  - Prohibition on "back door" Roth conversion
  - Limit on accumulation of IRA and defined contribution plan account balances > $10 million
    - Mandatory distributions
    - Prohibition of new contributions
  - More aggressive required distributions where accumulation of IRA and defined contribution plan account balances > $20 million
  - Restriction on IRA investment in private equity opportunities

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"FAMOUS" ROTH IRAs

- Press reports of multi-million (Romney) and multi-billion (Thiel) Roth IRA
- How to on unicorn IRAs?
- Details on the famous Roth IRAs not confirmed . . .
  - . . . but probably involve investment by traditional IRA or rollover IRA in limited-availability private equity (Romney - Bain) or angel investments (Thiel - PayPal) with significant growth results
- Build Back Better targets the unicorns
  - Required disgorgement above $10 million in deferred retirement benefits
  - Prohibition of limited availability investments

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2022 UPDATED - QUALIFIED PLANS:

APPLICABLE LAW UPDATE

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AGENDA

- Secure Act 1.0
- Possible Secure Act 2.0 provisions
- EPCRS update (Rev. Proc. 2021-30)
- IRS Pre – Examination Pilot Program

SECURE ACT 1.0

- Increase in auto-enrollment cap from 10% to 15% for “safe harbor” plans
- Allows part-time employees who work 500 hours in 3 consecutive years to participate
- Increased RMD age from 70.5 to 72
- Facilitates offering annuities in 401(k) plans
- Permits limited penalty-free withdrawals from 401(k) plan accounts for costs related to having or adopting a child
- Eliminates notice requirement for “safe harbor” plans using a non-elective employer contribution
- Employer tax credits
- Facilitates adoption of multiple employer plans
- Amendment deadlines

POSSIBLE SECURE ACT 2.0 PROVISIONS

- Increase RMD age from 72 to 75 (phased in)
- Allow part-time employees who work 500 hours in 2 consecutive years to participate
- Allow participants who are age 62-64 to contribute an additional $10,000 to their 401(k) or 403(b) accounts or an additional $5,000 to simple IRS accounts
- Allow matching contributions on student loan repayments
- Larger tax credits for small businesses
- Reduced administrative burden/reporting requirements for employers
- Required auto-enrollment

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EPCRS UPDATE (REV. PROC. 2021-30)

- Self-correction deadline extended
- Reduce requirements for correction through amendment
- Extend sunset date for correction of auto-enrollment failure
- Increase de minimis exception for overpayments and excess amounts
- Overpayments correction allows different options for repayment

IRS PRE – EXAMINATION PILOT PROGRAM

- IRS sends letter to employer 90 days before IRS examination begins
- Offers opportunity to correct issues before examination

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QUESTIONS?

Andrew J. Rudolph
Partner
Tax, Benefits, and Private Client
215.569.5581
andy.rudolph@blankrome.com

Michael A. Kadlec
Partner
Tax, Benefits, and Private Client
215.569.5587
michael.kadlec@blankrome.com

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2022 Tax Update:

Speaker Biographies

November 7, 2022
Philadelphia

Lawrence S. Chane
Partner, Blank Rome LLP
+1.215.569.5721
larry.chane@blankrome.com

CO-CHAIR, TAX, BENEFITS, AND PRIVATE CLIENT PRACTICE GROUP

Lawrence Chane concentrates his practice in the areas of estate and tax planning, primarily for owners of closely held businesses, executives, and professionals. He advises clients on the federal, state, and local tax issues that affect them and their businesses and the transfer of wealth from one generation to another. He provides advice and counsel on sophisticated estate and income tax planning techniques involving life insurance, generation skipping, succession planning, and planned charitable giving.

Larry is a fellow of The American College of Trust and Estate Counsel. He has served as adjunct professor at Villanova University School of Law in the Graduate Tax Program, teaching a course titled “Tools and Techniques of Estate Planning,” and is a past president of the Philadelphia Estate Planning Council.

Larry has appeared on CNBC and has been quoted in publications including *TIME* and *Kiplinger’s Personal Finance* on tax and estate planning issues.

Joseph T. Gulant
Partner, Blank Rome LLP
+1.212.885.5304
joseph.gulant@blankrome.com

CO-CHAIR, BUSINESS DEPARTMENT

Joseph Gulant has considerable experience in domestic and international taxation matters. He counsels public and private corporations, partnerships, funds, real estate and maritime-related companies, tax-exempt organizations, and individuals in all aspects of United States and international tax law.

He also has extensive experience with tax controversies, including criminal tax investigations and prosecutions, civil audits, appeals, and collections matters.

Joseph is a contributor to Blank Rome’s *Tax Controversy Watch* blog (www.taxcontroversywatch.com), which focuses on addressing and providing a comprehensive review of the latest developments in the tax controversy field. Additionally, he publishes and lectures frequently on many varied taxation matters.

Andrew J. Haas
Partner, Blank Rome LLP
+1.215.569.5479
andrew.haas@blankrome.com

Andrew Haas concentrates his practice in the areas of estate, tax, and closely held business planning. He regularly works with business owners and entrepreneurs to effectively integrate business interests into a comprehensive estate plan. Andrew also counsels high net-worth individuals, including professional athletes, executives, and their families, and works closely with clients and their professional advisers to ensure seamless exchange of information, as well as the effective implementation and administration of estate planning strategies.

Andrew is the author of the chapter "Estate Planning For Closely-Held Businesses" in the book *Estate Planning in Pennsylvania,* 5th Edition (2019, PBI Press). In addition, he has been cited in the *Philadelphia Inquirer* on estate planning topics and has been published in the Wealth Management supplement of *The Legal Intelligencer*. Andrew also frequently speaks on estate planning topics.

Scott D. Hatch
Senior Advisor, Blank Rome
Government Relations LLC
+1.202.772.5898
scott.hatch@blankrome.com

Scott Hatch is a Senior Advisor in Blank Rome's Government Relations practice, based in its Washington, D.C. office. Known for his exceptional advocacy and management skills, Scott Hatch is highly experienced in strategy design, issue advocacy, and crisis mitigation. His background spans a broad array of sectors, including social impact, philanthropy, energy, national security, and technology.

Scott possesses a rare combination of policy and political acumen having run a national party political committee and served as a senior leadership staffer on the floor of Congress. He specializes in capturing his clients' vision then building and managing the architecture to make those ideas into successful realities at the highest levels of the non-profit, corporate, and political domains.

Scott honed his policy and negotiating skills as the Chief Floor Assistant to the Majority Whip of the House of Representatives, serving as the Whip's "eyes and ears" on the floor of Congress.

Cory G. Jacobs
Partner, Blank Rome LLP
+1.215.569.5481
cory.jacobs@blankrome.com

CO-CHAIR, TAX, BENEFITS, AND PRIVATE CLIENT PRACTICE GROUP

Cory Jacobs concentrates his practice in the areas of business tax law and general corporate law. He advises a broad range of individual and business taxpayers in the technology, manufacturing, healthcare, energy, financial services, sports, and consumer products industries. He regularly provides strategic advice in matters relating to: tax-efficient structuring of mergers, acquisitions, divestitures, reorganizations, spin-offs, redemptions, and liquidations; use of partnerships, S corporations, and limited liability companies; and issuances of equity-based compensation.

Cory regularly represents private equity firms, public companies, family-owned businesses, and entrepreneurs. His diverse, multi-industry experience yields a tailored, business-minded approach when advising clients on sophisticated tax issues. Cory has taught numerous corporate and partnership tax classes at Rutgers Camden Law School and Villanova University School of Law. His tax practice is enhanced by his CPA experience as a senior tax consultant in Deloitte & Touche's international and domestic tax practices.

Chambers USA notes that Cory is "praised by clients for his 'real-time, actionable feedback and deep understanding of the tax code'" and describes him as "practical, creative and a strong advocate for the client."

Nicole L. Johnson
Partner, Blank Rome LLP
+1.212.885.5286
nicole.johnson@blankrome.com

Nicole Johnson works with clients to resolve state and local tax controversies at the audit, administrative, and judicial levels and advises clients on state and local tax law in transactional matters. She represents clients on matters that implicate virtually every category of taxes, including corporate income and franchise taxes, gross receipts taxes, gaming taxes, sales and use taxes, and transactions taxes.

She frequently delivers lectures on state and local tax matters and has presented at several organizations, including the Council On State Taxation, Tax Executives Institute, Energy Tax Association, Ohio Tax Conference, and California Tax Policy Conference. Nicole was appointed to the New York Tax Appeals Tribunal Advisory Panel in 2018. She also regularly provides expert insights and commentary to the annual Bloomberg Tax Survey of State Tax Departments.

Michael A. Kadlec
Partner, Blank Rome LLP
+1.215.569.5587
michael.kadlec@blankrome.com

Michael Kadlec has significant experience in all aspects of employee benefits and executive compensation, including: design and drafting of retirement and welfare benefit plans; design and drafting of equity compensation arrangements, long-term incentive arrangements, and transaction bonus arrangements; drafting and negotiation of employment, separation severance, and similar agreements; design and drafting of deferred compensation arrangements; advice and guidance on compliance with ERISA and IRC section 409A; advice and guidance on employee benefits and executive compensation aspects of corporate mergers and acquisitions, including IRC section 280G; and advice and guidance on public corporation executive compensation design and disclosure.

Michael has experience representing various types of clients, including international publicly traded corporations, private equity funds, privately held entities, large tax-exempt organizations, and executives.

Andrew M. Logan
Associate, Blank Rome LLP
+1.215.569.5606
andrew.logan@blankrome.com

Andrew Logan concentrates his practice in the areas of trust and estate law and tax-exempt organizations.

Andrew's trust and estate practice is focused on assisting high net-worth individuals and their families with implementing sophisticated estate and income tax planning techniques involving life insurance, multigenerational wealth transfers, succession planning, and charitable giving. He also assists clients with the administration of estates and trusts, including the representation of corporate fiduciaries in the Orphans' Courts of Pennsylvania.

Andrew's tax-exempt organizations practice is focused on assisting nonprofit entities in business structuring, applying for and obtaining tax-exempt status from the Internal Revenue Service, complying with state and federal tax laws, avoiding excise taxes and unrelated business income tax, and structuring joint ventures. A substantial part of his exempt organizations practice involves counseling several large charter school networks in a variety of areas, including entity formation, governance, tax compliance, and operations.

David J. Moise
Partner, Blank Rome LLP
+1.212.885.5049
david.moise@blankrome.com

David Moise has more than 30 years of experience providing services in the area of tax and tax controversy. His practice focuses on federal, state, and local tax examinations; appeals and litigation; and federal and multistate voluntary disclosure agreements.

In addition, David has extensive experience in relation to tax collection procedures, including tax liens and levies, as well as collection administrative appeals, installment agreements, and offers in compromise.

David frequently lectures at local and national industry conferences and writes on tax matters and controversies for leading industry publications, such as *Wealth Management* and *Private Asset Management*.

Mitchell A. Newmark
Partner, Blank Rome LLP
+1.212.885.5135
mitchell.newmark@blankrome.com

Mitchell Newmark defends audits and litigates U.S. state and local tax matters before judicial courts and administrative tribunals around the country. He has successfully argued cutting edge, precedential tax matters before state high courts, intermediate appellate courts, and trial courts on behalf of clients, obtaining favorable outcomes across a wide range of industries. He counsels clients on state and local aspects of sophisticated planning and transactional matters, including asset-based financing transactions and unclaimed property matters. He has also successfully counseled individuals and estates regarding residency, domicile, and multistate taxability in audits and appeals.

He frequently delivers lectures on state and local tax issues and has spoken before numerous organizations, including the New York University's ("NYU") Institute on State and Local Taxation, Georgetown University Law Center's Advanced State and Local Tax Institute, New York University's School of Professional Studies Tax Conferences in July, Vanderbilt University Law School's Paul J. Hartman State and Local Tax Forum, The Tax Executives Institute, The Council on State Taxation, North Eastern States Tax Officials Association, New Jersey CPA Society, New Jersey Bar Association, New Jersey Society of Enrolled Agents, and the Chicago Tax Club.

Prior to joining Blank Rome, Mitchell was a partner at a leading Am Law 100 firm and spent six years as Deputy Attorney General in New Jersey, where he represented the Division of Taxation, among other agencies and bodies, in court. He also counseled the Division of Taxation and other agencies on regulatory matters.

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Jeffrey M. Rosenfeld
Partner, Blank Rome LLP
+1.215.569.5752
jeffreym.rosenfeld@blankrome.com

Jeffrey Rosenfeld concentrates his practice on business tax law. He counsels public and private corporations, partnerships, and individuals in a broad array of tax matters, including: domestic and international tax matters; state and local tax planning; tax-efficient structuring of domestic and international mergers, acquisitions, divestitures, reorganizations, spin-offs, redemptions, and liquidations; formation, operation, and acquisition of Subchapter S corporations, partnerships, and limited liability companies; federal, state, and local criminal and civil tax controversies, including audits, administrative appeals, and litigation; and issuances of equity-based compensation

In addition to his tax practice, Jeffrey maintains a corporate practice where he draws upon his tax base to draft, negotiate, and advise clients on limited liability company operating agreements, equity incentive agreements, and similar equity-related documents. Jeffrey's experience in this regard spans across many industries, including (most prominently) the private equity industry.

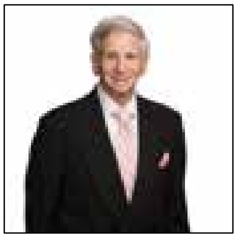
Andrew J. Rudolph
Partner, Blank Rome LLP
+1.215.569.5581
andy.rudolph@blankrome.com

Andrew Rudolph has more than 40 years of experience advising publicly traded and privately held businesses on employee benefits, executive compensation, and related tax and corporate law issues.

Andrew's practice covers the full spectrum of benefits and compensation issues affecting employers in an environment in which rewards are critical to the effectiveness of the strategic business plan. He has been advising clients for more than two decades, through several business cycles and through restructurings, acquisitions, and dispositions that have propelled these businesses to leading positions in their industries.

Chambers USA noted that Andrew "is hailed as a 'brilliant' labor and employment lawyer," with sources stating that his "analysis of issues is very much on point and succinct."

During law school, Andrew served as an editor of the *University of Pennsylvania Law Review*.



Michael I. Sanders
Partner, Blank Rome LLP
+1.202.772.5808
michael.sanders@blankrome.com

Michael Sanders is the lead partner of the Firm's Washington, D.C. office tax group. He focuses his practice in the area of taxation, offering particular knowledge in matters affecting partnerships, limited liability companies, S corporations, real estate, tax controversy, opportunity zone funds, and estate planning, including trusts and estates. He also has a large practice in the area of exempt organizations, involving healthcare and low-income housing, associations and joint ventures between for-profits and nonprofits, as well as structuring New Markets Tax Credit and Historic Tax Credit transactions. He regularly serves as an expert witness in complex litigation.

Michael is the author of *Joint Ventures Involving Tax-Exempt Organizations*, a book recently cited by the majority opinion in the widely covered U.S. Supreme Court decision in *Burwell v. Hobby Lobby Stores, Inc.* He is also an adjunct professor at George Washington University Law Center and Georgetown University Law School.

Michael is a frequent speaker on the Opportunity Zone Fund legislation, part of the 2017 Tax Cut and Jobs Act. He advises funds, investors, and real estate companies on the program requirements and provides up-to-date guidance.

Prior to Blank Rome, Michael served as an attorney-adviser to the assistant secretary of tax policy at the Office of Tax Legislative Counsel and as a trial attorney at the U.S. Department of Justice (Attorney General's Honors Program).

Jason Wright
Senior Partner and Global Head of Marketing, Skybridge Capital
+1.212.485.3100
JWright@skybridge.com

Jason Wright is a Senior Partner and Global Head of Marketing at SkyBridge Capital. Prior to SkyBridge, Jason was Managing Director of Business Development at Soleil Securities Group. He was also Managing Director at SoundView Ventures from 2000 to 2003 and Director at Wit Capital Group from 1996 to 2000.

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Thank you for joining us today

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