Election 2020: Where Do the Candidates Stand on Business Tax Issues?

With both major political party conventions behind us, it's time to focus on the upcoming national election. Among their many differences, the Republicans and Democrats have widely divergent tax platforms.

Do you know where the candidates stand on major business tax issues? In some cases, the candidates' plans contrast with their parties' platforms, so it's important to watch their statements and websites closely. Here's a quick summary of their positions on business-related tax matters to help you make an informed decision in November.

President Donald Trump — Building on the TCJA

In general, Republican presidential nominee Donald Trump plans to continue the tax reform efforts that he supported during his first term. Specifically, he signed the GOP-backed Tax Cuts and Jobs Act (TCJA) into law in December 2017. It included many federal tax cuts and breaks for businesses, such as:

- Installing a flat 21% tax rate for C corporations and personal service corporations,
- Permanently liberalizing the Section 179 first-year depreciation rules,
- Temporarily expanding first-year bonus depreciation deductions, and
- Repealing the alternative minimum tax (AMT) for C corporations.

In addition, the TCJA created a deduction for up to 20% of qualified business income (QBI) from sole proprietorships, limited liability companies (LLCs), partnerships and S corporations. That provision is scheduled to expire after 2025. However, the White House budget for fiscal year 2021 (which starts on October 1, 2020) would extend the QBI deduction beyond 2025.

In general, President Trump has indicated support for preserving tax reforms under the TCJA if he's elected for a second term. He would also like to expand the existing Opportunity Zone program, which is intended to encourage investment in economically distressed census tracts by providing capital gains tax relief for individuals and businesses that make qualified investments in those areas.

Without providing specifics, Trump would push for the following tax law changes if reelected:

- A new "Made in America" tax credit,
- A new tax credit for companies that bring back jobs from China,
- 100% first-year expensing for certain industries, including pharmaceuticals and robotics, that bring manufacturing back to the United States, and
- Permanent federal payroll tax cuts. (However, Trump hasn't laid out a plan for how Social Security benefits would be paid if the taxes that fund them were eliminated.)

Furthermore, Trump has called for forgiveness for federal payroll taxes that were temporarily deferred for September 1, 2020, through December 31, 2020, by an executive action issued on August 8.

Unfortunately, Trump's tax proposals leave many unanswered questions. For example:

- What will happen with the 100% bonus depreciation deduction after 2022, when it's scheduled to begin being phased out under current tax law?
- Will Trump support the requirement for businesses to amortize research and development costs over five years, which is scheduled to start after 2022? (Under current law, research and development costs can be fully deducted when paid or incurred.)
- Will Trump allow COVID-19-related business tax relief measures to expire — or will he encourage Congress to extend them?

Unless the Republicans regain control of the House and retain control of the Senate, any tax cut proposals would likely face strong opposition from congressional Democrats. However, if reelected, Trump is unlikely to sign any legislation that calls for major federal business tax *increases*.

Trump's Promise to Business Owners

When accepting the Republican party nomination, Trump pledged to continue the progress made on business tax reforms during his first term. Specifically, he promised to "provide tax credits to bring jobs out of China back to America — and … to impose tariffs on any company that leaves America to produce jobs overseas." His federal tax promises for the second term is "to continue to reduce taxes and regulations at levels not seen before."

Former Vice-President Joe Biden — Rebuilding America through Investment

If Democratic presidential nominee Joe Biden is elected, he has expressed support for major changes to the current federal tax laws. His plans could gain traction if Democrats retain control of the House and gain control of the Senate. This could mean rollbacks or revisions of several TCJA provisions, which would be necessary to pay for his plans to rebuild the U.S. economy.

Notably, the Biden plan would increase the corporate federal income tax rate from 21% to 28%. The change would raise an estimated $1.1 trillion or so over 10 years. This rate is significantly lower than the 35% maximum effective rate for profitable corporations that was in place before the TCJA was enacted. But Biden's proposed tax rate would be a flat rate, not based on a graduated schedule.

In addition, if elected, Biden would support a new 15% minimum tax on corporations with at least $100 million in annual income that pay little or no federal income tax under the "regular rules." An affected corporation would pay the greater of:

- The regular federal income tax bill, or
- 15% of reported book net income.

This new tax would raise an estimated $160 billion to $320 billion over 10 years.

Biden also would introduce a so-called "financial risk fee" on banks, bank holding companies and nonbank financial institutions with over $50 billion in assets. The fee would be based on an institution's covered liabilities and would provide the Federal Deposit Insurance Corporation (FDIC) with a pool of funds to pay for FDIC-insured deposits held in failed institutions.

Biden also supports "green energy" tax changes. Specifically, if elected, Biden would support reinstating or expanding tax incentives intended to reduce carbon emissions, including:

- Deductions for emission-reducing investments in residential and commercial buildings, and
- Credits for buying electric vehicles produced by manufacturers with credits that have been phased out under current law.

If elected, Biden would also like to eliminate federal income tax deductions for oil and gas drilling costs and depletion.

In addition, real estate investors could see several tax breaks eliminated under the Biden plan. For example, Biden's plan would eliminate:

- The $25,000 exemption from the passive loss rules for rental real estate losses incurred by middle-income individuals,
- Section 1031 like-kind exchanges that allow deferral of capital gains taxes on swaps of appreciated real property,
- Rules that allow faster depreciation write-offs for certain real property, and
- QBI deductions for profitable rental real estate activities.

However, Biden generally supports enhancing the QBI deduction for owners of other pass-through entities, including sole proprietorships, LLCs, partnerships and S corporations, that aren't involved in rental real estate activities.

Under current law, the QBI deduction is phased out at higher income levels. For 2020, phase-out begins once taxable income (calculated before any QBI deduction) exceeds $163,300 for an unmarried individual or $326,600 for a married joint-filing couple. Other limitations apply in specific circumstances. Biden's plan would simplify matters by limiting QBI deductions only for individuals who earn more than $400,000. (As mentioned earlier, however, Biden would eliminate QBI deductions for rental real estate activities.)

Biden's Economic Plan

When accepting the Democratic Party nomination, Biden presented his plan to rebuild the U.S. economy from the damage incurred during the COVID-19 crisis. He pledged to invest in infrastructure; make improvements in education, health care and elder care; and pursue climate change initiatives.

These investments would be funded by tax increases on wealthiest 1% of individuals and the largest, most profitable corporations. "I'm not looking to punish anyone. Far from it. But it's long past time the wealthiest people and the biggest corporations in this country paid their fair share," said Biden during his acceptance speech at the Democratic National Convention.

Stay Tuned

The candidates' current positions on business tax matters are sketchy at best. Over the next couple weeks, their goals and strategies may become more detailed, especially if another debate happens. It's also important to remember that the president doesn't make legislation. Any post-election federal tax law changes would first have to pass in the House and Senate, before going to the president to sign into law — or veto.

Stay tuned for more information about the candidates' federal tax positions. We can help you and your business implement tax planning strategies based on the latest developments in the run-up to the 2020 national election.

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