VIRTUAL COFFEE TALK

Gotta Keep 'Em Stimulated: Tax Must-Knows About the Recent Pandemic Aid Measure

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Agenda

1 Employment tax provisions and what businesses need to know

2 Business tax provisions

3 A third round of stimulus payments

4 Noticeably absent provisions and what potentially lies ahead

Employee retention credit

- The employee retention credit (“ERC”) is a refundable employer credit equal to the ERC percentage multiplied by the Qualified Wages
- Governed by three sets of rules:
  - Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”)
  - Consolidated Appropriations Act, 2021 (“CAA”)
  - American Rescue Plan Act of 2021 (“Rescue Plan”)

Employee retention credit — eligible employer

- An eligible employer is an employer that is carrying on a trade or business during the calendar year and either:
  - Has a full or partial suspension of operations due to governmental orders associated with COVID-19
  - A significant decline in gross receipts
- Under the Rescue Plan, a recovery startup business is also an eligible employer
- What is a significant decline in gross receipts?

Employee retention credit — qualified wages

- Amount of qualified wages based on type of employer
  - “Small employer”
  - “Large employer”
  - “Financially distressed employer”
- Maximum qualified wages per employee
  - Wages paid after March 12, 2020 and before January 1, 2021
  - Wages paid first half of 2021
  - Wages paid second half of 2021

Employee retention credit — other changes

- Amount of advance payments
- Which taxes the ERC offsets before becoming refundable

POLLING QUESTION

Which relief provision has been most helpful to you or your clients?

- ☐ Employee retention credit
- ☐ Paid sick and family leave credits
- ☐ Net operating loss/excess business loss provisions
- ☐ None of the above

Paid sick and family leave and associated credits

- Under the Families First Coronavirus Response Act (“FFCRA”):
  - Employers with fewer than 500 employees were required to provide paid sick and family leave through December 31, 2020 to employees who were unable to work for COVID-related reasons
  - Employers received refundable payroll tax credits to partially cover expenses associated with such leave
- The CAA extended these provisions on a voluntary basis through March 31, 2021
- The Rescue Plan extends voluntary FFCRA paid leave through September 30, 2021 while making other notable changes

Paid sick and family leave — credit limitations under prior law

- The credit for sick leave was limited to the least of the following:
  - The employee's leave pay
  - $511 per day, not to exceed $5,110 for ten days, due to absence from work because of own illness
  - $200 per day, not to exceed $2,000 for ten days, due to absence from work because of family member's illness or child's school closure
- The paid family leave credit was limited to $200 per day and subject to a cap of $10,000 per year per employee

Paid sick and family leave — modifications made by the Rescue Plan

- The Rescue Plan makes a number of noteworthy changes to the paid sick and family leave provisions, including:
  - Increasing the maximum amount of family leave wages to $12,000 per year
  - Resetting the 10-day limitation on paid sick days after March 31, 2021
  - Expanding paid sick leave to include vaccination-related absences
- The Rescue Plan also adds nondiscrimination provisions

Unemployment compensation

- Up to $10,200 in unemployment compensation is exempt from taxation for individuals with adjusted gross income (AGI) of $150,000 or less
- This special rule is applicable for 2020 only
- IRS has said it will publish additional guidance for eligible taxpayers who have already filed for 2020

POLLING QUESTION

Who is going to win the men’s NCAA Tournament?

- ☐ Gonzaga
- ☐ Oral Roberts
- ☐ Baylor
- ☐ Oregon
- ☐ None of the above

Business tax provisions — expansion of deduction limits for highly paid employees

- Under section 162(m), as modified by the TCJA, publicly held corporations may not deduct wages or other compensation in excess of $1 million paid annually to the CEO, CFO, or the three highest-paid non-CEO or CFO employees
- The Rescue Plan expands this deduction limitation by five employees – to include the top eight highest-paid employees, plus the CEO and CFO
- The change is effective for taxable years beginning after December 31, 2026

Business tax provisions — repeal of worldwide interest

- The Rescue Plan maintains the status quo:
  - Allocation and apportionment of interest expense within a worldwide group is the same, including the availability of water's-edge elections
  - It repealed the election under section 864(f) that allowed U.S. affiliated groups to allocate and apportion interest on a worldwide basis, which had only recently become effective
- Repeal of worldwide interest allocation may increase taxes on worldwide affiliated groups that are relatively highly leveraged outside the United States

Business tax provisions — reduced reporting thresholds for 1099-K income

- Form 1099-K is used by credit card companies and third-party processors to report payment transactions they process
- Currently: more than $20,000 in aggregate payments over at least 200 transactions
- For calendar years beginning after December 31, 2021: more than $600 in aggregate payments, regardless of the number of transactions

Business tax provisions — excess business loss limitation extended through 2026

- Non-corporate taxpayers may not use trade-or-business losses to offset more than $500,000 in nonbusiness income
  - TCJA – taxable years beginning after December 31, 2017 and before January 1, 2026
  - CARES Act – limitation repealed for taxable years beginning before January 1, 2021
  - Rescue Plan – taxable years beginning after December 31, 2025 (post-TCJA) and before January 1, 2027

A third round of stimulus payments

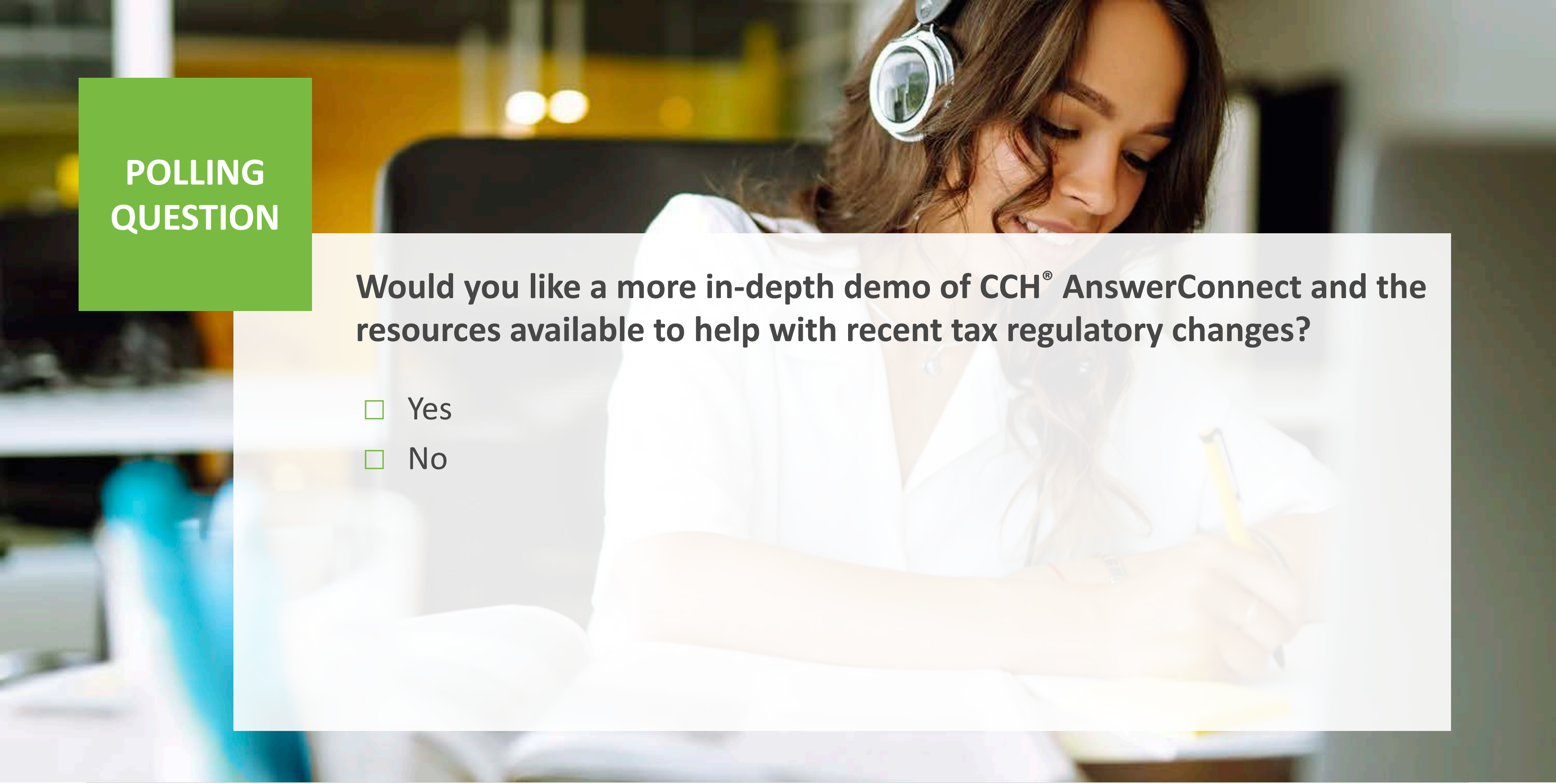
- The Rescue Plan provides individual taxpayers an advance refundable income tax credit against their 2021 tax liability in the amount of $1,400 ($2,800 for joint returns)
  - Increased in either case by $1,400 for each dependent of the taxpayer
  - College-age and other adult dependents are now able to qualify
- The new law adopts stricter income eligibility requirements than those included in previous legislation, reducing the amount of the credit (but not below zero) by 28% (i.e., by $28 for every $100) of the taxpayer's AGI that exceeds:
  - $150,000 if the taxpayer's filing status is married filing jointly
  - $112,500 if the taxpayer's filing status is head of household
  - $75,000 for all other taxpayers
- For taxpayers with dependents, consistent with previous rounds, the phase-out thresholds are slightly higher

Noticeably absent provisions

- Proposals missing from the new law include:
  - An increase in the federal minimum wage to $15 per hour
  - A repeal of the CARES Act’s net operating loss provisions
  - A repeal of the TCJA’s $10,000 cap on state and local tax deductions
- Biden Administration officials have left the door open for future action on some of these proposals pending further study or legislative developments
- However, the Senate’s reconciliation rules will likely continue to play an outsized role in determining which

The road ahead

- Democrats are now turning their attention to the "Build Back Better" plan
- The Build Back Better plan may be financed in part by tax increases on corporations and higher-income individuals
  - Budget reconciliation?
  - Effect of recent return to earmarks?
- President Biden's "Green Book" will likely provide greater insight into future tax-and-spending proposals



POLLING QUESTION

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Kevin M. Jacobs is a Managing Director with Alvarez & Marsal Taxand in Washington D.C. and the National Tax Office Practice Leader. He brings more than 15 years of experience in tax matters in both the public and the private sector.

Prior to joining A&M, Mr. Jacobs was a Senior Technician Reviewer (TCJA) with the IRS Office of Associate Chief Counsel (Corporate) for more than six years, where he advised on tax issues such as corporate re-organizations and corporation-shareholder issues, earning and profits, recovery and allocation of stock basis, liquidations, redemptions, bankruptcies, spin-offs and consolidated returns.

Mr. Jacobs was the principal Associate Chief Counsel (Corporate) attorney on several regulatory projects including the proposed section 382(h) regulations on built-in gains and losses, the global intangible low-taxed income regulations, and debt-equity regulations. He provided substantial contributions to numerous other guidance projects, such as the limitation on interest deductions regulations, and assisted in overseeing the Corporate Division's response to TCJA, including the coordination with Treasury's Offices of Tax Legislative Counsel and International Tax Counsel. Previously, Mr. Jacobs spent more than nine years at law and certified public accounting firms (Ropes & Gray LLP, Latham & Watkins LLP, Dewey Ballantine LLP and Arthur Andersen LLP).

Mr. Jacobs earned a bachelor's degree in accounting, a master's degree in accounting (with a concentration in taxation), a J.D. (magna cum laude) from the University of Florida and an LL.M. in taxation from New York University. He is admitted to practice before multiple courts, including the Supreme Court of the United States, the U.S. Tax Court and the U.S. Court of Federal Claims. He is admitted to the District of Columbia and Florida Bars and is a licensed Certified Public Accountant (CPA) in Florida and Colorado. Mr. Jacobs is a member of several organizations including the American Bar Association and the New York State Bar Association. He is also a frequent speaker on numerous corporate transaction tax matters.

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Before joining A&M, Mr. Boddicker served as tax and trade counsel to then-Senate Majority Whip John Thune and staff director of the Senate Finance Subcommittee on Taxation and IRS Oversight. Previously, he worked as tax and trade counsel to former Senator Dean Heller, where he acted as the Senator's chief tax advisor during committee and floor consideration of the Tax Cuts and Jobs Act, and as finance counsel to former Senator Cory Gardner.

Mr. Boddicker earned bachelor's degrees in economics and mathematics from the University of Iowa and the University of Arizona, respectively; a J.D. from American University, where he was Senior Note and Comment Editor of the American University International Law Review; and an LL.M. in taxation (with distinction) from Georgetown University Law Center. Mr. Boddicker is a member of the New York State Bar.

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