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BUSINESS TAX UPDATE FOR 2021 AND BEYOND

JCCS
ACCOUNTING
AUDIT
TAX
EMPLOYEE BENEFITS
SPECIALIZED SERVICES

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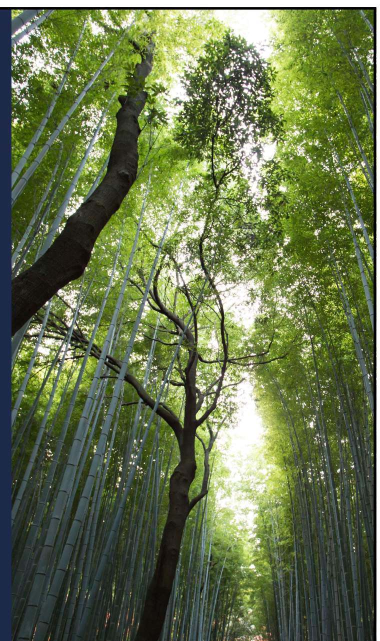
David Gilmer, CPA/ABV

David Gilmer is a certified public accountant, accredited in business valuations, a shareholder and the director of tax operations in a Montana-based public accounting firm. He has worked at JCCS, PC since 1998 assisting business owners navigate the tax law and performing long-term planning for both their business and personal goals. Dave holds a Bachelor of Science degree in accountancy from Northern Arizona University. He worked in private industry for a couple of years before joining JCCS.



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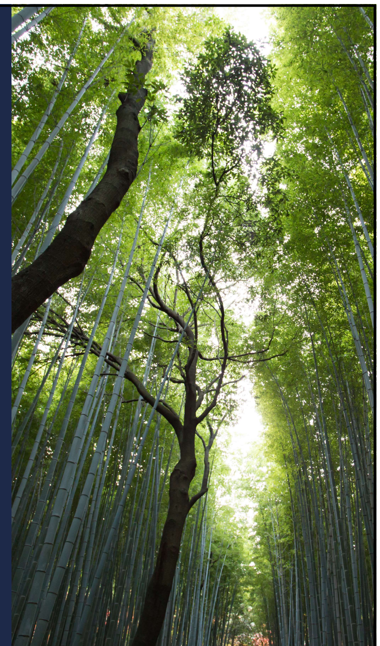
Marija Berney, CPA

Marija Berney, CPA is a tax manager with JCCS, PC. Marija enjoys helping clients navigate the complex and ever evolving world of tax law and financial reporting. She looks beyond their immediate needs to make sure that the advice she gives today will fit into tomorrow's big picture. Marija holds a degree in International Economics and Finance from University of Amsterdam. She has been with JCCS, PC for over 11 years servicing a diverse range of clients and industries.



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BUSINESS TAX UPDATE

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BUSINESS TAX UPDATE

2021 Federal Tax Laws

There has not been significant tax law changes for 2021 for business entities. Below are a few of the items that do vary from 2020:

Changes

- Business mileage deduction dropped to 56 cents per mile;
- Election to defer self-employment taxes does not apply to 2021;
- 100% deduction for business meals at restaurants (2021/2022);
    - This means you need to have different categories of meals on your Profit & Loss

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BUSINESS TAX UPDATE

2021 Federal Tax Laws

Changes (continued)

- NOLs will only offset 80% of income. There is no carryback provision for 2021.
- A cap of $250,000 on deductible business losses ($500,000 MFJ);
    - This limits the ability to offset non-business income with business losses.
- Business interest expense limitations back to 2019 rules.
    - Business interest can not cause business losses for larger businesses or businesses with significant non-participating ownership. Any expense not allowed is carried forward to future years.

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BUSINESS TAX UPDATE

Discussion in Congress

Regardless of your political affiliation, Congress over the past 20 years has made it their hobby to have taxpayers work with a constantly moving target, many times enacting laws that are either retro active or go into place immediately.

At the end of 2021, we found ourselves in a similar situation. Congress has been debating the Build Back Better Act for months, with various provisions added, then removed, then added back, then changed. Until they finally pass a law, it's anyone's guess as to what the future will look like. However, based upon the initial bill that passed the House of Representatives, here are some issues to be aware of.

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BUSINESS TAX UPDATE

Discussion in Congress

The majority of the changes highlighted in the Build Back Better bill are focused on individual income taxes. We did note the following business-related items:

Build Back Better

- An alternative minimum tax of 15% would be implemented on C-Corporations with income exceeding $1 billion.
- Business interest limitations (Section 163(j)) would all be calculated at the shareholder or partner level. Currently there is a discrepancy in procedure between S-Corporations and Partnerships.
- Small Business Stock (Section 1202 gains) on sales of qualified stock relates to the exempt portion of the gain. This exclusion could drop from 100% to 50%. There could also be AMT tax implications.

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BUSINESS TAX UPDATE

Discussion in Congress

Build Back Better (continued)

- Net investment income tax could be charged on all pass-through entity income that isn't already subject to self-employment income. This tax may only be applied to individuals with adjusted gross income over $400,000/$500,000.
- Excess business losses would not only be limited but separated out from net operating losses. Excess business loss carryforward would only be allowed to offset business income in the future, not other income like a net operating loss.
- If your total income goes over $10 million, you could be subject to additional surtaxes on your income.
- There are numerous discussions about various credits that could be implemented, expanded, or contracted.

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BUSINESS TAX UPDATE

Discussion in Congress

Items that have been discussed as potential changes that did not end up in the House bill include the following:

Tabled Ideas

- Increase in C-Corporation top tax rate to 26.5%;
- Limitation or removal of the Qualified Business Income deduction;
- Change to estate and gift valuation rules on "nonbusiness" assets in a business.

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BUSINESS TAX UPDATE

Discussion in Congress

An item not in the bill but being worked on by the IRS has to do with the deductibility of state income taxes by a business entity on their Federal return. States have spent several years trying to figure out how their residents may be able to deduct state income taxes. Most of those attempts have failed, but the IRS has issued a notice that they are working on rules and intend to propose regulations to clarify when and how a business can pay state level taxes for their owners and have that tax deducted on the Federal return. Although this notice was released around November of 2020, I have not seen these proposed regulations published yet.

Should these regulations go through, it does not appear that there is a law or method in Montana yet that would allow us to take advantage of this rule. I believe Montana would have to modify their current system to do so.

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BUSINESS TAX UPDATE

Montana Tax Simplification

Montana performed "simplification" actions. The theory behind this was that there were too many rules and credits that made Montana income taxes complicated but got very little use. They also desired to lower the top tax rate of the state to make Montana more attractive to businesses and individuals to move here. Some of these changes start in 2022 while others do not go into effect until 2024. We've listed out many items that will change even if they are not specifically business focused.

These changes, specifically the reduction of the tax rate, is subject to delay of implementation due to the American Rescue Plan Act of March 2021. The Federal funding Montana receives for covid relief limits the ability of states to reduce their tax revenue.

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BUSINESS TAX UPDATE

Montana Tax Simplification

2022

- Fifteen Montana Tax Credits were repealed:
  - Energy Conservation Credit
  - Alternative Energy Credit
  - College Contribution Credit
  - Geothermal System Credit
  - Adoption Credit
  - Elderly Care Credit
  - Health Insurance for Uninsured Montanans Credit
  - Alternative Energy Production Credit
  - Dependent Care Assistance and Referral Credit
  - Alternative Fuel Credit

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BUSINESS TAX UPDATE

Montana Tax Simplification

2022

- Montana Tax Credits repealed (continued):
  - Mineral/Coal Exploration Incentive Credit
  - Biodiesel and Blending Credit
  - Emergency Lodging Credit
  - Empowerment Zone Credit
  - Oil Seed Crush Facility Credit
- Reduction in top tax rate from 6.9% to 6.75%;
- Increased limit on a tax credit for contribution to Student Scholarship Organizations or Innovative Educational Programs;
- Increased Elderly Homeowner/Renter Credit.

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BUSINESS TAX UPDATE

Montana Tax Simplification

2024

- Filing status for Montana must match that of the Federal return;
- Montana return will start with Federal Taxable Income;
  - A number of Montana subtractions have been repealed. This means there will be less adjustments between Federal and Montana income.
- Montana MSA accounts will not deduct contributions anymore.
- Montana tax brackets will drop from the current 6 brackets to only 2;
  - 4.7% & 6.5%
- Montana tax brackets will have separate brackets for single vs MFJ;
- Capital gains tax credit has been repealed. There will be subtractions to income for 30% of long-term capital gains.

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BUSINESS TAX UPDATE

Other Montana Issues

Personal Property Taxes

- Taxes are due on business personal property. That includes basically everything that is not real property:
  - Equipment
  - Furniture & fixtures
  - Ag implements & equipment
  - Heavy equipment
  - Mining & manufacturing machinery
  - Supplies

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BUSINESS TAX UPDATE

Other Montana Issues

Personal Property Taxes

- Reports are due annually by March 1. Reports are now filed on the Montana Department of Revenue's TransAction Portal (TAP).
  - New businesses will need to contact the DOR to obtain a paper form to complete and file timely since they will not have the Account ID assigned to them yet.
- If you have property in more than one county, you have to file a separate report for each county.
- Late filed returns are assessed a 20% penalty.
- Tax is assessed based upon the fair market value of the property. You indicate the estimated fair market value as part of your reporting.
- The state does audit business owners regarding this filing.

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BUSINESS TAX UPDATE

Other Montana Issues

Personal Property Taxes

- The tax rate varies by county. Affected by mills levies.
- Law change for 2022.
  - For 2021 and prior, you were generally exempt from filing if your statewide value of property was $100,000 or less.
  - For 2022, the exemption amount has been increased to $300,000.

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BUSINESS TAX UPDATE

Multi-State Issues

Every state has their own laws related to state-level taxation of business activity. If you do any work for, in or to another state, you should speak with your CPA regarding the consequences in that particular state. Below are general rules related to these activities.

Apportionment

- Although each state has its own allocation, the general items looked at in splitting net income to individual states are:
  - Revenue generated;
  - Property owned or rented;
  - Wages paid.
- Montana will start double-weighting the sales factor starting in 2021
- So if you have an employee in another state or generate revenue in other state, you may have a filing obligation and owe tax to that state.

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BUSINESS TAX UPDATE

Multi-State Issues

During the pandemic, remote work has exploded. Employees are now being hired by out-of-state companies or continue to work for their employer while moving to a new state.

If you employ any individual that lives in a different state, you likely have payroll tax withholding and filing obligations for that state. Employee and wage accounts will need to be obtained with that state's Department of Revenue (or similar department). You are also likely to need to set up unemployment coverage in that state as well. Speak with your CPA immediately if this applies to you and you haven't been withholding state taxes.

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BUSINESS TAX UPDATE

Multi-State Issues

In 2018, the U.S. Supreme Court made a decision in the South Dakota vs Wayfair case regarding collection of sales taxes by out-of-state sellers. Since this occurred, states across the country have been putting rules into place to identify when businesses are obligated to collect sales taxes on sales to their state. Some states monitor this activity very closely. Although each state has their own rules, the majority of them revolve around a revenue threshold or number of transactions threshold. If you are a retailer selling products to customers in other states, you should find out what the thresholds are for that state. Most states are generally looking at sales of $100,000 or greater.

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BUSINESS TAX UPDATE

Other Common Issues

There are numerous other issues that auditors always pay attention to. It is important to make sure you have substantiation for and follow all the rules related to:

- Business auto use;
- Business meals;
- Business travel;
- Employee vs independent contractor;
- Form 1099 reporting;
- Home offices;
- Employee benefits;

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Questions?

It has been our pleasure to meet with you today and provide an update on the various tax, employment, and operation changes and challenges that businesses are facing. We appreciate your time and welcome the opportunity to be of service to you.

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