



MOSSADAMS

Key Tax Considerations for Your E-Commerce Company

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Speakers



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Agenda

01 THE LEGISLATIVE PROCESS

02 CURRENT FEDERAL TAX PROPOSALS

03 STATE AND LOCAL TAX UPDATES

04 QUESTIONS



The Legislative Process



Budget Reconciliation Process

BUDGET RECONCILIATION PROCESS REQUIRES SIMPLE MAJORITY

- Provisions must have budgetary effect
- Cannot increase deficit beyond 10-year period, unless offset by other changes in same bill
- No changes to Social Security

MAXIMUM OF 3 BUDGET RECONCILIATION BILLS EACH YEAR

- Previously used for 2001/2003 tax cuts and 2017 tax reform



Timeline

What happens next

Ways & Means Committee

SEPTEMBER 15

House Ways and Means
Committee approves bill

House & Senate

OCTOBER/NOVEMBER

Propose changes
Vote and pass final
package

President

NOVEMBER/DECEMBER

President Biden sign into
law?



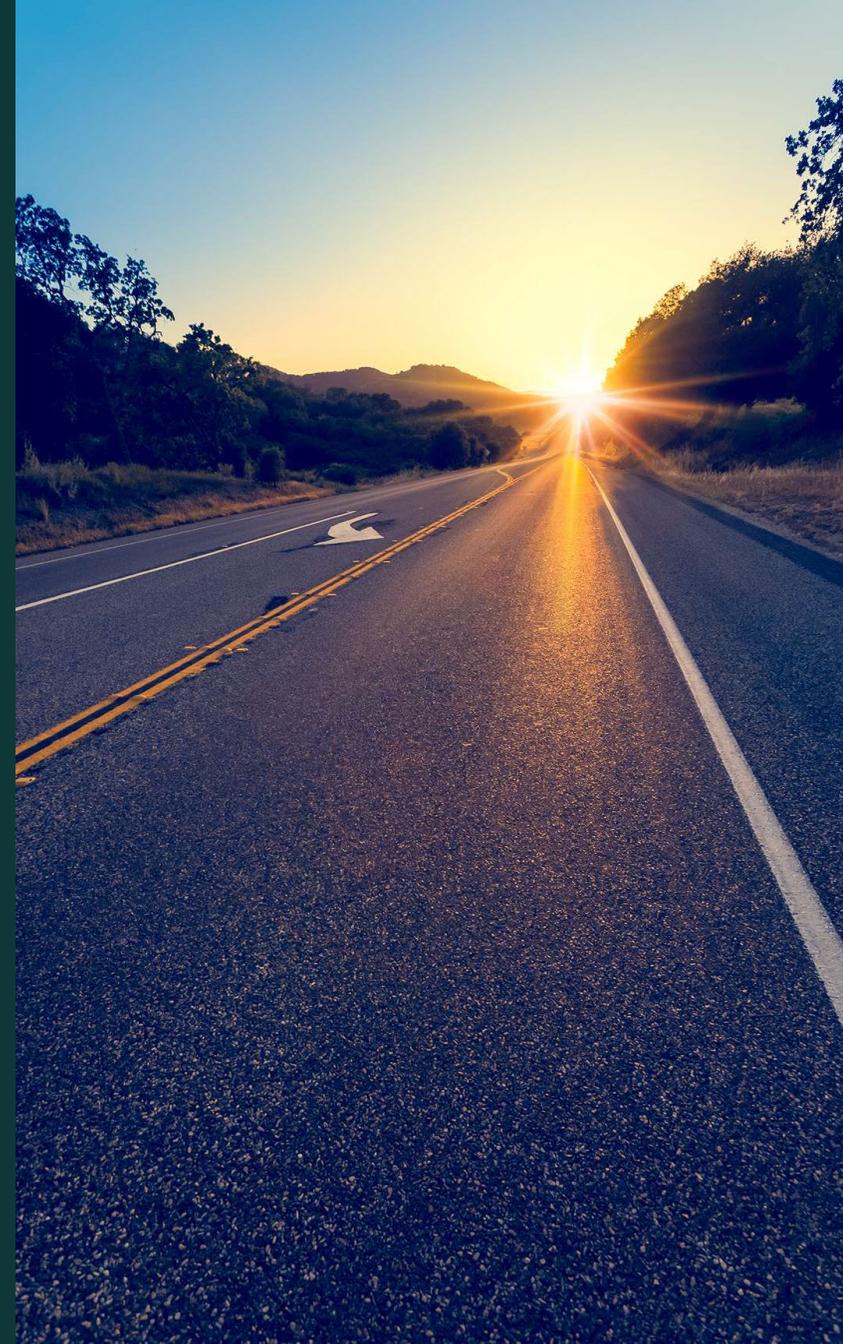
Current State of Congress

HOUSE

211 Republicans and 220 Democrats
(4 Current Vacancies)

SENATE

50 Republicans and 50 Democrats



34 US Senators up for Re-Election in 2022

DEMOCRATIC PARTY

- Colorado
- Connecticut
- Nevada
- Illinois
- California
- Louisiana
- Vermont
- Washington
- Hawaii
- New York
- Maryland
- Oregon
- New Hampshire

REPUBLICAN PARTY

- Missouri
- Arkansas
- North Carolina
- Idaho
- Iowa
- North Dakota
- Wisconsin
- Oklahoma
- Utah
- Georgia
- Arizona
- Kansas
- Alaska
- South Dakota
- Kentucky
- Ohio
- Florida
- South Carolina
- Alabama
- Pennsylvania
- Indiana



Current Federal Tax Proposals



Business Tax Proposals

	CURRENT LAW	BIDEN ADMINISTRATION	HOUSE WAYS & MEANS
Corporate income tax rate	21%	<ul style="list-style-type: none"> • 28% corporate tax rate • For corporations reporting more than \$100 million of annual book income, enact a 15% “minimum tax” on book profits, reduced by any foreign taxes paid or loss carryovers allowed 	<ul style="list-style-type: none"> • Graduated tax rates: <ul style="list-style-type: none"> • 18% on first \$400K of income • 21% on income up to \$5M • 26.5% on all additional income • Graduated rates do not apply if income > \$10M • No book minimum tax provision • Increase 50% DRD to 65% and 65% DRD to 72.5%
Qualified business income (QBI) deduction	Taxpayers other than C corporations are allowed a 20% deduction of QBI for pass-through entities or qualified REIT income, with some limitations. Set to expire December 31, 2025.	Phase out the deduction for taxpayers earning more than \$400K.	Maximum allowable <i>deduction</i> at \$400K/\$500K (single/MFJ)*

*Wyden proposal would phase out deduction at same amount and repeal rules that limit the deduction



House Ways & Means Tax Proposals



Amortization requirement for R&D expenses deferred to years beginning after 2025



1202 stock for taxpayers with AGI > \$400K for sales and exchanges made after September 13, 2021, subject to binding contract exception



Expand aggregation rules to include any trade or business under Section 469



Business interest limitation under Section 163(j) amended to apply at the partner level, not partnership level



Permit certain eligible S corporations to reorganize as partnerships without triggering tax for two-year period



Increase holding period for carried interests to five years



House Ways & Means Tax Proposals

ENERGY

- Extend production tax credit
- Expand investment tax credit
- New credits for clean or renewable energy
- Increase Section 179D deduction

EMPLOYEES

- Increase work opportunity tax credit (WOTC) to 50% for the first \$10k for through 2023

PROPERTY

- Increase historic rehabilitation credit
- Make the new markets credit permanent
- Create neighborhood homes credit



Individual Tax Proposals

	CURRENT LAW	BIDEN ADMINISTRATION	HOUSE WAYS & MEANS
Individual tax rate	Top rate is 37%, expiring after 2025.	Raise top marginal tax rate to pre-TCJA rate of 39.6%.	<ul style="list-style-type: none"> • Raise top marginal rate to 39.6% for those earning > \$400K/ \$450K (single/MFJ). • 3% surtax for modified AGI > \$5M.
Capital gain rate	Top rate is 20%. Additionally, 3.8% NIIT for income over \$200K/\$250K (single/MFJ).	Remove preferential rate for capital gains and qualified dividends for taxpayers with income over \$1 million by taxing them at ordinary rates. Would retain 3.8% NIIT.	<ul style="list-style-type: none"> • Raise tax rate on LTCGs and qualified dividends to 25%, for transactions after September 13, 2021, subject to written binding contract provisions • NIIT expanded to include NII from ordinary course of T/B for > \$400K/\$500K (single/MFJ) and special rules for estates/trusts



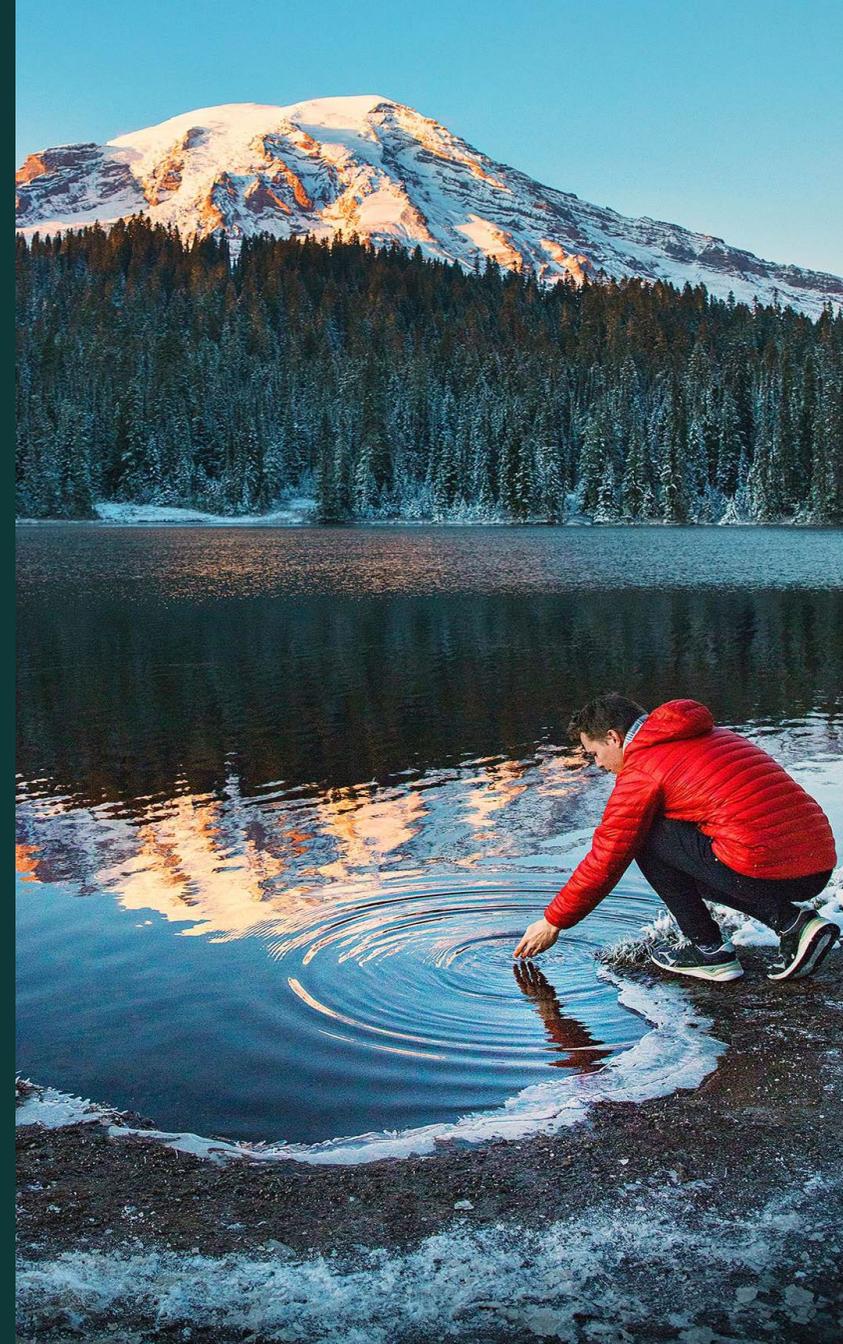
Individual Tax Proposals

	CURRENT LAW	BIDEN ADMINISTRATION	HOUSE WAYS & MEANS
Retirement incentives	<ul style="list-style-type: none">• Most workers can contribute up to \$19,500 a year to a 401(k) account (an additional \$6,500 if age 50 or higher).• The deferred salary isn't includable in taxable income until withdrawn.	<ul style="list-style-type: none">• Help small businesses cover the costs of setting up "automatic 401(k)" plans for workers without access to pensions or 401(k) plans.• Change the current deduction for retirement contributions to a credit.	<ul style="list-style-type: none">• Prohibit contributions to IRA if total value of IRA and defined contribution accounts > \$10M.• Annual reporting requirement on aggregate account balances > \$2.5M.• Eliminate back-door Roth conversions.
Excess business losses	Excess business losses for non-corporate taxpayers limited to \$250K/\$500K (single/MFJ) through 2025 (adjusted for inflation); excess is NOL carryforward.	Permanently disallow excess business losses for non-corporate taxpayers.	Permanently disallow excess business losses for non-corporate taxpayers and remove one-year deferral (retroactive to tax years beginning after December 31, 2020).



Not Included... So Far

- SALT cap repeal or relief (but it remains a priority)
- Repeal of step-up in basis for inherited assets
- Repeal of like-kind exchange rules
- Repeal of fossil fuel incentives



International Tax Proposals

- Significantly change the GILTI system
 - Move to country-by-country approach
 - Reduce Section 250 deduction from 50% to 37.5%
 - Reduce QBAI exemption from 10% to 5%
- Reduce FDII deduction from 37.5% to 21.875%
- Apply FTC limitation rules on a country-by-country basis
- New limitation on deduction of interest expense for foreign-parented multinational groups



POLLING QUESTION

What area of the new tax proposal gives you the most concern?

- A. Increase in corporate tax rate
- B. Increase in individual tax rate
- C. Limitation on QBI Deduction
- D. Increase in capital gains rate
- E. Changes to the int'l tax provisions
- F. Other



State and Local Tax Updates



California

1. California Tax Increase Proposals
2. State Tax Deduction Work Around
3. Changing State of Residency
4. CA AB 85



Tax Increase Proposals

- Income Tax Rate Increase Proposals
- Wealth Tax Proposals
- Prop 19 – Property Tax Base on Inherited Homes



State Tax Deduction Work Around

- Tax Cuts & Jobs Act limited SALT deduction to \$10k
- SALT Cap workarounds are now being passed by several states (i.e. California, New York, Oregon, etc.)
- Allows passthrough entities to pay and deduct state and local taxes



Changing State of Residency

- Residency is determined based on facts and circumstances
- No bright line tests to determine residency
- Some factors that are considered in determining residency:
 - Amount of time you spend in California versus amount of time you spend outside California
 - Location of your spouse and children
 - Location of your principal residence
 - State that issued your driver's license
 - State where your vehicles are registered
 - State where you maintain your professional licenses
 - State where you are registered to vote
 - Location of the banks where you maintain accounts
 - The origination point of your financial transactions



CA AB 85

NET OPERATING LOSS LIMITATION

The legislation, which applies to individuals, flow-through entities, and C corporations, disallows the use of California NOL deductions if the following conditions apply:

- The taxpayer recognizes business income
- The taxpayer has a federal adjusted gross income—or, for corporations, income subject to tax—that's greater than \$1 million

BUSINESS TAX CREDIT LIMITATION

Any business credit will only offset a maximum of \$5 million of California tax. California defines the term business credit as including the California Research Credit and the California Competes Tax Credit, among other business credits.

The carryover periods, if applicable, are extended by the number of years that a credit is disallowed by reason of this limitation.



Action Items for You and Your Organization

Addressing the four action items below should help your e-commerce company manage its tax strategy.

1



Stay attuned to what is currently happening with tax changes and new laws.

2



Get started on year-end tax planning now.

3



PTEs to review the state tax workaround before year-end.

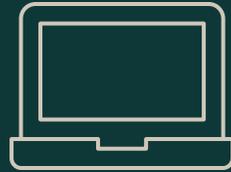
4



Review your company's state nexus profile.



E-commerce Series: Up Next



E-COMMERCE STRATEGIC PLANNING: CHART YOUR PATH FORWARD

November 11, 2021 at 10am



➤ QUESTIONS

Let's start a conversation.

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