# LINDA C. SLIDER

*ATTORNEY AT LAW*

P.O. BOX 5756
WALNUT CREEK, CALIFORNIA 94596

TEL: (925) 932-8450
FAX: (925) 938-4844
LINDA@SLIDERLAW.COM


December 1, 2022

Dear Clients and Friends:

With the year-end fast approaching, I wanted to review some recent tax law changes and remind you of some moves that may help lower your income tax bill for this year and next. This year's planning is (as usual) challenging, due to various legislative proposals under discussion which might (if adopted) impact next year's income taxes. Whether any of these proposals will become law is extremely uncertain, given both budgetary concerns and the results of the mid-term elections. In the face of this uncertainty, I hope you find the following discussion of recent tax law changes and possible year-end tax moves useful.

**TAX CHANGES IN THE INFLATION REDUCTION ACT OF 2022**: The Inflation Reduction Act of 2022 (the "Act") was adopted in August, 2022, and contains several new environment-related tax credits that are of interest to individuals and small businesses. The Act also extends and modifies some pre-existing credits. These credits include:

- Before the enactment of the Act, you were allowed a personal credit for specified nonbusiness energy property expenditures. The credit applied only to property placed in service before January 1, 2022. Now you may take the credit for energy-efficient property placed in service before January 1, 2033. The Act increases the credit for a tax year to an amount equal to 30% of the sum of (i) the amount paid or incurred by you for qualified energy efficiency improvements installed during that year, and (ii) the amount of the residential energy property expenditures paid or incurred by you during that year. The credit is further increased for amounts spent for a home energy audit. The amount of the increase due to a home energy audit can't exceed $150. The Act also repeals the lifetime credit limitation, and instead limits the allowable credit to $1,200 per taxpayer per year. In addition, there are annual limits of $600 for credits with respect to residential energy property expenditures, windows, and skylights, and $250 for any exterior door ($500 total for all exterior doors). Notwithstanding these limitations, a $2,000 annual limit applies with respect to amounts paid or incurred for specified heat pumps, heat pump water heaters, and biomass stoves and boilers.

- Before the enactment of the Act, you were allowed a personal tax credit, known as the residential energy efficient property (REEP) credit, for solar electric, solar hot water, fuel cell, small wind energy, geothermal heat pump, and biomass fuel property installed in homes in years before 2024. The Act makes the credit available for property installed in years before 2035. The Act also makes the credit available for qualified battery storage technology expenditures.


*Internal Revenue Service Treasury Regulations require that I inform you that, to the extent that this communication or its attachments concern federal tax issues, any advice contained in this communication or any attachment thereto is not intended or written to be used, and cannot be used, to avoid penalties under the Internal Revenue Code.*

- Before the enactment of the Act, a New Energy Efficient Home Credit ("NEEHC") was available to eligible contractors for qualified new energy efficient homes acquired by a homeowner before January 1, 2022. A home had to satisfy specified energy saving requirements to qualify for the NEEHC credit. The NEEHC credit was either $1,000 or $2,000, depending on which energy efficiency requirements the home satisfied. The Act makes the NEEHC credit available for qualified new energy efficient homes acquired before January 1, 2033. The amount of the NEEHC credit is increased, and can be $500, $1,000, $2,500, or $5,000, depending on which energy efficiency requirements the home satisfies and whether the construction of the home meets prevailing wage requirements.

- Before the enactment of the Act, you could claim a credit for each new qualified plug-in electric drive motor vehicle ("NQPEDMV") placed in service during the tax year. The Act, among other things, retitles the NQPEDMV credit as the Clean Vehicle Credit ("CVC") and eliminates the limitation on the number of vehicles eligible for the CVC credit. Also, final assembly of the vehicle must take place in North America. No CVC credit is allowed if the lesser of your modified adjusted gross income for the year of purchase or the preceding year exceeds $300,000 for a joint return or surviving spouse, $225,000 for a head of household, or $150,000 for others. In addition, no CVC credit is allowed if the manufacturer's suggested retail price for the vehicle is more than $55,000 ($80,000 for pickups, vans, or SUVs). Finally, the way the CVC credit is calculated is changing. The rules are complicated, but they place more emphasis on where the battery components (and critical minerals used in the battery) are sourced.

- A qualified buyer who acquires and places in service a previously-owned clean vehicle after 2022 is allowed an income tax credit equal to the lesser of $4,000 or 30% of the vehicle's sale price. No credit is allowed if the lesser of your modified adjusted gross income for the year of purchase or the preceding year exceeds $150,000 for a joint return or surviving spouse, $112,500 for a head of household, or $75,000 for others. In addition, the maximum price per vehicle is limited to $25,000.

- There is a new qualified commercial clean-vehicle credit for qualified vehicles acquired and placed in service after December 31, 2022. The credit per vehicle is the lesser of: (i) 15% of the vehicle's basis (30% for vehicles not powered by a gasoline or diesel engine) or (ii) the "incremental cost" of the vehicle over the cost of a comparable vehicle powered solely by a gasoline or diesel engine. The maximum credit per vehicle is $7,500 for vehicles with gross vehicle weight ratings of less than 14,000 pounds, or $40,000 for heavier vehicles.

- Under prior law, a "qualified small business" ("QSB") with qualifying research expenses could elect to claim up to $250,000 of its credit for increasing research activities as a payroll tax credit against the employer's share of Social Security tax. Due to concerns that some small businesses may not have a large enough income tax liability to take advantage of the research credit, for tax years beginning after December 31, 2022, QSBs may apply an additional $250,000 in qualifying research expenses as a payroll tax credit against the employer share of Medicare. The credit can't exceed the tax imposed for any calendar quarter, with unused amounts of the credit carried forward.

- Under prior law, you could claim a credit for sales and use of biodiesel and renewable diesel that you use in your trade or business or sold at retail and placed in the fuel tank of the buyer for such use and sales on or before December 31, 2022. The Act now provides that you can claim a credit for sales and use of biodiesel and renewable diesel fuel, biodiesel fuel mixtures, alternative fuel, and alternative fuel mixtures on or before December 31, 2024. You are also now allowed to claim a refund of excise tax for use of (i) biodiesel fuel mixtures for a purpose other than for which they were sold or for resale of such mixtures on or before December 31, 2024, and (ii) alternative fuel as that used in a motor vehicle or motorboat or as aviation fuel, for a purpose other than for which they were sold or for resale of such alternative fuel mixtures on or before December 31, 2024.

**YEAR-END TAX PLANNING FOR INDIVIDUAL TAXPAYERS**: Whether or not proposed tax increases are passed next year, the standard year-end approach of deferring income and accelerating deductions to minimize taxes will continue to produce the best results for all but the highest-income taxpayers, as will the bunching of deductible expenses into this year or next to avoid restrictions and maximize deductions. If proposed tax increases do pass, however, high-income taxpayers may find that the opposite strategies produce better results (i.e., accelerating income into 2022 to be taxed at currently lower rates, and deferring deductible expenses until 2023, when they can be taken to offset what would be higher-taxed income). High-income taxpayers should carefully evaluate all relevant factors as they consider year-end moves.

Here is a list of actions based on current tax rules that may help you save tax dollars if you act before year-end. Not all of these actions will apply to you, but you (or a family member) may benefit from many of them. Again, if you are a high-income taxpayer already subject to tax at the highest brackets, you should exercise caution before taking actions which would pull taxable income into 2022 or defer deductions until 2023. These potential tax-savings actions include:

- Higher-income individuals must be wary of the 3.8% surtax on certain unearned income. The net investment income tax ("NIIT") is 3.8% of the lesser of: (i) net investment income ("NII"), or (ii) the excess of modified adjusted gross income ("MAGI") over a threshold amount ($250,000 for joint filers or surviving spouses, $125,000 for a married individual filing a separate return, and $200,000 in any other case). As year-end nears, the approach taken to minimize or eliminate the 3.8% surtax will depend on the taxpayer's estimated MAGI and NII for the year. Some taxpayers should consider ways to minimize (e.g., through deferral) additional NII for the balance of the year, others should try to reduce MAGI other than NII, and some individuals will need to consider ways to minimize both NII and other types of MAGI. An important exception is that NII does not include distributions from IRAs or most other retirement plans.

- The 0.9% additional Medicare tax also may require higher-income earners to take year-end action. It applies to individuals whose employment wages and self-employment income total more than an amount equal to the NIIT thresholds (discussed above). Employers must withhold the additional Medicare tax from wages in excess of $200,000 regardless of filing status or other income. Self-employed persons must take it into account in figuring estimated tax. There could be situations where an employee may need to have more withheld toward the end of the year to cover the tax. This would be the case, for example, if an employee earns less than $200,000 from multiple employers

but more than that amount in total. Such an employee would owe the additional Medicare tax, but nothing would have been withheld by any employer.

- Long-term capital gain from sales of assets held for over one year is taxed at 0%, 15% or 20%, depending on the taxpayer's taxable income. If you hold long-term appreciated assets, consider selling enough of them to generate long-term capital gains that can be sheltered by the 0% rate. The 0% rate generally applies to net long-term capital gain to the extent that, when added to regular taxable income, it is not more than the maximum zero rate amount (e.g., $83,350 for a married couple, and $41,675 for a single taxpayer). Pay attention to the amount of capital gains to be taxed at the zero rate before deciding to "harvest" tax losses. For example, if the $5,000 of long-term capital gains you recognized earlier this year qualifies for the zero rate, then try not to sell assets yielding a capital loss before year-end (because the first $5,000 of those losses will offset $5,000 of capital gain that is already tax-free). Instead, consider delaying the "harvesting" of capital losses until 2023 for use to potentially offset capital gains which are taxed at the 15% or 20% rate.

- Postpone income until 2023 and accelerate deductions into 2022 if doing so will enable you to claim larger deductions, credits, and other tax breaks for 2022 that are phased out over varying levels of adjusted gross income ("AGI"). These tax breaks subject to phase out may include deductible IRA contributions, child tax credits, higher education tax credits, and deductions for student loan interest. Postponing income also is desirable for taxpayers who anticipate being in a lower tax bracket next year due to changed financial circumstances. Note, however, that in some cases, it may actually pay to accelerate income into 2022. For example, that may be the case for a person who will have a more favorable filing status this year than next (e.g., head of household versus individual filing status), or who expects to be in a higher tax bracket next year. That's especially a consideration for high-income taxpayers who may be subject to higher rates next year under proposed legislation.

- If you believe a Roth IRA is better for you than a traditional IRA, consider converting traditional-IRA money invested in any beaten-down stocks (or mutual funds) into a Roth IRA in 2022 (if eligible to do so). Keep in mind that the conversion will increase your income for 2022, possibly reducing tax breaks subject to phaseout at higher AGI levels. This may still be desirable, however, for those potentially subject to higher tax rates if proposed legislation is enacted to raise tax rates for high-income taxpayers in 2023.

- It may be advantageous to try to arrange with your employer to defer payment of any bonus that may be coming your way until 2023. This will defer your tax on the bonus and may also reduce your tax (if you expect to be in a lower tax bracket in 2023). Again, considerations may be different for the high-income individuals.

- Many taxpayers won't want (or need) to itemize because of the high basic standard deduction amounts that apply for 2022 ($27,700 for joint filers, $13,850 for singles and for marrieds filing separately, $20,800 for heads of household), and because many itemized deductions have been reduced or abolished. For example, the deduction for state and local taxes (the "SALT Deduction") is limited to $10,000 per return (regardless

of filing status), and miscellaneous itemized deductions and non-disaster related personal casualty losses are disallowed for 2022. You can still itemize medical expenses that exceed 7.5% of your AGI, state and local taxes up to $10,000, your charitable contributions, plus mortgage interest deductions on a restricted amount of debt, but these deductions won't save taxes unless they total more than your standard deduction.

- Some taxpayers may be able to work around these deduction restrictions for itemized deductions by applying a bunching strategy to pull or push discretionary medical expenses and charitable contributions into the year where they will do some tax good. For example, a taxpayer who will be able to itemize deductions this year but not next will benefit by making two years' worth of charitable contributions this year. The COVID-related increase for 2022 in the income-based charitable deduction limit for cash contributions from 60% to 100% of MAGI assists in this bunching strategy.

- Consider using a credit card to pay deductible expenses before the end of the year. Doing so will increase your 2022 deductions even if you don't pay your credit card bill until after the end of the year.

- If you expect to owe state and local income taxes when you file your return next year and you will be itemizing in 2022, consider asking your employer to increase withholding of state and local taxes (or make estimated tax payments of state and local taxes) before year-end to pull the deduction of those taxes into 2022. But this strategy is not effective to reduce taxes to the extent it causes your 2022 state and local tax payments to exceed the $10,000 limit on SALT Deductions.

- Required minimum distributions ("RMDs") from an IRA or 401(k) plan (or other employer-sponsored retirement plan) have not been waived for 2022. If you were 72 or older in 2022, you must take an RMD. Those who turn 72 in 2022 have until April 1 of 2023 to take their first RMD, but they may want to take it by the end of 2022 to avoid having to double up on RMDs next year.

- If you are age 70½ or older by the end of 2022, and especially if you are unable to itemize your deductions, consider making 2022 charitable donations via qualified charitable distributions from your traditional IRAs. These distributions are made directly to charities from your IRAs, and the amount of the contribution is neither included in your gross income nor deductible on Schedule A, Form 1040. However, you are still entitled to claim the entire standard deduction. (The qualified charitable distribution amount is reduced by any deductible contributions to an IRA made for any year in which you were age 70½ or older, unless it reduced a previous qualified charitable distribution exclusion.)

- Take an eligible rollover distribution from a qualified retirement plan before the end of 2022 if you are facing a penalty for underpayment of estimated tax and increasing your wage withholding won't sufficiently address the problem. Income tax will be withheld from the distribution and will be applied toward the taxes owed for 2022. If you have not previously made a 60-day rollover of an IRA distribution in the past twelve months, and you timely roll over the gross amount of the distribution (i.e., the net amount you

received plus the amount of withheld tax) to a traditional IRA within 60 days of the IRA distribution, no part of the distribution will be includible in income for 2022. However, the withheld tax will still be applied pro rata over the full 2022 tax year to reduce previous underpayments of estimated tax.

- Consider increasing the amount you set aside for next year in your employer's FSA if you set aside too little for this year and anticipate similar medical costs next year.

- If you become eligible in December of 2022 to make HSA contributions, you can make a full year's worth of deductible HSA contributions for 2022.

- Make gifts sheltered by the annual gift tax exclusion before the end of the year if doing so may save gift and estate taxes. The exclusion applies to gifts of up to $16,000 made in 2022 to each of an unlimited number of individuals. You can't carry over unused exclusions to another year. These transfers may save family income taxes where income-earning property is given to family members who are in lower income tax brackets (as long as they are not subject to the kiddie tax).

- If you were in federally declared disaster area, and you suffered uninsured or unreimbursed disaster-related losses, keep in mind you can choose to claim them either on the return for the year the loss occurred (in this instance, the 2022 return normally filed next year), or on the return for the prior year (2021), generating a quicker refund.

- If you were in a federally declared disaster area, you may want to settle an insurance or damage claim in 2022 to maximize your casualty loss deduction this year.

**YEAR-END TAX PLANNING FOR BUSINESSES**: Once again, whether or not proposed tax increases are passed for next year, the standard year-end approach of deferring income and accelerating deductions to minimize taxes will continue to produce the best results for all but the highest-income businesses and their owners, as will the bunching of deductible expenses into this year or next to avoid restrictions and maximize deductions. If proposed tax increases do pass, however, high-income businesses and owners may find that the opposite strategies produce better results (i.e., pulling income into 2022 to be taxed at currently lower rates, and deferring deductible expenses until 2023, when they can be taken to offset what would be higher-taxed income). High-income businesses and their owners should carefully evaluate all relevant factors as they consider year-end moves.

Here is a list of actions based on current tax rules that may help you save tax dollars if you act before year-end. Not all of these actions will apply to your business, but your business may benefit from many of them. Again, if your business is a high-income taxpayer already subject to tax at the highest brackets, you should exercise caution before taking actions which would pull taxable income into 2022 or defer deductions until 2023. These potential tax-savings actions include:

- Taxpayers other than corporations may be entitled to a deduction of up to 20% of their qualified business income. For 2022, if taxable income exceeds $340,100 for a married couple filing jointly (about half that for taxpayers with another filing status), the

deduction may be limited based on whether the taxpayer is engaged in a service-type trade or business (such as law, accounting, health, or consulting), the amount of W-2 wages paid by the business, and/or the unadjusted basis of qualified property (such as machinery and equipment) held by the business. The limitations are phased in. The phase-in applies to joint filers with taxable income up to $100,000 above the threshold, and to other filers with taxable income up to $50,000 above their threshold. Taxpayers may be able to salvage some or all of this deduction, by deferring income or accelerating deductions to keep income under the dollar thresholds (or be subject to a smaller deduction phaseout) for 2022. Depending on their business model, taxpayers also may be able increase the deduction by increasing W-2 wages before year-end. The rules are quite complex, so don't make a move in this area without consulting your accountant.

- More small businesses are able to use the cash (as opposed to accrual) method of accounting than were allowed to do so in earlier years. To qualify as a small business a taxpayer must, among other things, satisfy a gross receipts test, which is satisfied for 2022 if, during a three-year testing period, average annual gross receipts don't exceed $27 million. Cash method taxpayers may find it easier to shift income, for example by holding off billings till next year or by accelerating expenses, for example, paying bills early or by making certain prepayments.

- Businesses should consider making expenditures that qualify for the liberalized business property expensing option. For tax years beginning in 2022, the expensing limit is $1,080,000, and the investment ceiling limit is $2,700,000. Expensing is generally available for most depreciable property (other than buildings) and off-the-shelf computer software. It is also available for interior improvements to a building (but not for its enlargement, elevators or escalators, or the internal structural framework), for roofs, and for HVAC, fire protection, alarm, and security systems. The generous dollar ceilings mean that many small and medium sized businesses that make timely purchases will be able to currently deduct most if not all their outlays for machinery and equipment. What's more, the expensing deduction is not prorated for the time that the asset is in service during the year. Expensing eligible items acquired and placed in service in the last days of 2022, rather than at the beginning of 2023, can result in a full expensing deduction for 2022.

- Businesses also can claim a 100% bonus first year depreciation deduction for machinery and equipment bought used (with some exceptions) or new if purchased and placed in service this year, and for qualified improvement property. The 100% write-off is permitted without any proration based on the length of time that an asset is in service during the tax year. As a result, the 100% bonus first-year write-off is available even if qualifying assets are in service for only a few days in 2022.

- Businesses may be able to take advantage of the de minimis safe harbor election (also known as the book-tax conformity election) to expense the costs of lower-cost assets and materials and supplies, assuming the costs aren't required to be capitalized under the UNICAP rules. To qualify for the election, the cost of a unit of property can't exceed $5,000 if the taxpayer has an applicable financial statement (AFS, e.g., a certified audited financial statement along with an independent CPA's report). If there's no AFS, the cost

of a unit of property can't exceed $2,500. Where the UNICAP rules aren't an issue, and where potentially increasing tax rates for 2023 aren't a concern, consider purchasing qualifying items before the end of 2022.

- A corporation (other than a large corporation) that anticipates a small net operating loss ("NOL") for 2022 (and substantial net income in 2023) may find it worthwhile to accelerate just enough of its 2023 income (or to defer just enough of its 2022 deductions) to create a small amount of net income for 2022. This allows the corporation to base its 2023 estimated tax installments on the relatively small amount of income shown on its 2022 return, rather than having to pay estimated taxes based on 100% of its much larger 2023 taxable income.

- Year-end bonuses can be timed for maximum tax effect by both cash- and accrual-basis employers. Cash-basis employers deduct bonuses in the year paid, so they can time the payment for maximum tax effect. Accrual-basis employers deduct bonuses in the accrual year when all events related to them are established with reasonable certainty. However, the bonus must be paid within 2½ months after the end of the employer's tax year for the deduction to be allowed in the earlier accrual year. Accrual employers looking to defer deductions to a higher-taxed future year should consider changing their bonus plans before year-end to set the payment date later than the 2.5-month window or change the bonus plan's terms to make the bonus amount not determinable at year end.

- To reduce 2022 taxable income, consider deferring a debt-cancellation event until 2023.

- Sometimes the disposition of a passive activity can be timed to make best use of its freed-up suspended losses. Where reduction of 2022 income is desired, consider disposing of a passive activity before year-end to take the suspended losses against 2022 income. If possible 2023 top rate increases are a concern, holding off on disposing of the activity until 2023 might save more in future taxes.

If you or your accountant would like more details about any item discussed in this letter, please do not hesitate to call.

Very truly yours,

Linda C. Slider