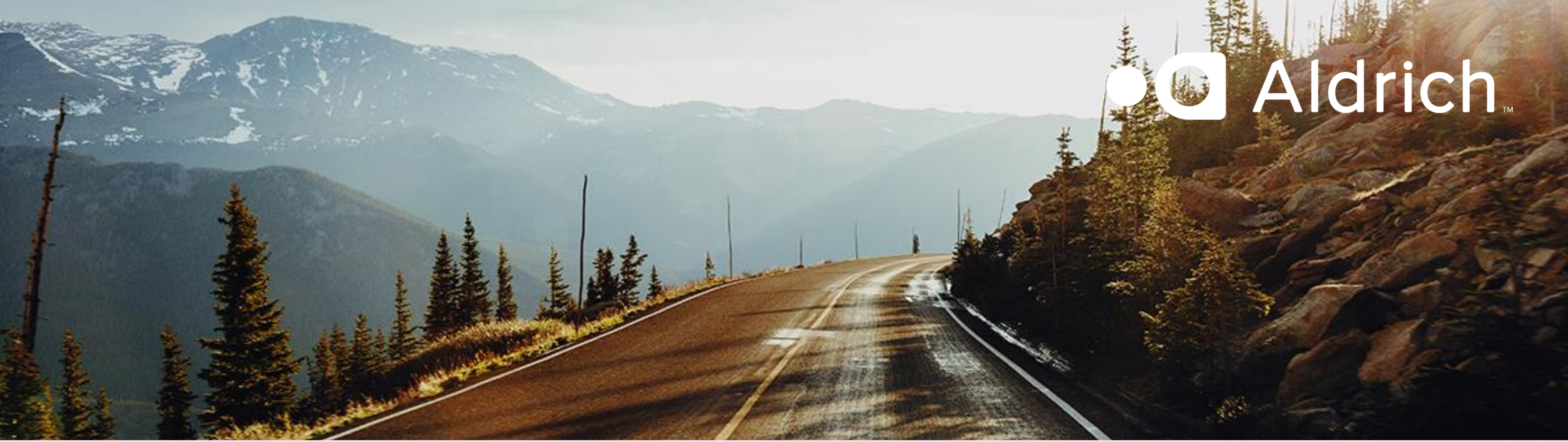


What Your Business Needs to Know

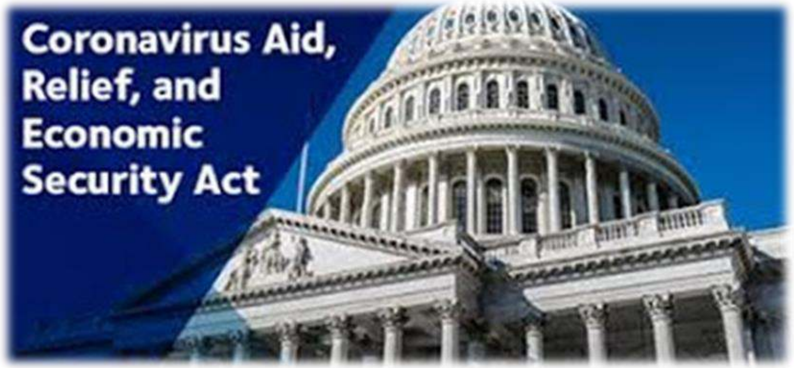
2020/21 Key Updates

Presented for NWUCA
March 30, 2021

- Cares Act Overview – April 26, 2020
- Consolidated Appropriations Act - December 27, 2020
  - PPP2
  - Employee Retention Credit – Changes
- Financial Reporting Changes
- Other Tax Considerations
- Overview of Biden's Tax Plan
- Payroll Tax Savings while Improving Fringe Benefits

Background – CARES Act and [part of] Consolidated Appropriations Act (CAA) of 2021

- Business charitable contribution limit increased to 25% for 2020 (still unallowable under FAR Part 31)
- Student loan repayments (extended to 2025 with CAA)
- Employer payroll tax payment delay (tax/deferred tax consideration)
- Employee retention credit (modified and extended with CAA)
- Net operating loss carryback (five years for 2018 through 2020) – fully deductible
- Qualified improvement property technical correction (allows for 100% bonus depreciation) (tax consideration)
- Paycheck Protection Program loans (CAA: PPP2)



- CAA expands on the employee retention credit introduced in the CARES Act and extends it through June 30, 2021
- CAA: PPP loans recipients eligible for ERC (no PPP paid wages though)
- Health care costs paid to qualified employees included
- Several changes retroactive to 2020 and new qualification and calculation rules for 2021

RETROACTIVE TO 2020

- If qualifications are met for 2020 = file amended payroll tax returns to claim the ERC
- Qualifications
  - Full or partial suspension of business operations due to a government order **or** a decline in gross receipts (more than 50% decline when compared to the same quarter in 2019)
  - If over 100 employees, only wages paid to employees not providing services qualify for the credit
  - Wages paid between March 12, 2020 and December 31, 2020 qualify
- Credit Amount
  - 50% of up to $10,000 of wages per employee per year (max credit of $5k per employee per year)

NEW RULES FOR 2021

- Qualifications
  - Full or partial suspension of business operations due to a government order **or** a decline gross receipts (more than 20% decline when ***comparing 2021 to the same quarter in 2019***)
  - If over 500 employees, only wages paid to employees not providing services qualify for the credit
  - Wages paid between January 1, 2021 and July 1, 2021 qualify
  - Credit Amount
    - 70% of up to $10,000 of wages per employee per **quarter** (max credit of $7k per employee per **quarter**)

- Loan applications can be submitted until March 31, 2021
- Sufficient documentation needed
  - Needs, ongoing economic uncertainty
  - Uses – all eligible expenses from loan date through covered period
  - FTEs and changes
- Covered period options (8 vs. 24 week period through 12/31/2020) (PPP2 is also 8 or 24 week period, but same calculation of loan amount of 2.5 months of average monthly payroll)
- Alternative payroll covered period was removed under CAA – not sure if that applies to anyone who has not yet requested forgiveness or just new PP2 loans, though
- Loan term (2 vs. 5 years) – must request change for pre June 5, 2020 loans (cash flow consideration) (5 years for PPP2 Loans)
- Loans over $150K published (under Freedom of Information Act)

PAYROLL COSTS

- Gross compensation (limited to $100,000 annualized)
    - Under 5% owners not considered “owner-employees” (C- or S-Corporations)
- Rent payments
    - Related-party restrictions
    - Shared space restrictions
- Utilities (does not include vehicle fuel)
- Interest on mortgage of real estate or personal property or any other debt obligations that were incurred before February 15, 2020 (certain interest is not forgivable)
- Added includable expenses with PPP2

- Additional funding available for both first-time borrowers and businesses that previously received a PPP loan
- Eligibility requirements for applying for PPP2 include:
  - 300 or fewer employees (1st time borrowers = 500 employees)
  - Used or will use the full amount of their first PPP loan on eligible expenses by disbursement date of new loan
  - Demonstrate a 25% gross revenue (received or accrued based on accounting method per IFR) decline in any 2020 quarter compared with the same quarter in 2019 (does not include receipts on sale of capital assets)

- Maximum loan amounts = $2 million (2nd draw; 1st draw is $10M)
- At least 60% must be spent on payroll
- Same eligible costs, but new relief package under CAA adds:
  - Covered worker protection and facility modification expenditures, including personal protective equipment, to comply with COVID-19 federal health and safety guidelines
  - Expenditures to suppliers that are essential at the time of purchase to the recipient’s current operations
  - Covered operating costs such as software and cloud computing services and accounting needs
- Tax deductibility of expenses and still exempt forgiveness status

- Must be requested within 10 months of end of covered period
- Can take 5 months thereafter to know if/how much has been forgiven (lender has 60 days; SBA has 90 days)
- Payments not due until forgiveness determined (interest continues to accrue)
- Not required to request entire amount of forgiveness
- Can be limited based on uses of loan, FTE reductions, and/or salary reductions
- Loans over $2M likely to be audited by SBA or agent
- Expenses covered by forgiveness deductible (new with CAA) (Some states do not follow this provision)

- Employee's deferred portion of FICA (president's executive order) - timeline for catching up extended through December 31, 2021
- FFCRA employer credits extended to March 31, 2021 – optional, but no change in total limit
- Various tax credits extended, including Work Opportunity Credit (WOTC), 45L Energy-Efficient Home Tax Credit, and New Market Credit (NMTC)
- A temporary 100% deduction for restaurant meals created for businesses for tax years 2021 and 2022
- 7(a) SBA loans – six months paid principal and interest under CARES Act (2020) – tax free and SBA will make an additional three months of principal and interest payments starting 2/1/21

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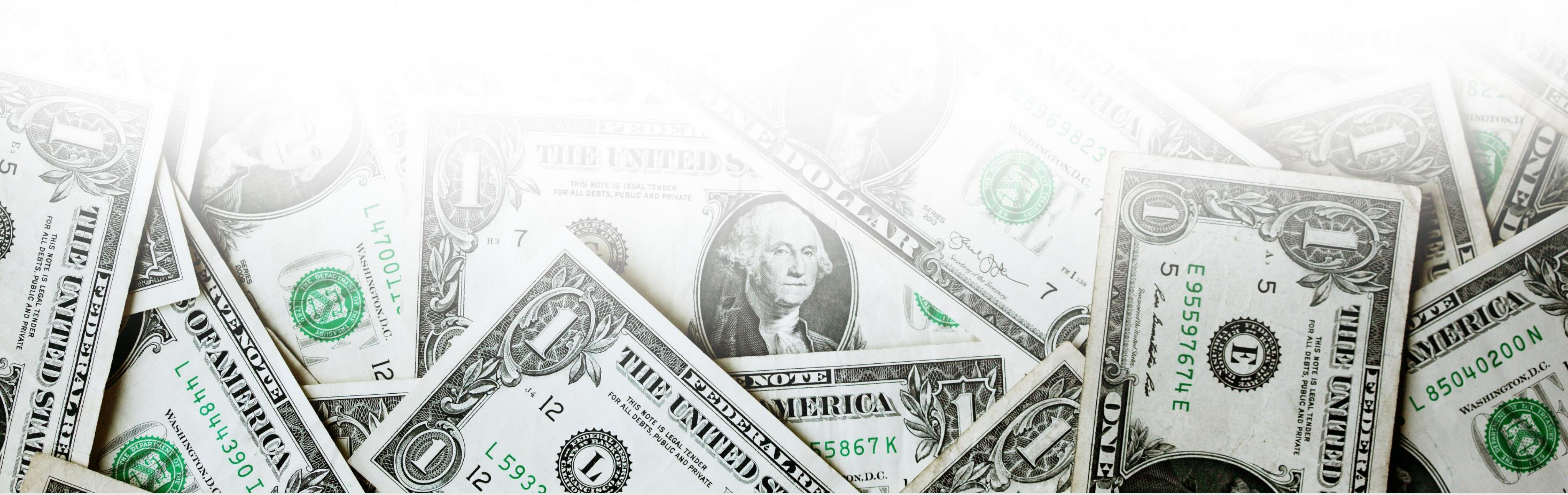
Financial Reporting Changes

Can I get a personal PPP grant?



- Officially forgiven by SBA by 12/31/2020?
  - Recognize income in 2020

- Not officially forgiven by SBA as of 12/31/2020?
  - Recognize income in 2020 **or** 2021
  - If income is recognized in 2021, there will be a liability on the balance sheet at 12/31

Technical Question and Answer (TQA) 3200.18 – Borrower Accounting for a Forgivable Loan Received Under the Small Business Administration Paycheck Protection Program.

- This TQA addresses accounting for nongovernmental entities, which includes business entities and not-for-profit entities.

High level: All nongovernmental entities can follow a debt accounting model and be done; and not worry about getting second guessed (because PPP is structured as a loan). Entities can also look to other grant-type models, but these get trickier.

TQA 3200.18

TQA 3200.18: DEBT MODEL – ASC 470

A nongovernmental entity can always account for forgivable PPP loans as debt:

- **Initial accounting:** Recognize loan as a financial liability and accrue interest in accordance with the interest method under *ASC 835-30*.
- **Derecognition of the Loan**: either when:
  - (1) the loan is partly or wholly forgiven, and the debtor has been legally released

  OR

  - (2) the debtor pays off the loan to the creditor
- Would reduce the liability by the amount forgiven and record a gain on extinguishment once the loan is partly or wholly forgiven and legal release is received.

High level: You can record as a loan and be done with it

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TQA 3200.18

TQA 3200.18: "GRANT" MODELS

If certain conditions are met (see the sidebar), other acceptable ways to account for forgivable PPP loans are:

- ASC 450-30: Contingent gain
- IAS 20 – Governmental grant
- ASC 958-605: Conditional contribution

  *NFP's must follow ASC 958 if not treating as debt

Would record the proceeds from the loan as a deferred income liability to be reduced as the entity recognizes the related expenses to which the loan relates.

These models can only be used if:

- A nongovernmental entity expects to meet the PPP's eligibility criteria

AND

- Concludes that the PPP loan represents, in substance, a grant that is expected to be forgiven

High level: Grant models potentially let you release the liability earlier; but require judgement.

OTHER CONSIDERATIONS

- **How to present on P&L**
  - Other income or offset expenses
  - Generally, offsetting expenses is not recommended for contractors as it may skew job profitability or be allocated arbitrarily; we anticipate users of the financial statements prefer it separated
- **Loans over $2M**
  - May wish to use the debt method if not certain of forgivable amount
- **Succession planning, buy-outs and bonus plans**

Potential impact to common debt covenant calculations:

- **Working Capital: Current Assets – Current Liabilities**
  - If debt model: impact of current or noncurrent portion, classified according to terms of loan
  - If grant model: other than current portion of loan, working capital would remain the same
- **Debt Service Coverage Ratio: Net Operating Income / Total Debt Service**
  - If debt model: Has the company included its PPP loan within total debt service? Should it be?
  - If grant model: Is the PPP loan inflating the company’s net income? Not part of operating income or loss.

Other Tax & Financial Considerations

CORPORATE ACTIVITY TAX

- Applicable to Gross Receipts recognized starting January 1, 2020
    - Based on tax method
    - $250 + .57% of taxable Oregon commercial activity over $1 million
    - Registration required once reaching $750,000 in Oregon gross receipts (changed to one-time registration, generally)

Estimates - 2020: No estimates required if expecting liability less than $10,000

- Good faith effort requirement to be able to avoid penalty for underpayment of estimates:
    - Unable to pay a full quarterly installment because of insufficient funds due to COVID-19
    - Could not reasonably calculate a quarterly payment or annual tax liability due to the impact of COVID-19 on their business
    - No ability to determine whether they will have CAT liability for the 2020 tax year, after taking into consideration exclusions and subtractions provided in ORS Chapter 317A
    - Made a reasonable estimate of the quarterly installment based on information available to them at the time
    - Relied on information contained in a proposed administrative rule

- Gross Receipts
  - Sourcing rules – Sale of other than Tangible Personal Property 150-317-1040
  - Sourcing rules – Sale of Tangible Personal Property 150-317-1030
- Property Transferred into Oregon
- Subtraction Calculation
  - 35% of greater of Cost of Goods Sold (COGS) on federal return or compensation
    - Cost of Goods Sold
    - Compensation Items (limited to $500,000/employee)

Ongoing Estimates – 80% through 2021 tax; 90% thereafter

- "Agent" means a person who is acting on behalf of another, *and* is subject to that other person's control (emphasis added).
- All facts and circumstances must be considered.
- A lot of uncertainty around reimbursements, especially in construction, real estate, health care and transportation
- Amended Rule 150-317-1100 includes two examples for contractors. In one example, a contractor performing a cost-reimbursable contract receives a fee of 5% of total project costs. The contractor "acts as a conduit regarding any payments made to the subcontractors." Only the contractor's 5% fee, and any amount not remitted to subs was subject to CAT.

- Agency exemption - Added example 5 to Administrative Rule 150-317-1100 (Final)
  - Discusses a cost-reimbursable contract
  - Totality of facts and circumstances test
  - Subcontract payments excluded from gross receipts

Gross Revenue = subcontractor cost plus 5% of total project costs		
Subcontractor		$ 10,000,000
Other costs		500,000
Total costs		10,500,000
Fee (5% of total costs)		525,000
Total contract		11,025,000
Less: paid to subcontractor		(10,000,000)
Gross Receipts for CAT		$ 1,025,000

CHECK YOUR CONTRACTS

APPORTIONMENT – HB 4202

- Multiple methods of apportionment for multi-state taxpayers
- Option to follow normal apportionment rules for income tax purposes
- Can opt to use method provided in administrative rules
- Fiscal Year filers can opt to use fiscal year expenses for subtraction

WIN/WIN!

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Oregon Corporate Activity Tax Calculation

21,950,000	Estimated Oregon Corporate Activity Gross Receipts	
22,150,000	Estimated Oregon Total Gross Receipts	
25,200,000	Estimated Total Sales and other receipts	
87.897%	Calculated Apportionment Percentage	
100.000%	Alternative Apportionment - Based on your Oregon Tax Return	
	Fair value of property transferred into Oregon for use in the entity's own business within one year of being received/purchased outside of Oregon	
18,600,000	Estimated Total Cost Inputs (cost of good sold in arriving at federal taxable income under the IRC)	
12,400,000	Estimated Total Labor Cost (Not to exceed $500,000 for any single employee)	
	Single Family Home Subcontract Labor Costs	
	Does the Taxpayer:	
Yes	Have Oregon gross receipts greater than $1,000,000	
20,950,000	Corporate Activity Gross Receipts	
(6,510,000)	Greater of 35% of Cost of Good Sold or Labor Costs	
-	15% of Single Family Home Subcontract Labor Costs	
-	Property Transferred to Oregon	0.57%
14,440,000	Taxable Gross Receipts	Plus Minimum $250
82,558	Oregon Corporate Activity Tax	

0.373% Effective Oregon CAT Rate

- As defined by ORS 317A.100(19) and new rule (150-317-1020)
  - More than 50% direct and indirect ownership

    AND
  - Unitary business [ORS 317A.100(18)(a)]
    - Centralized management or common executive force
    - Centralized administrative services or functions resulting in economies of scale
    - Flow of goods, capital resources or services that result in financial integration

- Indirect (constructive) ownership clarified [150-317-1020(10)(d)(A)]
  - Spouse, parents, brothers/sisters, grandparents, children, grandchildren and an estate or trust of which the individual is an executor, trustee, or grantor, to the extent that the estate or trust is for the benefit of that individual's spouse or children.
- Partnership – includes either capital or profits interest
- Foreign (non-U.S.) affiliates – if no commercial activity in Oregon, file a “modified group return” that omits foreign information (150-317-1025).

OREGON CAT KEY DATES

- **February 1 —** Fourth quarter 2020 CAT estimated payments due.
- **April 15 —** Last day to file CAT return without an extension or apply for an extension for filing a CAT return.
- **April 30 —** First quarter 2021 CAT estimated payments due.
- **August 2 —** Second quarter 2021 CAT estimated payments due.
- **October 15 —** Last day to file 2020 CAT return with an extension.
- **November 1 —** Third quarter 2021 CAT estimated payments due.
- **February 1, 2022 —** Fourth quarter 2021 CAT estimated payments due.

METRO SUPPORTIVE HOUSING SERVICES TAX

NEW METRO TAX FOR INDIVIDUALS

(includes most of Multnomah, Washington, and Clackamas Counties)

- Effective: January 1, 2021 (expires 2030 unless reauthorized)
- Residents: 1% of entire Oregon taxable income over $125,000 single and $200,000 married filing jointly
- Nonresidents: 1% of earned income within the Metro area over $125,000 single and $200,000 married filing jointly
- Non-residents should be tracking their time worked within the metro area.
- Deduction for pass-through owners re: distributive share of taxable income on Metro Business Income Tax Return

NEW METRO TAX FOR BUSINESSES

- Effective: January 1, 2021 (expires 2030 unless reauthorized)
- Businesses with worldwide gross receipts in excess of $5M
- 1% tax on net income earned in the metro area (reviewing apportionment info); minimum tax $100
- Tracking both the location of employees working on a job and the location where receipts are sourced is important until further guidance is released on how revenue will be apportioned
- Businesses located in the Metro area will have required withholding for all employees beginning in 2022
- When available in 2021 employees must be given the option for withholding by written documentation

NEW METRO TAX FOR BUSINESSES

- Presumption of doing business in the district:

    1. Advertising or otherwise professing to be doing business within the District;
    2. Delivering goods or providing services to customers within the District;
    3. Owning, leasing or renting personal or real property within the District;
    4. Engaging in any transaction involving the production of income from holding property or the gain from the sale of property, which is not otherwise exempted in this chapter. Property may be personal, including intangible, or real in nature;
    5. Engaging in any activity in pursuit of gain which is not otherwise exempted in this chapter; or
    6. Engaging in any activity that constitutes substantial nexus with the District.

NEW METRO TAX FOR BUSINESSES

- Apportionment

- Net income from the tax filer's business x $\dfrac{\text{gross income from business activity in District during the tax year}}{\text{gross income from business activity everywhere during the tax year}}$

- Sales of tangible personal property are deemed to take place in the District if the property is delivered or shipped to a purchaser within the District.

- Sales other than sales of tangible personal property are deemed to take place in the District, if the income producing activity is performed in the District.

- This is still being evaluated by Metro for potential modifications

MULTNOMAH COUNTY

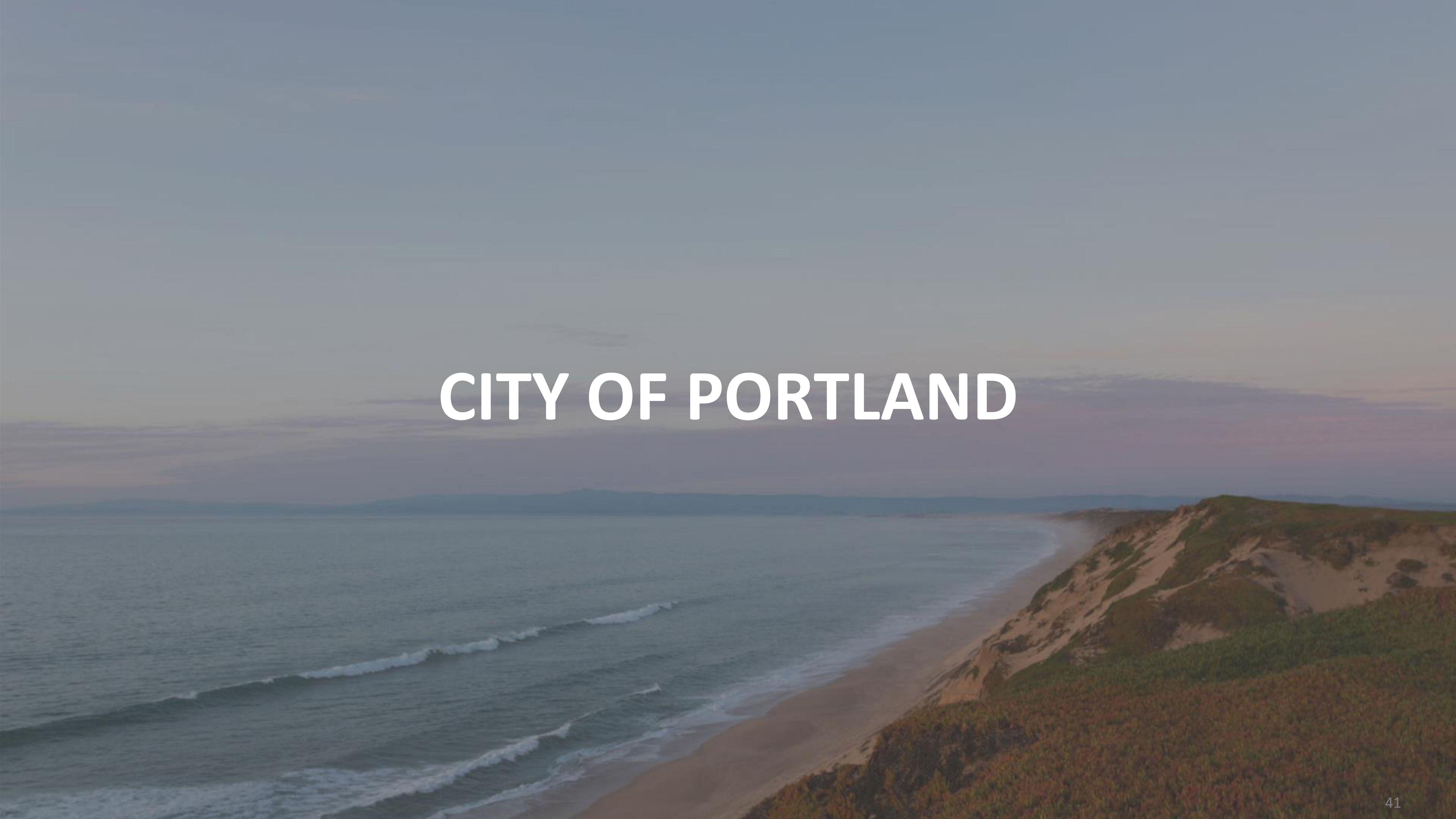
- Business changes for 2020:
- Rate increase to 2% (from 1.45%);
- owner comp deduction $127K (from $108K);
- gross receipts exemption of $100K (from $50K),
- Individual changes:
- 2021: Multnomah County Pre-School For All Tax

MULTNOMAH COUNTY PRE-SCHOOL TAX

- Effective: January 1, 2021
- Residents – Entire Oregon taxable income over threshold
- Nonresidents – Multnomah County taxable income over threshold (where you work)
- Threshold: Individuals with taxable income over $125,000 single and $200,000 married filing jointly
- Rates: 1.5% on income above threshold + additional 1.5% (2nd tier) on income above $250,000 single and $400,000 married filing joint
- 2026 rates increase by 0.8%,
- In addition to the new Metro Tax
- Withholding voluntary for 2021, but tax still due 4/15/2022. Employers automatically opt employees who make over $200K in at above rates.

MULTNOMAH COUNTY PRE-SCHOOL TAX EXAMPLE:

- Single resident filer with taxable income of $260,000
- 1st $125,000 is exempt
- Remaining $135,000 taxed at 1.5% = $2,025
- 2nd tier applicable to amounts in excess of $250,000 for single
- 2nd tier amount of $10,000 taxed at 1.5% = 150
- Total Multnomah County Tax = $2,175



CITY OF PORTLAND

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- Clean Energy Surcharge (Started 1/1/2019)
  - Retail sales = sales of goods and services in Portland
  - Threshold of annual retail revenue over $1 billion and Portland annual revenue over $500,000
  - Surcharge is 1% on gross revenue from retail sales within Portland
  - Not a tax imposed on the purchaser

BTAR 500.19-4 Clean Energy Surcharge (CES) - Retail Sale

Revenue Division

Tax Division

Business Tax Administrative Rule 500.19-4

- Analysis for businesses thinking of relocating
- How much work is being performed in Metro; in Multnomah County
- What would it cost to move/be located elsewhere?
- Impact to business of move (market, customers)
- Impact on employees
- Analysis for individuals thinking of relocating
- Impact of location of business, customers, work performance
- Cost to move/real estate considerations
- 2020: Oregon tax change individuals dropped .25% for income under $125K single ($250K MFJ/HOH)

- Oregon Corporate Activity Tax: https://www.oregon.gov/dor/programs/businesses/Pages/corporate-activity-tax.aspx

- Supportive Housing Services Tax:
- https://www.oregonmetro.gov/sites/default/files/2020/07/23/supportive-housing-services-tax-collection-information-07222020-3.pdf

- Multnomah County Preschool for All Tax: https://multco.us/dchs/preschool-all-tax-information

- Aldrich Advisors: https://aldrichadvisors.com/tax/tax-outlook-oregon-portland/

Biden’s Tax Proposals

INDIVIDUAL TAX RATES

- **Current Law:** Seven tax brackets (10%, 12%, 22%, 24%, 32%, 35%, 37%)
- **Proposed Change:** Increase the top rate to 39.6% for taxpayers earning more than $400,000

CAPITAL GAIN RATES AND INVESTMENTS

- **Current Law:**
  - 0%, 15%, 20% capital gains rates
  - 3.8% net investment tax for joint taxpayers earning >$250,000
  - Gain deferral with qualified opportunity funds
- **Proposed Change:**
  - Ordinary tax rate for taxpayer's with over $1 million income
  - More qualifications for opportunity funds

CONSIDERATIONS FOR INDIVIDUALS IN HIGH TAX BRACKET

- **ROTH Conversions**
  - 401ks or IRAs
  - If you thought tax rates would be same or higher in retirement
  - If you cared more of preserving wealth for future generations
- **Recognizing Capital Gains Now**
  - May work in the short-term but tax rates could change in 4 years+

Corporate Tax Rates

- **Current Law:** 21%
- **Proposed Change:** 28%
- 15% Minimum Tax on companies with >$100 million book net income but no federal tax

OTHER CONSIDERATIONS

- **Phase out Section 199A passthrough deduction for taxpayers making over $400k**
- **10% Made in America credit**
- **10% offshoring tax penalty**
- **GILTI**
  - Rate to 21%
  - Country by country calculation
  - Eliminate the 10% exemption

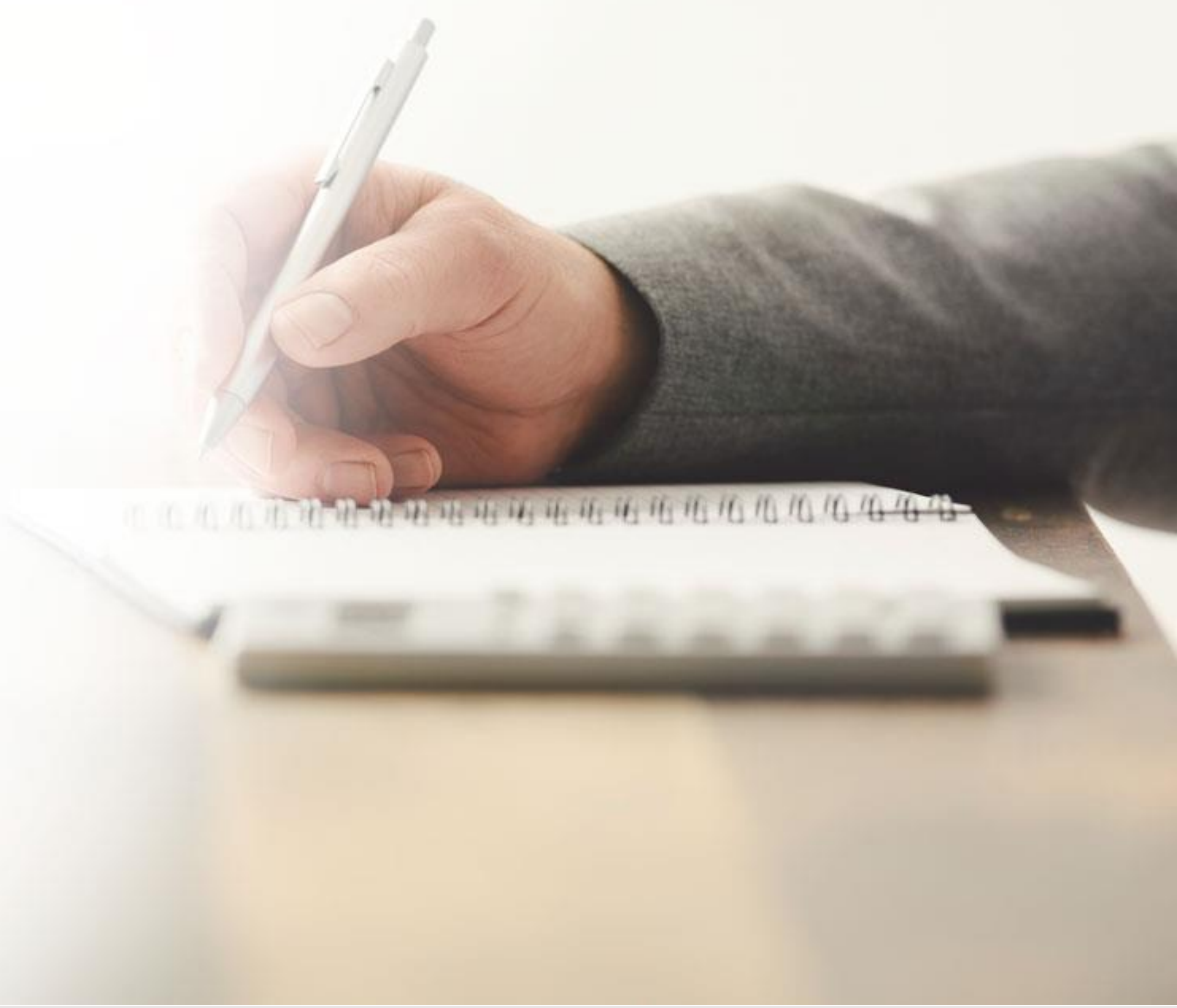
ESTATE CONSIDERATIONS

- **Reduce exemption from $11.7 million to $3.5 million**
- **Increase top rate to 45%**

PREVAILING WAGE FRINGE

- Prevailing Wage Fringe can be used to provide for employee benefits and/or retirement instead of being paid in cash.

- This saves the employer payroll taxes and insurance costs normally assessed on this compensation



$14.84	Prevailing Wage Fringe Benefit
x 160	Hours Per Month
x 12	Month
x 25	Employees
$712,320	Annual Prevailing Wage Fringe Payment
x 25%	Employer Payroll Tax/Insurance
$178,080	Annual Savings

CONTRIBUTING PREVAILING WAGE TO 401(K) PROFIT SHARING PLANS

- Provides a retirement benefit for the employees
- *IMPORTANTLY* – this can be used in combination with discrimination testing to provide enhanced benefits to owners and key executives

	Compensation	Employee Deferral	Catch Up	Average Deferral %	Refund	Net Contributions to Owner
Owner	$ 160,000	$ 19,500	$ 6,500	12%	$ 14,167	$ 11,833
Staff 1	$ 40,000	$ 4,000	$ -	10%	$ -	
Staff 2	$ 25,000	$ -	$ -	0%	$ -	
10 PW Employees	$ 550,000	$ 5,500	$ -	1%	$ -	
Staff Subtotal	$ 615,000	$ 9,500	$ -	1%	$ -	
Total	$ 775,000	$ 29,000	$ 6,500		$ 14,167	$ 11,833

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	Compensation	Employee Deferral	Catch Up	Prevailing Wage	Prevailing Wage as % of Pay	Safe Harbor 3%	Discrimination Tested Profit Sharing	Total Employer Contributions
Owner	$ 160,000	$ 19,500	$ 6,500	n/a	n/a	$ 4,800	$ 33,700	$ 64,500
Staff 1	$ 40,000	$ 4,000	$ -	n/a	n/a	$ 1,200	$ 2,000	$ 3,200
Staff 2	$ 25,000	$ -	$ -	n/a	n/a	$ 750	$ 500	$ 1,250
10 PW Employees	$ 550,000	$ 5,500	$ -	$ 55,000	10%	Satisfied	Satisfied	Satisfied
Staff Subtotal	$ 615,000	$ 9,500	$ -			$ 1,950	$ 2,500	$ 4,450
Total	$ 775,000	$ 29,000	$ 6,500	$ 55,000		$ 6,750	$ 36,200	$ 68,950
								94% to Owner
Prevailing Wage Fringe contributions average 10% of compensation for this group.								
The first 3% is used as the safe harbor contribution which satisfies the ADP Test.								
Profit Sharing for Employees is 2% of compensation.								

DESIGN ISSUES

- Immediate eligibility
- Contributions made at least quarterly
- 100% Vesting
- Withdrawals may be limited
- Highly Compensated Employees with Prevailing Wage may limit discrimination testing leverage

- Employees who do not have Prevailing Wage need additional contributions

- Employees used to Prevailing Wage as compensation may be unhappy with “pay cut” if fringe goes into plan

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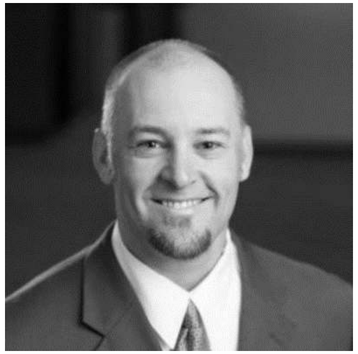

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