

# Welcome to Thursday Tax Topics!

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# Today

- Are my clients the only one facing refund delays?
- What's going on with tax reform? Is it the calm before the storm?
  - Update on Infrastructure and Reconciliation
  - Highlights from American Families Plan study with Center for Agricultural and Rural Development
- Interesting Innocent Spouse Case
- Rules Issued for Iowa COVID grant exclusions

# IRS Backlog



# No, It's Not Just Your Clients

The Taxpayer Advocate Service says the delay is cause by:

- High volume of 2020 tax returns (still being filed daily)
- Backlog of unprocessed 2019 paper returns
- IRS resource issues
- Technology problems

# IRS Backlog – IRS August 20 Update

- <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>
- As of August 13, 2021, we had **11.1 million unprocessed individual returns**. Unprocessed individual returns include tax year 2020 returns such as those requiring correction to the **Recovery Rebate Credit amount or validation of 2019 income used to figure the Earned Income Tax Credit (EITC) and Additional Child Tax Credit (ACTC)**.
- This work does not require us to correspond with taxpayers but does require special handling by an IRS employee so, in these instances, it is taking the IRS more than 21 days to issue any related refund and in some cases this work could take 90 to 120 days.

## IRS Backlog – IRS August 20 Update

- If, as a result, a correction is made to any RRC, EITC or ACTC claimed on the return, the IRS will send taxpayers an explanation. Taxpayers are encouraged to continue to check **Where's My Refund?** for their personalized refund status and can review Tax Season Refund Frequently Asked Questions.

# IRS Backlog – IRS August 20 Update

- You may check Where's my refund or you can view your account. If you filed electronically and received an acknowledgement, you do not need to take any further action other than promptly responding to any requests for information. If you filed on paper, check Where's my refund?
  - If it tells you we have received your return or are processing or reviewing it, we are processing your return, but it may be under review. We're working hard to get through the backlog. **Please don't file a second tax return or contact the IRS about the status of your return.**

# IRS Backlog – IRS August 20 Update

- The IRS is now opening mail within normal timeframes. As of August 19, 2021, we had **2.5 million unprocessed Forms 941**. We are rerouting tax returns and taxpayer correspondence from locations that are behind to locations where more staff is available, and we are taking other actions to minimize any delays. Tax returns are opened in the order received. If you filed electronically and received an acknowledgement, you do not need to take any further action other than promptly responding to any requests for information. We're working hard to get through the backlog. Please don't file a second tax return or contact the IRS about the status of your return.
- **As of August 13, 2021, our total inventory of unprocessed Forms 941-X was approximately 284,000 which cannot be processed until the related 941s are processed.** While not all these returns involve a COVID credit, the inventory is being worked at two sites (Cincinnati and Ogden) that have trained staff to work possible COVID credits.

# IRS Backlog – What About TAS?



# IRS Backlog – TAS Explanation in Mid-year Report

- IRS must manually review very large numbers of recovery rebate credits, as well as EITC and ACTC 2019 adjusted income lookback claims.
  - **35 million backlog** of 2020 returns requiring manual processing.
- The vast majority of processing delays are resulting from tax returns not loaded into the system or in “**suspense**” status awaiting IRS action (~**6 million**). **17 million** paper returns waiting.
  - **Neither IRS nor TAS can help with a return that is in suspense.** An IRS employee must manually work the return and move it through. **No additional information is available for these returns.**
  - The tax return must be posted on the IRS system before even the IRS can access the return information.

## IRS Backlog – TAS Explanation

- TAS understands the frustrations and hardships caused by these unprecedented circumstances. Please be patient if you learn your refund claim is not yet processed and understand why TAS cannot accept your case at this time.
- We continue to work with the IRS to identify ways to address this backlog. TAS will continue to update its case acceptance criteria as the situation changes.
- Practitioner hotline is very backlogged as well, of course.

Iowa TAS: [Jana.M.Baraks@irs.gov](mailto:Jana.M.Baraks@irs.gov)

## Can TAS help me with my tax issue?

If you are having tax problems and have not been able to resolve them with the IRS, the Taxpayer Advocate Service (TAS) may be able to help you. Please answer just a few brief questions to determine if TAS can help you with your tax issue. Generally, we help taxpayers whose tax issues fall into one of these main categories. Select the topic below to learn more:

- [Financial Hardship](#)
- [IRS System Issue](#)
- [Fair & Equitable Treatment](#)
- [Public Policy](#)

**Note:** While the results of the TAS qualifier tool may indicate if TAS can help you with your tax issue, the final determination will be made by one of our Advocates.

## Senate passed Infrastructure Bill

- Senate passed the scaled down **\$1.2 trillion infrastructure package** August 10 by a vote of 69-30.
  - “INVEST in America Act”
    - Replace and repair roads, bridges, modernize ports and waterways, rail, water pipes, power grid, airports, and more.
    - Expand access to internet broadband, including rural broadband.
    - Address some climate change matters
      - Implement charging stations for electric vehicles, transmission lines
  - Says paid for with **repurposed COVID funds and dynamic scoring.**

## Senate passed Infrastructure Bill

- Ending ERC September 30, 2021, would be part of repurposed COVID spending.

Recovery Start-ups could claim ERC 3<sup>rd</sup> and 4<sup>th</sup> Quarters?

# Shifted Controversial Provisions to Reconciliation



# Senate Passed Budget Resolution

- On August 11, Senate Democrats passed a \$3.5 trillion budget resolution for fiscal year 2022 (50-49).
- This opens door for Senate to later pass (with 50 votes) the provisions within the President's budget, including the **American Families Plan and more** through **budget reconciliation**.
  - Committees are instructed to write legislative language, due September 15.
  - “The Democratic budget will be the most significant legislation for American families since the era of the New Deal and Great Society.” Senator Schumer.

## Thune Amendment

- “To protect owners of generationally-owned businesses, farms, and ranches so that they may continue to transfer ownership or operations to family members or others based upon the same tax principles that existed when they began operations and under which they currently operate, including the full benefit of the step-up in basis.”
- Passed 99-0.
- **Non-Binding**

# House Divided

- Lots of support in the majority party, but they haven't agreed on the details.
- **Tuesday (August 24)**: House passed the \$3.5 trillion budget resolution and set a September 27 House vote on infrastructure.
- Moderates wanted to pass infrastructure first. Progressives don't want infrastructure if they can't have reconciliation (all or nothing).
- This may tee up reconciliation earlier than thought.

# Budget Reconciliation



# Reconciliation Might Try to Include it All

- Including provisions not able to get through the infrastructure bill
  - Corporate tax rate increase (to 28%, maybe 25% as compromise)
  - More climate provisions, although parliamentarian may say not revenue-related.
- Benefits and tax increases proposed by the American Families Plan.

# Unclear What Will Happen



## Unclear What Will Happen

- Says no increased taxes on those making under \$400,000.
- Says won't impact farms and small businesses.
- Talk of capital gains increase landing at ~28% instead of 39.6%
- Talk of increase impacting 2022, not 2021 returns as proposed.
- Yesterday, Treasury official confirmed \$1 million threshold for higher tax rate on capital gains would apply to both married and singles.

## New Tax at Death or Gift – Most Controversial, BUT...

- This is a **controversial provision** that appears to face significant opposition, even amongst many Democrats. But **lockout** is huge issue.
- How do you raise money with higher capital gain taxes if no one sells?



## AICPA Letter

- AICPA sent a letter expressing concerns about:
  - Partial interest valuations at death or gift
    - Out of line with all valuation principles (marketability, lack of control, administrability)
  - Also lists without discussion concerns about:
    - Insufficient liquidity to pay tax
    - Would estate tax returns remain subject to assessment until business is no longer family owned and operated?
    - Difficulties of determining basis records
    - 90-year lookback for trusts unwieldy
    - Taxation of cap gains at death would sometimes be 3<sup>rd</sup> time taxed!

# Work is Ongoing...Calm before the storm?

- Congress on “recess,” but tax writers are working overtime...



- Get through 9/15 filing deadline (just 20 days out!), and we may have more information...

## What to Do?

- Consider the impact of higher taxes in 2022.
- Perhaps a good time to sell if already in the near-term plans.
- Perhaps a good time to make a gift, if already in the near-term plans.
- Perhaps complete that S Corp election you've been delaying.
  
- Not enough information about what will happen to divert substantially from current course. Stay tuned.

## Meanwhile....

- New numbers from Tax Policy Center show that **61% owed no federal income tax in 2020.**
- **Maybe 57% in 2021?**
- Budget deficit for 2021 expected to be \$3 trillion by the end of September.

# What is up with the debt ceiling?

- Current debt limit suspension expired July 31, 2021 (instituted by BBA of 2019).
  - Authorization to pay our bills.
- Since that time, Treasury has moved forward with “extraordinary measures” allowing bills to be paid (temporary emergency powers).
- CBO says this can continue until October or November. Then must have support from Congress to again raise the debt ceiling.
- If that does not occur, the government would be unable to pay its obligations fully, and it would delay making payments for its activities, default on its debt obligations, or both.
- <https://www.cbo.gov/publication/57371>

## Example – Lifetime Sale

Worked with ISU ag economist Wendong Zhang to review statistically representative sample of Iowa farmland owners to determine impact of American Families Plan on these owners, based **solely** upon their farmland holdings:

<https://www.card.iastate.edu/products/publications/synopsis/?p=1330>

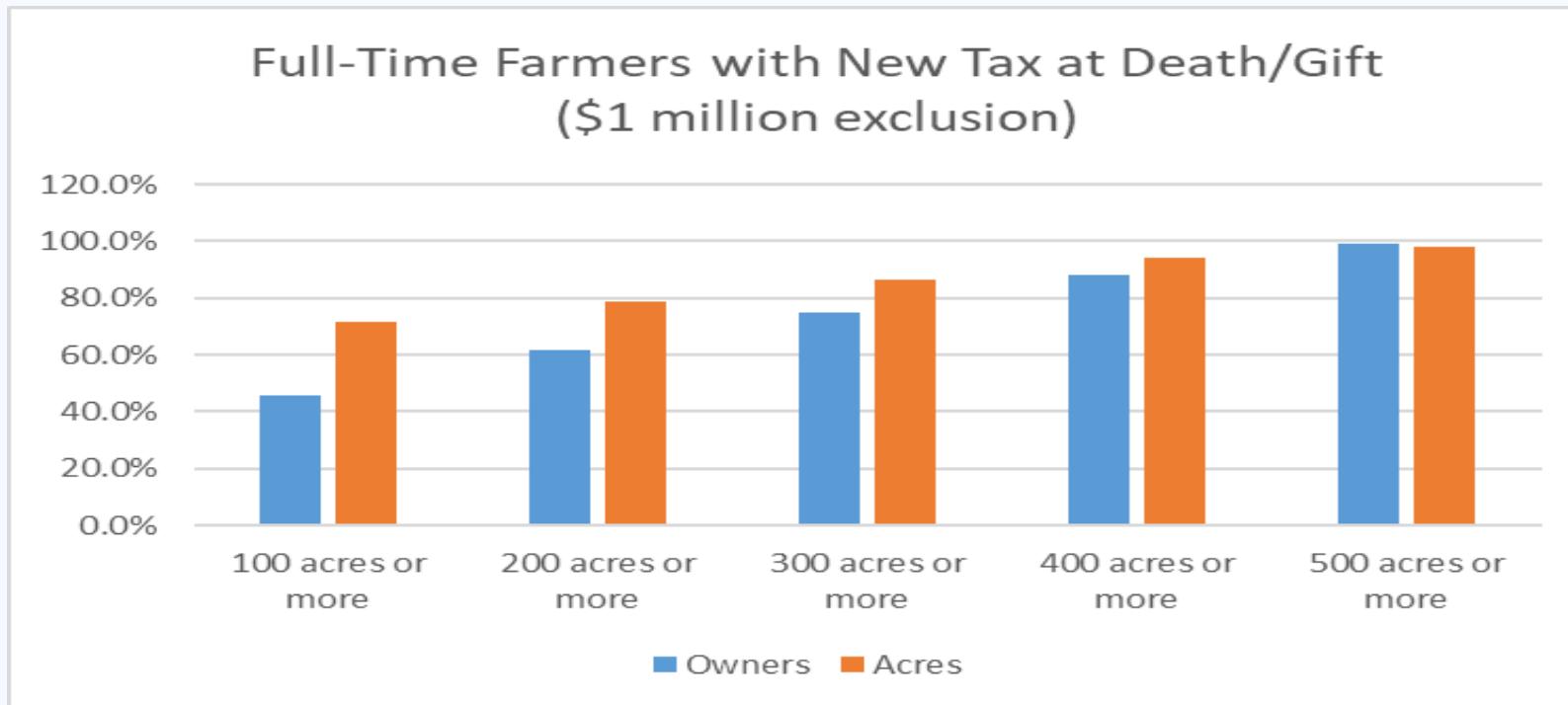
## Example – Lifetime Sale

- On average, we estimate that a full-time farmer owning **358 acres** of farmland would see tax liability from a lifetime sale increase from \$475,248 to \$860,572 (**81% increase**) or from 14.5% to **26% of FMV**.

## Example of Average Impact

- In 2002, an unmarried Cerro Gordo County farmer purchased **422 acres** of farmland worth \$2,648/acre or **\$1,117,550**.
- In 2021, the FMV of the land is \$3,250,642 or \$7,703/acre. The farmer sells, recognizing **\$2,133,092** in gain.
- Under current law, the farmer would owe **\$398,265** or 12% of the sales price in tax, assuming no additional income beyond the standard deduction.
- Under the AFP, this farmer would owe \$686,208 or 21% of the sales price in tax, a **72% tax increase**.

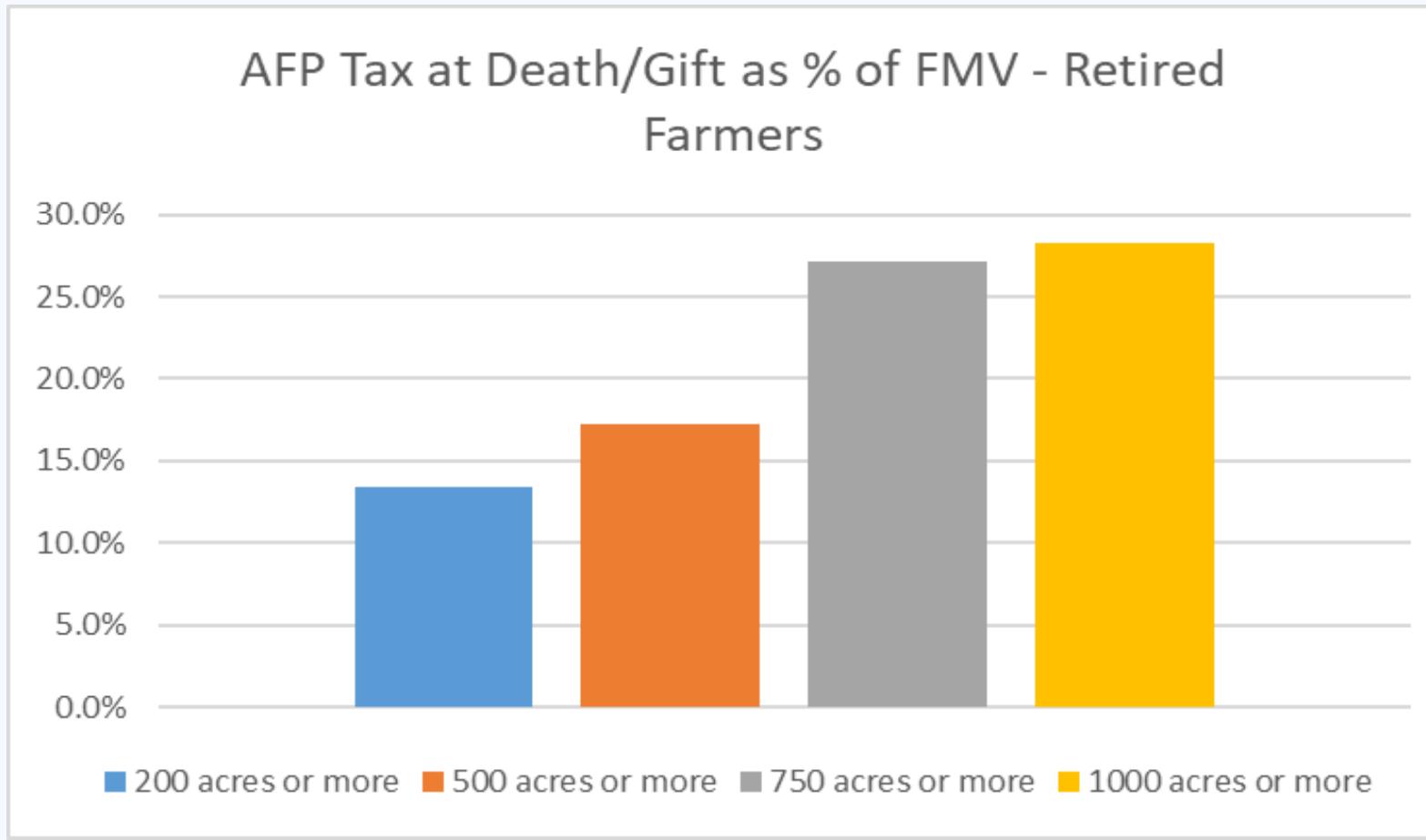
# Impact – Tax at Death or Gift (with \$1 million Exclusion)



## Estimated Impact

- Our data show that the **average new tax liability** for retired farmers with an interest in 200 acres or more or 500 acres or more would be **\$582,659 and \$1,002,543**, respectively.

# Estimated Impact



## Example

- A retired farmer from Buena Vista County dies in 2021 owning 700 acres of farmland.
- In 1975, he purchased the land for \$1,450/acre or \$1,015,000. In 2021, it is worth \$9,800/acre or \$6,860,000. He dies with \$5,845,000 in unrealized gain.
- Under the AFP, the retired farmer's death creates new tax liability of \$1,863,178. This is **27% of the FMV of the land.**

# Innocent Spouse Cases

- Grady v. Commissioner, T.C. Summ. Op. 2021-29 (spouse knew taxes weren't being paid, but she still got relief. Financial hardship was key...knowledge only one of other important factors)
- Rogers v. Commissioner, No. 20-2789 (7<sup>th</sup> Cir. 2021)(same day, no relief, completely different facts).
  - Spouse with reason to know (MS in biochemistry, JD, MBA, and doctorate in education).

# Innocent Spouse Cases

- Factors: Relief under IRC 6015(f)(Rev. Proc. 2013-34):
  - Marital Status
  - Economic Hardship
  - Knowledge or Reason to Know
  - Legal obligation, apart from income tax laws
  - Significant benefit
  - Compliance with laws
  - Mental and Physical Health

## Iowa Exclusion of COVID-19 Grants from Income

- <https://www.legis.iowa.gov/docs/aco/arc/5817C.pdf>
- No surprises...lists every grant impacted.
- Issued August 12.

# Upcoming Events

- Only one Thursday Tax Topics in September:  
September 9, 2021(12:00 pm)

September 21-22: Agricultural Law Seminar and Farm  
Tax Workshop (in-person and online)

Tax School in November-December: Three in-person in  
Iowa, three in-person in Wisconsin, and three webinar  
options

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# Discussion