Miller & Chevalier

TAX TAKE: State of the Union: Biden Revisits the Stock Buyback Excise Tax

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Although last week's State of the Union address was light on tax policy, President Biden did propose to "quadruple the tax on corporate stock buybacks to encourage long term investments." In a fact sheet previewing his address, the White House noted: "President Biden signed into law a surcharge on corporate stock buyback[s], which reduces the differential tax treatment between buybacks and dividends and encourages businesses to invest in their growth and productivity as opposed to paying out corporate executives or funneling tax-preferred profits to foreign shareholders."

The one percent stock buyback excise tax was enacted as part of the Inflation Reduction Act (IRA). In December 2022, the Internal Revenue Service (IRS) issued initial guidance regarding the new tax, with comments due by March 20, 2023. Although the stock buyback excise tax had been proposed by Congressional Democrats for a number of years, its enactment came about quite quickly as a last minute revenue replacement after a carried interest proposal was dropped from the IRA to secure the vote of Senator Kyrsten Sinema (I-AZ).

The Tax Foundation estimates a four percent tax on buybacks would generate $185 billion over 10 years. And while the Biden proposal to increase the excise tax to four percent is not anticipated to receive serious consideration by Republicans (with one Republican member referring to the proposal as "dead on arrival"), it is a reminder that this proposal could gain political traction if Democrats regain control of the House and keep control of the Senate and the White House in the 2024 election cycle. **#TaxTake**

Upcoming Speaking Engagements and Events

On March 3, Marc and Jorge will moderate "Floyd's Panel: 2023 Tax Legislative Update," at the Federal Bar Association 2023 Tax Law Conference.

Loren will present a Federal Bar Association 2023 Tax Law Conference virtual program, "The OECD Pillars: Buckle Up!", on March 6.
