

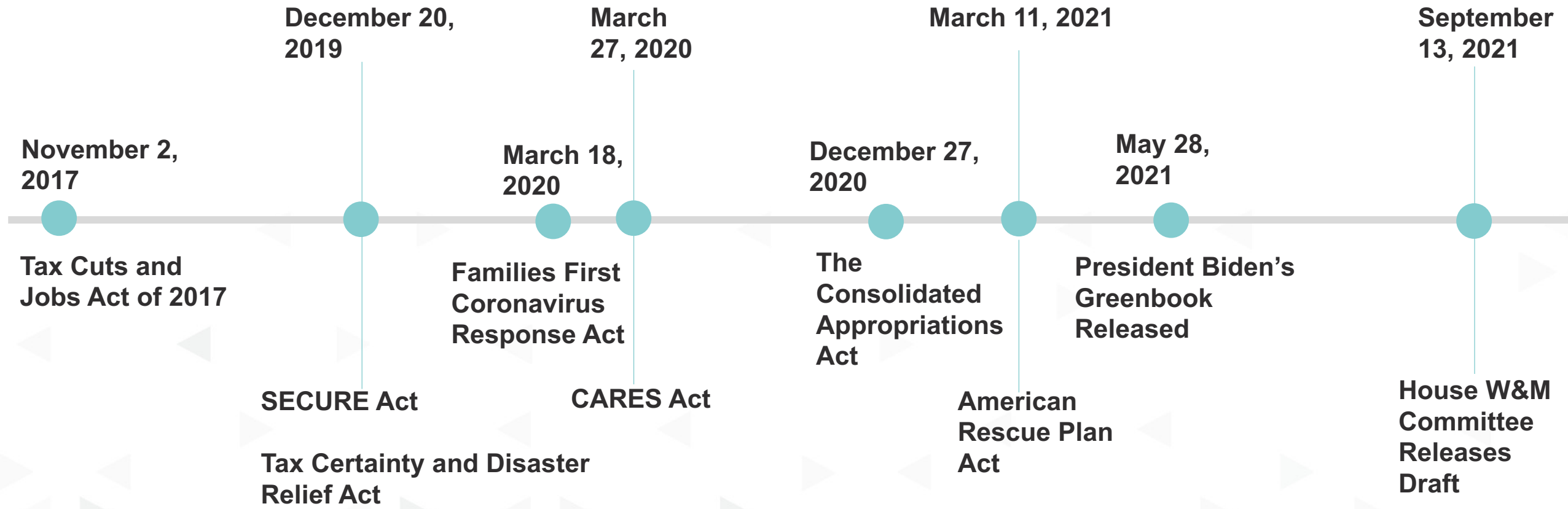
# 2021 A Tax Odyssey:

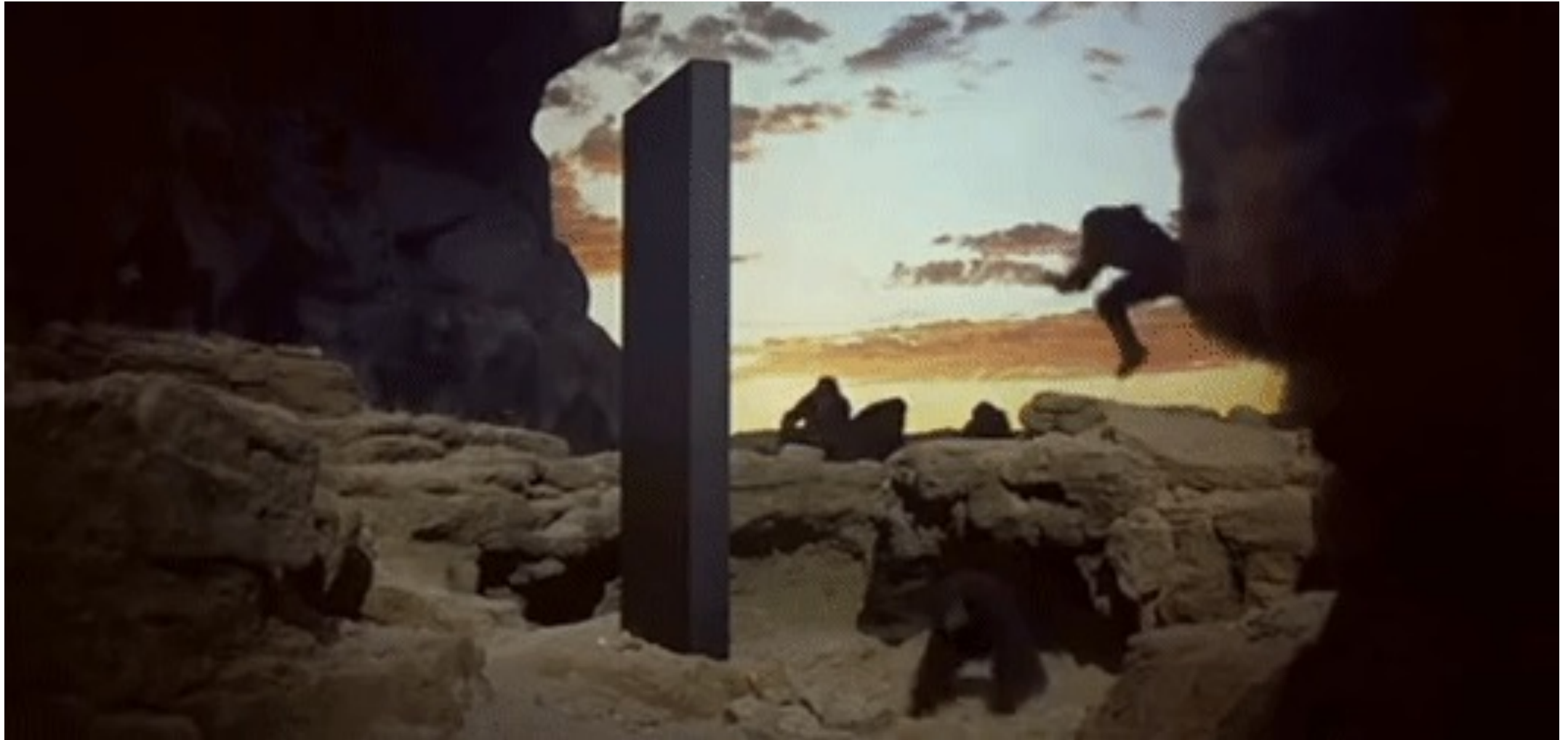
Where we're going and where we've been



**BKD**  
CPAs & Advisors

# LEGISLATIVE TIMELINE





Everyone needs a trusted advisor.  
Who's yours?

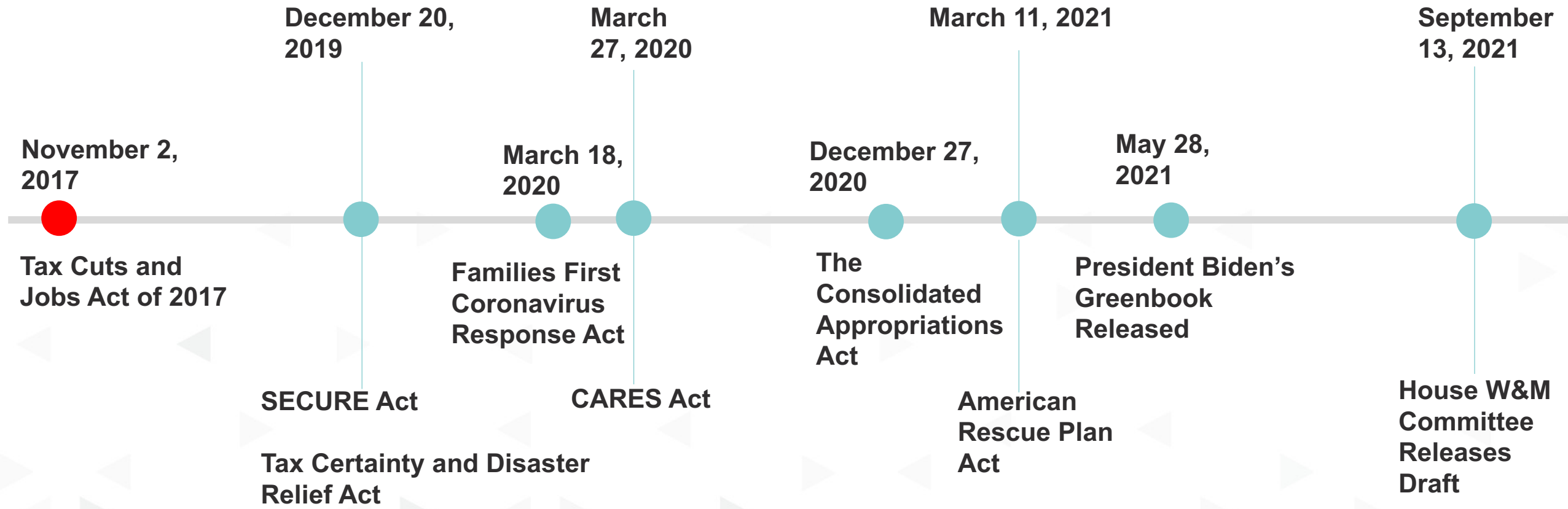
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Everyone needs a trusted advisor.  
Who's yours?

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# LEGISLATIVE TIMELINE



# TAX CUST AND JOBS ACT OF 2017

- Most consequential overhaul to US tax code since 1986
- Significant reduction in tax rates for businesses and their owners
- Contained permanent and temporary provisions

# TCJA SUMMARY

Permanent	Temporary
➤ 21% flat corporate tax rate	➤ 100% bonus depreciation on qualified assets
➤ Elimination of corporate AMT	➤ 20% deduction for Qualified Business Income
➤ Interest expense limitation	➤ Increased estate and gift tax exemption to \$11mil
➤ Changes to Net Operating Loss rules	➤ Excess business loss limitation
➤ Accelerated depreciation for real estate improvements	➤ Reduced tax rates for individuals
➤ Limits on deductions for meals & entertainment	➤ Removal of personal exemptions and changes to several itemized deductions
➤ Expanded eligibility for certain accounting methods	

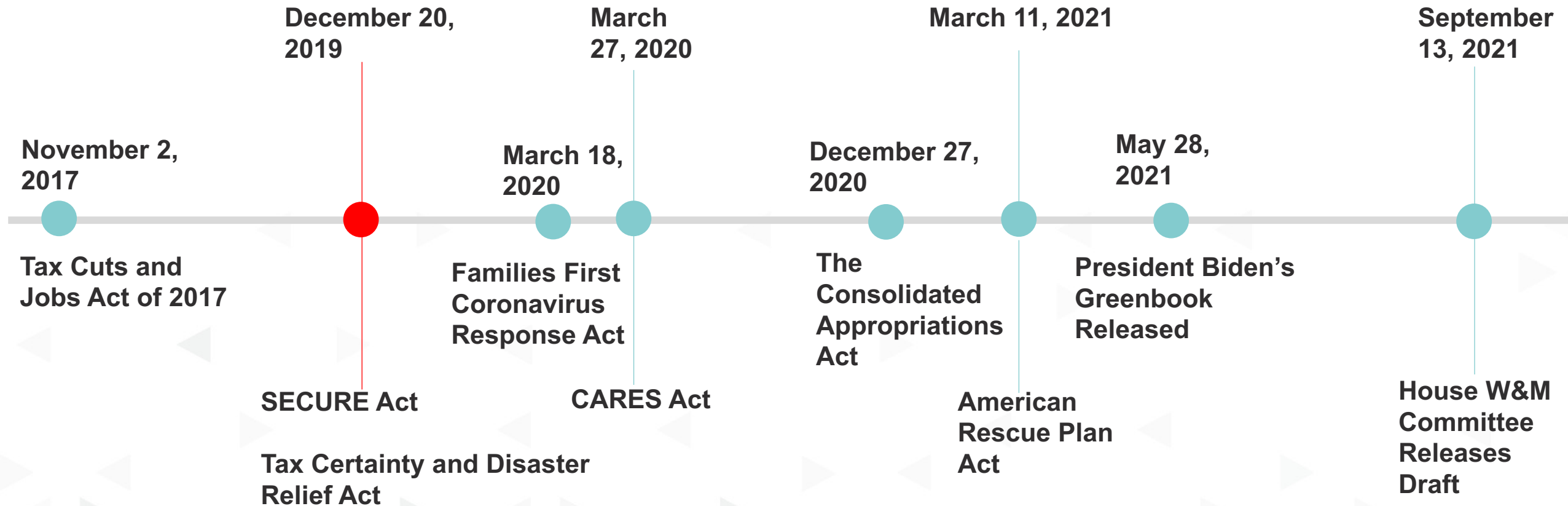


# TAX PLANNING GOLDMINE

- Permanent tax savings using temporary deferrals
- Defer every dollar of income to next year
- Change of accounting methods
  - › Accrual to cash
  - › Retainage A/R deferrals
  - › Fixed asset scrub
- NOL carrybacks (while you still can)



# LEGISLATIVE TIMELINE



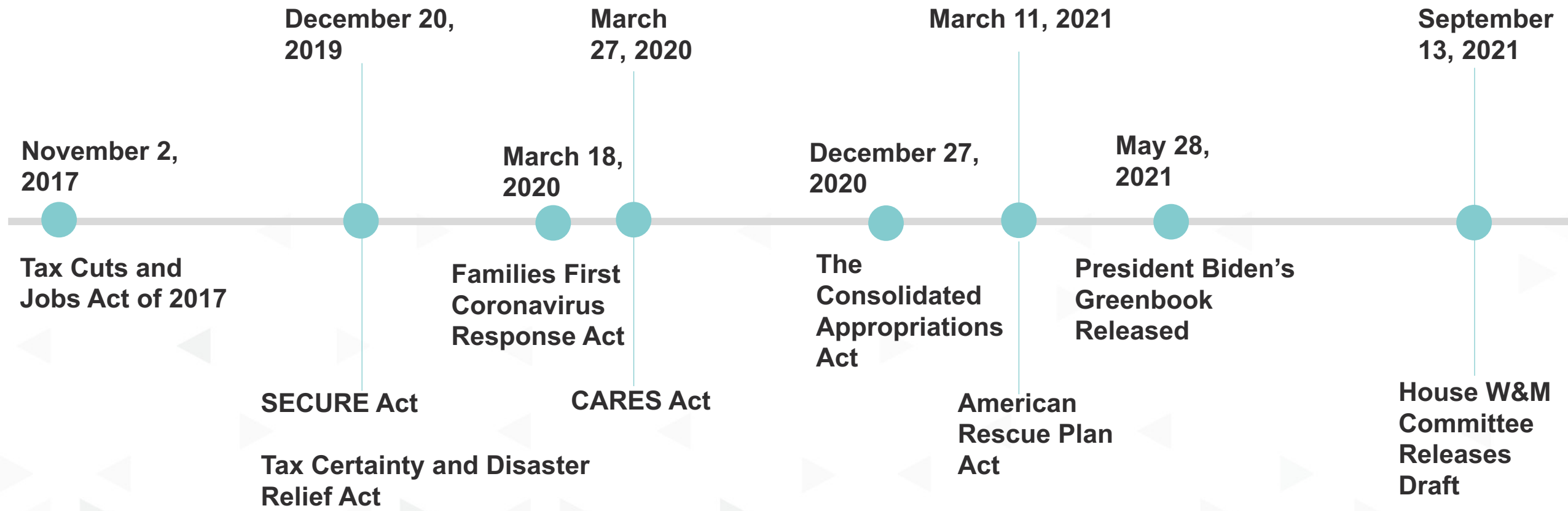
# THE SETTING EVERY COMMUNITY UP FOR RETIREMENT ACT (SECURE)

- Bipartisan bill aimed at making retirement saving more accessible
- Pushed back retirement plan required minimum distributions from 70½ to 72
- Allows traditional IRA owners to contribute to their plan indefinitely
- Requires most non-spouse inherited IRA plans to take distributions to liquidate the account within 10 years
- Allows part-time workers to be eligible for 401k plans of their employers

# THE TAX CERTAINTY AND DISASTER RELIEF ACT OF 2019

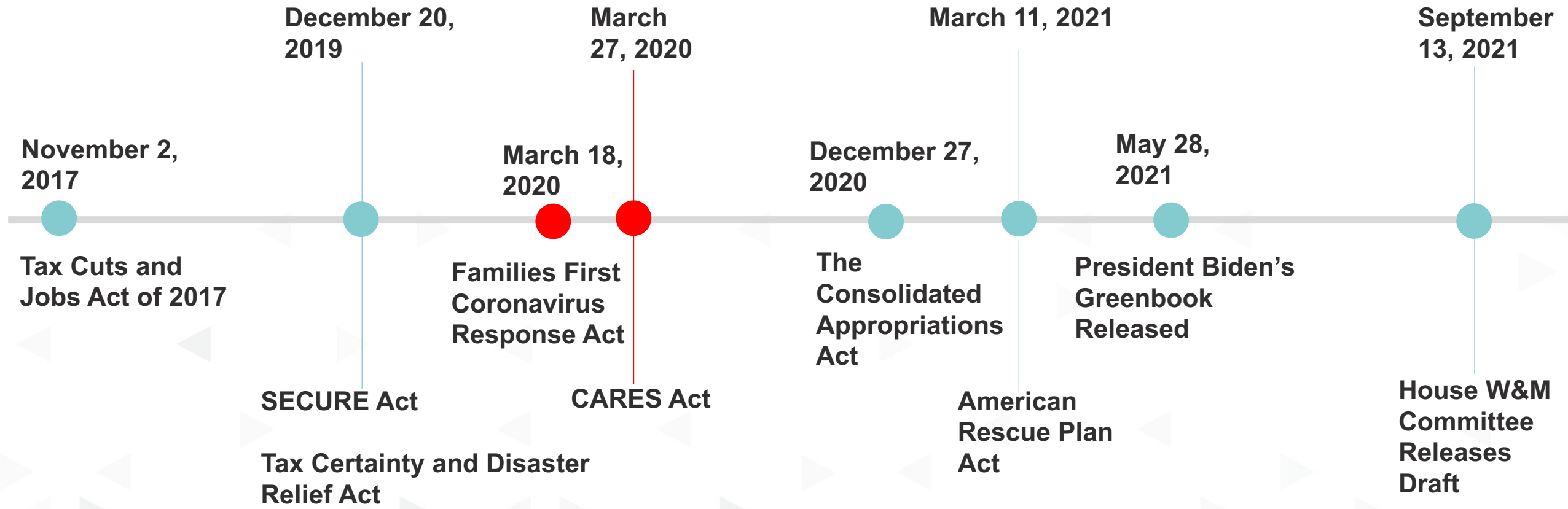
- Renewed two dozen tax credits and deductions that had expired or were set to expire at the end of 2019
  - Energy efficient home credit (45L)
  - Energy efficient commercial building deduction (179D)
  - Work opportunity tax credit (WOTC)
  - Empowerment zone tax incentives
  - Employee retention credit for employers affected by qualified disasters

# LEGISLATIVE TIMELINE





# LEGISLATIVE TIMELINE



# THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- Expanded nutrition assistance, paid sick leave, and enhanced unemployment insurance benefits
- Provided free coronavirus testing and increased federal Medicaid funding
- Mandated Covid -19 related family medical and paid sick leave for employers
- Provided tax credits to reimburse employers for both sick leave and family medical leave



# THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (CARES)

- Provided emergency assistance and healthcare response for individuals, families and businesses affected by COVID-19
- Over 300 pages and \$2.3 trillion in stimulus spending
- Intended to blunt the impact of economic downturn caused by the COVID-19 pandemic
- Historic government funding to support large and small businesses, hard hit industries, and individuals

# KEY CARES ACT PROVISIONS

- Payroll Tax Deferral
- Paycheck Protection Program
- Employee Retention Credit
- Temporary favorable changes to the tax code

# PAYROLL TAX DEFERRAL

- Delayed remittance of applicable employment taxes
  - Deferral period: enactment – January 1, 2021
  - 50% of deferral period liability due by December 31, 2021
  - 50% of deferral period liability due by December 31, 2022
- › Tax deduction not allowed for accrued expense if paid back after 9/15/2021.

# PAYCHECK PROTECTION PROGRAM (PPP)

- Free money!!!! (maybe?)
- Forgivable loans to "qualified employers"
- Mass confusion for taxpayers and lenders
- Multiple different tests to receive loan and qualify for forgiveness



# EMPLOYEE RETENTION CREDIT (ERC)

- Refundable credit against applicable employment taxes
- Originally effective from March 12, 2020 – January 1, 2021
- Strict restriction on who could qualify
- PPP loan recipients not eligible (for now...)
- Credit = 50% of eligible wages for entire effective period

# OTHER TAX CODE CHANGES - INDIVIDUALS

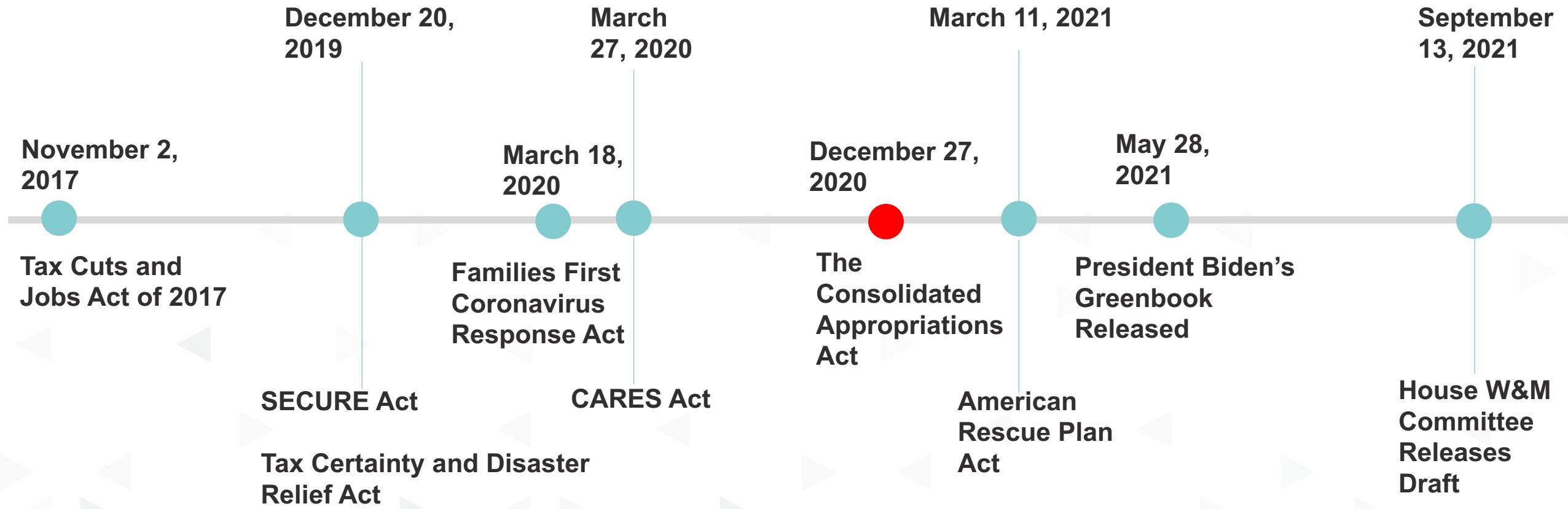
- Temporary increase of charitable contribution limitations
- Temporary waivers of RMD and penalties on early retirement account distributions
- Suspension of Excess Business Loss Limitations



# OTHER TAX CODE CHANGES - BUSINESSES

- Five year NOL Carrybacks
- Temporary changes to Interest Limitation rules
- Technical correction for Qualified Improvement Property

# LEGISLATIVE TIMELINE



# THE CONSOLIDATED APPROPRIATIONS ACT OF 2021

- Additional \$900 billion in COVID-19 stimulus
- \$1.4 trillion in government funding through September 2021
- Provisions
  - Additional round of PPP and changes to the original program
  - Extension and expansion of ERC
  - Funding for COVID relief programs and other relief initiatives

# PPP LOAN UPDATES AND EXPANSION

- More free money!!! (really this time)
- Loosens rules for forgiveness calculation
- Simplifies forgiveness for smaller loans
- Do-over for returned loans
- More restrictions on 2nd round loan qualification

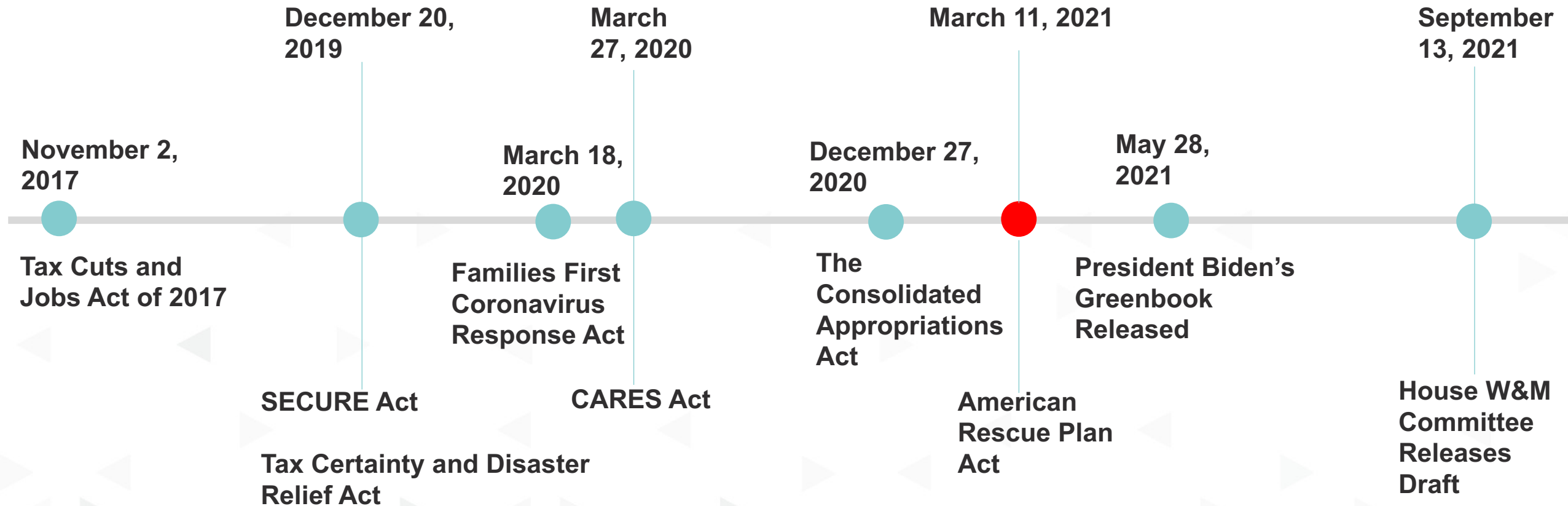
# ERC EXPANSION

- Extended into Q1 and Q2 of 2021 and expanded benefit
- PPP loan recipients now qualify
- Credit = 70% of qualified wages "per quarter"
- 500 full-time employee cap vs 100 in 2020
- 20% reduction in revenues to qualify with prior quarter "safe harbor"

# OTHER PROVISIONS

- Grants for shuttered venue operations
- 100% deduction for business meals in 2021 & 2022 (restaurants)
- 100% charitable deduction limit extended to 2021
- Extended and made permanent various tax credits

# LEGISLATIVE TIMELINE





# AMERICAN RESCUE PLAN ACT OF 2021 (ARPA)

- Signed into law by President Biden on March 11
- \$1.9 trillion COVID-19 stimulus bill
- Includes aid for vaccinations & testing, state & local governments, schools, troubled multiemployer plans, rental assistance, agriculture, & airline industry
- Tax-related provisions & additional business relief

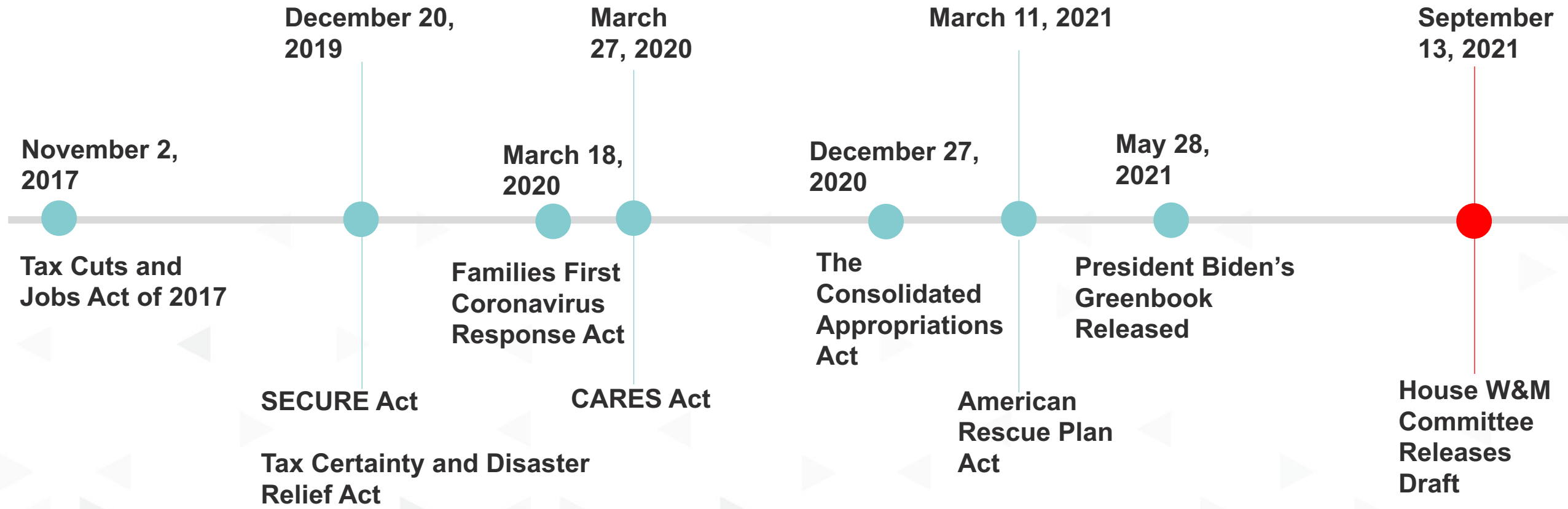
# INDIVIDUAL STIMULUS AND TAX BENEFITS

- \$300 Unemployment payments until September 2021
- Enhanced child tax credit (\$3,600 including advance payments)
- Expansion earned income credit
- Child & dependent tax credit adjustment
- Excludes student debt forgiveness from income from 2021-2025

# PROVISIONS FOR ORGANIZATIONS

- Expansion of Paid Sick & Family Leave Credits
- Additional funding and expanded eligibility for PPP loans
- Extended employee retention credit to December 31, 2021
- Restaurant grants

# LEGISLATIVE TIMELINE





I'm sorry Dave. I'm afraid you're not paying your fair share of taxes.

# CURRENT PROPOSALS & LEGISLATIVE OUTLOOK

## MAKEUP OF CONGRESS



- › 219 Democrats
- › 211 Republicans



- › 50 Democrats + Vice President Harris
- › 50 Republicans

# BIPARTISAN INFRASTRUCTURE DEAL

- \$1.2 trillion paid for in following ways:
  - Restrict availability of the Employee Retention Credit to wages paid prior to October 1, 2021 (three months early), except for recovery start-up businesses
  - Strengthen tax enforcement on transactions involving cryptocurrencies
  - Reinstate the Superfund Tax, which imposes excise tax on chemical manufacturers through 2032
  - Repurpose unused COVID-related relief funds
  - Lean on state & local investment in broadband infrastructure



# HOUSE W&M COMMITTEE PROPOSALS

## INDIVIDUAL TAX RATES

### Strengthen Taxation of High-Income Taxpayers

Topic	Current Law	Proposal
Increase top marginal income tax rate for high earners (individuals)	<ul style="list-style-type: none"><li>➤ Seven brackets with top rate of 37 percent* for taxable income over \$523,600 single &amp; head of household (HOH); \$628,300 married filing Joint (MFJ)) in 2021</li><li>➤ Expires after December 31, 2025, except thresholds continue to be indexed for inflation using chained measurement of consumer price index where applicable</li></ul>	<ul style="list-style-type: none"><li>➤ <b>Increase top rate to 39.6 percent</b> for taxable income over \$437,500 single, \$465,100 HOH, &amp; \$492,150 MFJ in 2022, indexed annually for inflation (\$14,950 for trusts)</li><li>➤ Effective for taxable years beginning <b>after December 31, 2021</b></li></ul>

*\*Plus 3.8 percent net investment income tax on unearned income when modified gross income exceeds certain thresholds*

# HOUSE W&M COMMITTEE PROPOSALS

## INDIVIDUAL TAX RATES

### Strengthen Taxation of High-Income Taxpayers

Topic	Current Law	Proposal
Create new 3% surcharge on high-income individuals	<ul style="list-style-type: none"><li>➤ No additional taxes for high-income individuals after applying the highest income tax rate of 37% and potential 3.8% NIIT.</li></ul>	<ul style="list-style-type: none"><li>➤ <b>Additional 3% tax</b> for modified AGI over \$5mil single, HOH, and MFJ (\$2.5mil for MFS)*</li><li>➤ Additional tax starts at \$100,000 for Trusts</li><li>➤ Effective for taxable years beginning <b>after December 31, 2021</b></li></ul>

*\*Not considered part of Sub A, Chapter 1 for purposes of determining AMT and tax credits*

# HOUSE W&M COMMITTEE PROPOSALS

## INDIVIDUAL TAX RATES

Strengthen Taxation of High-Income Taxpayers		
Topic	Current Law	Proposal
Expansion of net investment income tax (NIIT) & <i>Self-Employment Contributions Act</i> (SECA) tax	<ul style="list-style-type: none"><li>➤ 3.8 percent on certain NII of individuals, estates, &amp; trusts (\$250k threshold for MFJ)</li><li>➤ NII does not include income from pass-through ownership where the partner or shareholder materially participates (passive vs active)</li></ul>	<ul style="list-style-type: none"><li>➤ All pass-through business income of high-income taxpayers subject to either NIIT or SECA tax (\$500k threshold for MFJ &amp; \$400k for single)*</li><li>➤ Effective for taxable years beginning <b>after December 31, 2021</b></li></ul>

\*Passive activity rules still apply to offsetting pass-through losses

# PLANNING OPPORTUNITIES

- Accelerate income & defer deductions for permanent tax saving
  - › Change of accounting methods
  - › Consider forgoing bonus depreciation
  - › Pre-pay intercompany rents for accrual basis entities
  - › Wait until next year for large charitable contributions
  - › Convert traditional IRA's to Roth IRA
  - › Consider accelerating recognition of income with deferred compensation plans

# HOUSE W&M COMMITTEE PROPOSALS

## INDIVIDUAL TAX RATES

Strengthen Taxation of High-Income Taxpayers		
Topic	Current Law	Proposal
Reform taxation of capital income (& qualified dividends)	➤ Top rate of 20 percent*	<ul style="list-style-type: none"><li>➤ Top rate of 25% for taxpayers in the top ordinary income tax bracket (\$492k MFJ, \$437k single)^</li><li>➤ Effective date is <b>September 13, 2021</b></li><li>➤ Unless existing binding contract and close occurs before 12/31/21</li></ul>

*\*Plus 3.8 percent net investment income tax on unearned income when modified gross income exceeds certain thresholds*

*^Plus 3.8 percent net investment tax and 3 percent surtax starting at applicable thresholds*

# PLANNING OPPORTUNITIES

- Accelerate gain recognition and defer losses
  - › Could still make sense to pick up gain in 2021
  - › Don't harvest losses until 2022
  - › Intentionally recognize gains in grantor trusts
  - › Consider election out of installment sale

# CURRENT BUSINESS TAX RATES

	Corporations	Pass-Throughs
Number of tax brackets	➤ One, flat rate	➤ Seven brackets for individuals (four for trusts/estates)
Top tax rate	➤ 21 percent + 23.8 percent on qualified dividends	➤ 37 percent + 3.8 percent net investment income tax
Alternative minimum tax	➤ None	➤ 28 percent (after exemption subject to phaseout)
Other tax	<ul style="list-style-type: none"> <li>➤ Accumulated earnings tax (20 percent)</li> <li>➤ Tax on undistributed personal holding company income (20 percent)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Self-employment tax (15.3 percent)</li> <li>➤ Built-in gains tax</li> </ul>
Other rate considerations	➤ Full/partial gain exclusion on qualified small business stock	<ul style="list-style-type: none"> <li>➤ Qualified business income deduction (20 percent)</li> <li>➤ Limitations on losses &amp; SALT deduction</li> </ul>

# HOUSE W&M COMMITTEE PROPOSALS

## CORPORATE TAX RATES

Strengthen Taxation of Corporate Taxpayers		
Topic	Current Law	Proposal
Increase corporate tax rate and re-introduce graduated rates	➤ Flat corporate tax of 21%	➤ Top rate of 26.5% for corporate net income over \$5mil ➤ Graduated rates: 18% (\$0 - \$400k) 21% (%400k - \$5mil) ➤ Effective date is <b>December 31, 2021</b>



# HOUSE W&M COMMITTEE PROPOSALS

## QUALIFIED BUSINESS INCOME DEDUCTION

Strengthen Taxation of Pass-through Taxpayers		
Topic	Current Law	Proposal
Severely limit the use of Sec 199A deduction for pass-through income.	<ul style="list-style-type: none"><li>➤ Taxpayers can receive a maximum 20% deduction on Qualified Business Income received from partnerships and S corporations</li><li>➤ Effectively takes the maximum individual rate for passthrough business income from 37% to 29.6%</li></ul>	<ul style="list-style-type: none"><li>➤ Limit the eligibility of the 199A deduction to taxpayers making less than \$500k MFJ, and \$400k single</li><li>➤ Effective date is <b>December 31, 2021</b></li></ul>

# HOUSE W&M COMMITTEE PROPOSALS

## COMPARISON OF CORPORATE VS PASS-THOUGH

Type of Entity	Current Law ^	Proposal
Corporation	➤ <b>39.8 percent</b> (21% + 0.79 * 23.8%)	➤ <b>59.25 percent</b> (26.5% + 0.735 * 31.8%)
Pass-through		
<u>With</u> qualified business income deduction	➤ <b>29.6 percent through 2025</b> (37% * 80%)	➤ <b>28 percent through 2025</b> (35% * 80%) (under \$500k)
<u>Without</u> qualified business income deduction	➤ <b>37 percent through 2025</b>	➤ <b>46.4 percent</b> (39.6% + 3.8% + 3%)

*^Plus 3.8 percent net investment tax not included on active passthrough income*

# HOUSE W&M COMMITTEE PROPOSALS

## ESTATE AND GIFT TAX

Strengthen Taxation of High-Income Taxpayers		
Topic	Current Law	Proposal
Reduce lifetime estate and gift tax exemption	<ul style="list-style-type: none"><li>➤ Lifetime exemption amount of \$10mil indexed for inflation</li><li>➤ Currently \$11.7mil in 2021</li></ul>	<ul style="list-style-type: none"><li>➤ Cuts in half the lifetime exemption to \$5mil indexed for inflation</li><li>➤ Would make 2022 exemption amount approximately \$5.9mil per person</li><li>➤ Effective date is for gifts and estate incurred after <b>December 31, 2021</b></li></ul>

# HOUSE W&M COMMITTEE PROPOSALS

## ESTATE AND GIFT TAX

Strengthen Taxation of High-Income Taxpayers		
Topic	Current Law	Proposal
Tighten valuation discounting rules for transfers of property by estate or gift	<ul style="list-style-type: none"><li>➤ Allows for valuation discounts for lack of marketability and lack of control</li><li>➤ Total combined discounts can reach 30% - 40% in some cases</li></ul>	<ul style="list-style-type: none"><li>➤ Removes the ability to include non-business assets in the calculation of discounts</li><li>➤ Valuation discounts would remain for business use assets only</li><li>➤ Effective date is for gifts and estate incurred <b>after enactment</b></li></ul>

# HOUSE W&M COMMITTEE PROPOSALS

## ESTATE AND GIFT TAX

### Strengthen Taxation of High-Income Taxpayers

Topic	Current Law	Proposal
Restrictions on the use of Grantor Trusts for estate planning	<ul style="list-style-type: none"><li>➤ Grantor trusts are not included in the donor's estate</li><li>➤ While grantor status is active income is reported to the donor</li></ul>	<ul style="list-style-type: none"><li>➤ Include in donor's estate if considered the owner</li><li>➤ Transfer to grantor trust not considered gift if donor is considered the owner</li><li>➤ Distributions to beneficiaries considered gift</li><li>➤ Effective date is for gifts and estates incurred <b>after enactment</b></li></ul>

# HOUSE W&M COMMITTEE PROPOSALS

## ESTATE AND GIFT TAX

Strengthen Taxation of High-Income Taxpayers		
Topic	Current Law	Proposal
Recognition of gain on sale to grantor trusts	<ul style="list-style-type: none"><li>➤ Sales to grantor trusts are not a recognizable event for income tax purposes</li></ul>	<ul style="list-style-type: none"><li>➤ Sales to grantor trusts would be recognized for income tax purposes</li><li>➤ Effective date is for gifts and estates incurred <b>after enactment</b></li></ul>

# HOUSE W&M COMMITTEE PROPOSALS

## OTHER RELEVANT CHANGES

Close Loopholes		
Topic	Current Law	Proposal
Increase holding period for carried interest	➤ 3 year holding period	➤ 5 year holding period
Permanently disallow excess business losses	➤ Phase out in 2026	➤ Permanently extend
Limit exclusion of Sec 1202 small business stock	➤ No income threshold	➤ Limit exclusion for taxpayers over \$400k of income
Eliminate back-door Roth IRA strategy for high income taxpayers	➤ No income threshold	➤ Limit exclusion for taxpayers over \$400k of income

*\*Threshold adjusted annually for inflation*

# HOUSE W&M COMMITTEE PROPOSALS

## INCREASE IRS FUNDING

### › Improve Tax Administration

- Increase oversight of paid tax return preparers
  - Enhance accuracy of tax information
  - Expand broker information reporting with respect to crypto assets
- › Address taxpayer noncompliance with listed transactions
  - › Modify tax administration rules
  - › Authorize limited sharing of business return information to measure economy more accurately



# OMISSIONS HOUSE W&M COMMITTEE PROPOSALS

- Repeal of \$10k limit on state and local tax deduction
- Limitation on like-kind exchanges
- 15% minimum tax on corporations with over \$2bil of income
- Carbon tax and carbon polluter import fee
- Biden administration plan for new IRS reporting system



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# Thank You!

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