Declaring Inflation Reduced and Being Forgiving – Recent Developments in Tax and Law

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Overview

A lot has happened in the legal and tax world over the last couple of weeks. I fear that much of it is not good for many people or the country and is contrary to the principles of a democratic republic (if that is what we still have). Agriculture is in the crosshairs of much of it over the long-term. That last point is something I have been talking about for over 20 years – tax and energy policies that shift the problems of the urban areas of the coasts to the rural areas by using the space of those less populated and agricultural-heavy rural parts of the country and shifting the incidence of tax policy to those same areas disproportionately.

Recent enacted legislation, an executive order and associated tax and legal issues - it's all the topic of today's post.

"Inflation Reduction Act"

I hesitate to call this Act by its name – the "Inflation Reduction Act" (Act). If ever there has been a deceptively misnamed piece of legislation, this is it. An Act with $750 billion of fake money to will not reduce inflation. Words have no meaning. I suppose that we are supposed to believe that the following provisions of the bill will reduce inflation:

- $3 billion for the U.S. Postal Service to buy new electric mail trucks;
- $3 billion for the EPA to oversee block grants for "environmental justice;"
- $40 billion total to the EPA which includes $30 billion for "disadvantaged communities" (keep in mind that the total annual budget of the EPA is about $10 billion);
- $750 million to the Interior Department for new hires;
- $10 million to the USDA to be spent on "equity commissions" to "combat" racism;
- $25 million to the Government Accountability Office to determine, "whether the economic, social and environmental impacts of the funds described in this paragraph are equitable;"
- Via a budget gimmick to keep the amount outside of the Act's price tag are amounts to the Energy Department for existing "green" energy loan programs and a new energy loan-guarantee program.

The above is only a listing of a few of the provisions in the several-hundred-page bill. These are the ones that particularly stuck out to me. Reduce inflation? Not a chance.

Then there are numerous "renewable" energy-related tax credits that won't reduce inflation either. Indeed, it's likely that the credits will increase inflation. When education credits came on the scene several years ago, tuition increased, and university endowments began to bloat. As of September 1, 2022, Harvard's endowment is $53.2 billion, and Yale's is $42.3 billion.

Right after the Act was signed into law with an enhanced tax credit for electric vehicles, major U.S. automakers announced that the price of electric vehicles would be going up by almost exactly the amount of the new tax credit. In an interesting twist, while CA has announced a ban on gas car sales after 2034, the state is already telling its citizens *not* to charge existing electric vehicles during a heat wave to avoid blackouts.

Tax Provisions

The following provisions are some of the major tax provisions of the Act:

- 15% minimum tax on corporate-book income (rather than taxable income) applicable to C corporations with annual adjusted financial statement income averaging over $1 billion in revenue over prior three years. The tax is on the higher of regular taxable income and financial statement income. In other words, it is a 15% tax on the excess of a corporation's adjusted financial statement income over its corporate AMT foreign tax credit of I.R.C. §59(l)for the year. It's also applicable to U.S. corporations with foreign parents if average 3-year revenue earned in the U.S. is $100 million or more. R.C. §56A (new) defines "adjusted financial statement income" as a corporation's net income (or loss) as set forth in the taxpayer's applicable financial statement, as defined in Sec. 451(b)(3). Adjusted financial statement income is reduced by the amount of tax depreciation deductions the taxpayer claims when calculating taxable income for the year.

The provision also disallows the use of NOLs accruing before 2020. That will have negative implications for companies that had virus-related shutdowns but had invested in 2018-2019 in equipment that created a loss.

Note: The provision is especially harmful to U.S. manufacturing firms, and will put pressure on U.S. manufacturers to cut labor costs or scale back U.S. operations. The non-partisan Joint Committee on Taxation (JCT), in an initial report, determined that 49.7% of the tax would hit U.S. manufacturers that account for 11% of the economy. By comparison, wholesale trade, information companies and retail trade get off relatively easy by comparison. JCT says the biggest hit will be felt in IN, KY, MI, NC and WI. In effect, the provision "claws back" part of the $280 billion subsidy for computer chip manufacturers (another bill that was signed into law before this one). While those numbers can be adjusted a bit due to the final provision exempting accelerated depreciation, the hit to the manufacturing sector will be big. The Tax Foundation estimates that the provision will eliminate approximately 20,000 jobs. The provision does not apply to a foreign company unless the company has significant U.S. operations.

- A nondeductible 1% excise tax on stock buybacks after 2022 of a "covered corporation." That's a domestic corporation with stock traded on an "established securities market." Under this provision, the value of stock that is treated as repurchased during the tax year for purposes of computing the excise tax is reduced by the value of any new issuances of stock by the corporation during the same tax year ("netting rule"). The term "repurchase" is defined by reference to I.R.C. §317(b). It includes any acquisition of stock by the corporation in exchange for cash or property other than the corporation's own stock or stock rights, as well as any other "economically similar" transaction as Treasury determines. Excluded from excise tax are repurchases if: 1) it's part of a tax-free reorganization under I.R.C. 368(a) and no gain or loss is recognized by the shareholder as a result of the reorganization; 2) the repurchased stock (or an amount of stock equal to the value of the repurchased stock) is contributed to an ESOP or employer-sponsored retirement plan; 3) the total amount of repurchases within the tax year are $1 million or less; or 4) the repurchase is treated as "dividend" for tax purposes.

Note: The Tax Foundation estimates that the provision will eliminate 7,000 jobs.

- The excess business loss rule is extended for two more years – through 2028. That means that there will be a cap on net operating losses of $250,000 (single) and $500,000 (mfj). Those amounts are adjusted for inflation.

- Extension of the I.R.C. §25C energy-efficient property credit (personal credit for specified nonbusiness energy property expenditures) for property placed in service before 2033. It is renamed as the "energy-efficient home improvement credit" and is a 30% credit for qualified energy efficient improvements installed during the year, and the amount of residential energy property expenditures paid or incurred during the year. The credit is increased for amounts spent for home energy audit up to $150 and is limited to $1,200 per taxpayer/year. The lifetime $500 limit on the credit is repealed. Eligible property can be residential property that is not the taxpayer's primary residence. Other limits are $600 annually for residential energy property expenses such as windows and skylights; $250 for any exterior door ($500 total); and a $2,000 annual limit for amounts paid or incurred for specified heat pumps, heat pump water heaters and biomass stoves and boilers.

- Extension of residential energy efficient property credit of I.R.C. §25D for property installed in years before 2035 - 26% through 2021; 30% if prop. placed in service from 2022-2032; 26% (2033); 22% (2034). Property that qualifies is solar electric; solar hot water; fuel cell; small wind energy; geothermal heat pumps; biomass fuel property; and qualified battery storage technology expenses. The credit is renamed as the "residential clean energy credit."

- New energy efficient home credit under I.R.C. §45L for contractors that applies for qualified new energy efficient homes acquired before 2033. The credit varies from $500 to $5,000.

- New clean-vehicle credit of I.R.C. §30D that is generally effective for vehicles places in service after 2022 and before 2033. This credit is the retitled qualified plug-in electric drive motor vehicle credit. The maximum credit is $7,500 (2023-2032). It eliminates the cap on the number of vehicles eligible (i.e., no per manufacturer credit). For the credit to be available, a vehicle's final assembly must be in the U.S. (effective upon enactment). In addition, battery-making materials must be sourced in Canada or Mexico for full credit to apply. However, presently most EV battery-making minerals (lithium, cobalt and nickel) are sourced from China. No credit is available if a taxpayer's lesser of MAGI for year of purchase or preceding year exceeds $300,000 (mfj or ss); $25,000 (hh) or $150,000 (others). There is no phaseout. No credit is available if a vehicle's MSRP exceeds $55,000 ($80,000 for pickups, vans or SUVs). Starting in 2024 the $7,500 credit only applies to vehicles made with parts and components sourced from U.S., Canada or Mexico, or countries with which U.S. has a free trade agreement. The credit is split in half - $3,750 applies to vehicles having at least 40% of critical battery materials sourced from a free trade country or from material recycled in U.S. This goes to 80% by 2026. The remaining $3,750 applies to vehicles with 50% of battery component manufactured or assembled in North America. The 50% goes to 100% after 2028

Note: Sourcing requirements are dependent on the supply chain. This will make it tough for manufacturers to comply with the requirement that almost all of the materials come from North America. Manufacturers must prove that their vehicles comply with the sourcing requirements. The Treasury is to develop guidelines by the end of 2022 to show how compliance will be measured. Currently there are 72 EV models can be purchased in the U.S. 70% of them will become immediately ineligible. 100% will not qualify for the full credit

Note: The credit is allowed once per vehicle, and taxpayers claiming the credit must include the vehicle identification number (VIN) on the return. To verify whether a motor vehicle meets the final assembly requirement, dealers and consumers can follow a two-step process: 1) check to see if the vehicle appears on the Department of Energy's list of model year 2022 and 2023 electric vehicles that *may* qualify. But there may be vehicles on the Department of Energy list that do not meet the final assembly requirement in all circumstances; and 2) enter the vehicle's 17-character vehicle identification number (VIN) into the National Highway Traffic Safety Administration's VIN Decoder tool and view the "Plant Information" field at the bottom of the results page. A transition rule allows a buyer who entered into a written, binding contracts to buy a qualifying vehicle before August 16, 2022, but does not take possession of the vehicle until after that date, to avoid the final assembly requirement.

- Used clean vehicle credit of I.R.C. 25E. The credit is the lesser of $4,000 or 30 percent of the vehicle's cost. For the credit to apply, a vehicle's sales price can't exceed $25,000.

Comment on the vehicle tax credits: The big issue is that the tax credits will increase inflation. Electric vehicle manufacturers have already increased the price of their vehicles by the cost of the credit. In essence, the government is paying a purchaser of an electric vehicle back their own money to buy an electric vehicle from a manufacturer that has raised the cost of the vehicle by the same amount. Thus, the credit is a subsidy for the manufacturer. It does not result in any real savings for the purchaser.

- An extension of the credit for sales and use of biodiesel and renewable diesel used in a trade or business or sold at retails and placed in fuel tank of buyer through 2024. A refund of excise tax can be claimed for the use of biodiesel fuel mixtures for a purpose other than for which they were sold or for resale on or before 2025 and 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 on or before 2025.

- The credit for energy produced from renewable resources under I.R.C. §45 is 1.5 cents per kilowatt hour. But, if prevailing wage paid to employees the credit is increased 10% by sourcing steel, iron or manufactured-product components from U.S. manufacturers or by locating in an "energy community" – area with significant employment in fossil fuel industry or which have experienced the closure of a coal mine or coal-fired plant.

Comment: Apparently, the Administration is concerned that "green" energy jobs don't actually generate "good-paying jobs" as the Administration likes to say.

- With the research and development credit, for tax years beginning after December 31, 2022, an eligible small business can reduce payroll taxes by up to $500,000 annually (up from the prior limit of $250,000). An eligible small business is one having less than $5 million in revenue *and* revenue for less than five years. The credit can now apply to the Medicare portion of taxes (*previously, it only applied to the Social Security portion of payroll tax*). Unused amounts can be carried forward. The credit can't exceed tax imposed for any calendar quarter The IRS will need to revise Forms 941, 6755 and 8794.

- Modifications to the I.R.C. §179D energy efficiency deduction. Previously, only commercial building owners or the designers of energy efficient systems in government-owned buildings qualified. Under the Act, designers of lighting, HVAC or building envelope systems in structures owned by other tax-exempt entities such as nonprofits, religious groups and educational institutions can also qualify. The Act lowers the threshold for energy improvements needed to qualify. Under prior law, a building had to show a 50 percent energy savings over a benchmark structure. The Act changes 50 percent to 25 percent and the base deduction begins at $.50/sq. foot for the 25 percent energy savings threshold, and increases by 2 cents per square foot for each percentage point above that, up to $1 per square foot. Contractors can earn a "bonus" deduction by paying prevailing wages and meeting apprenticeship requirements on these jobs. This bonus deduction starts at $2.50 per square foot at the 25 percent threshold, and increases 10 cents per square foot beyond that, up to a $5 maximum.

The JCT has determined that the Act will reduce real GDP by $68.5 billion and cut labor income by $17.1 billion. The JCT also says that average tax rates will increase for nearly every income category in 2023. Specifically, the JCT says that taxes will rise by $16.7 billion in 2023 on those earning less than $200,000 annually and those making between $200,000 and $500,000 will pay $14.1 billion more. The JCT also concluded that 61 percent of taxpayers making between $40,000 and $50,000 will see a tax increase, and that 91 percent of taxpayers making between $100,000 and $200,000 will see higher taxes.

Ag Program Spending

The Act contains a great deal of spending on ag conservation-related programs. Here are the primary provisions:

- EQIP - $8.45 billion additional funding over Fiscal Years 2023-2026. Prioritizes funding for reduction of methane emissions from cattle (e.g., cattle passing gas) and nutrient management activities (e.g., diets to reduce bloating in cows).
- CSP - $3.25 billion additional funding over same time frame.
- Ag Conservation Easement Program (ACEP) - $1.4 billion over same time frame for easements or interests in land that will reduce, capture, avoid or sequester carbon dioxide, or methane oxide emissions with land eligible for the program. ACEP incorporates the Wetlands Reserve Program, the Grasslands Reserve Program and the Farm and Ranch Lands Protection Program.

- Regional Conservation Partnership Program - $4.95 billion over same timeframe for cover cropping, nutrient management, and watershed improvement.
- $4 billion for drought relief that prioritizes the CO basin.
- The U.S. Forest Service gets $1.8 billion for hazardous fuels reduction projects on USFS land.
- $14 billion for rural development and lending projects.
- $3.1 billion to USDA to provide payments to distressed borrowers.
- $2.2 billion to USDA for farmers, ranchers and forest landowners that have been discriminated against in USDA lending programs (i.e., reparations).
- $5 billion to USDA for National Forest System to fund forest reforestation and wildfire prevention.

Increased Obamacare taxpayer subsidies:

The Act provides $64 billion of taxpayer funds to extend expanded Obamacare subsidies. Remember, President Obama said that the ACA would save the average family about $2,500 annually in health care costs. Well, not so much. In 2014, the first year of exchanges, the average premium was $353. By 2019 it was $558. Over the same time, the average subsidy increased from $383 to $524. The subsidy is determined by taking cost of silver plan less the amount that Obamacare requires to be spent on an exchange plan (“expected contribution). ARPA (2021) increased subsidies by $36 billion through 2022 (in other words the additional taxpayer subsidies cause the amount a person in an exchange pays to go down).

Note: From 2018-2020 the Trump Administration deregulated Obamacare exchanges and prices on the exchanges stabilized. When the Biden Administration repealed the changes, prices began rising again. The anticipated premium increase for 2023 is 10%.

Under the Act, if a person is over 400 percent of the poverty line, the person can still qualify for the premium tax credit of I.R.C. §36B (through 2025) if the sliver plan would cost more than 8.5 percent of household income. There is a lower applicable percentage of household income for all income levels.

Medicare provisions:

The Act allows Medicare to negotiate drug prices. While that sounds good, the economics may not work out as anticipated. In reality, while less expensive drugs may result, there will likely be fewer “miracle drugs” in the future due to a decreased incentive for pharmaceutical research and development. The Act permits the Secretary of the Department of Health and Human Services to negotiate maximum “fair” prices for 50 drugs in Medicare Part D and 50 drugs in Medicare Part B on a phased schedule. Drugs that are less than nine years (for small-molecule drugs) or 13 years (for biological products) from their U.S. Food and Drug Administration (FDA)-approval or licensure date would be held exempt from negotiation. To enforce the negotiation, the bill imposes a monetary penalty of 10 times the difference between the offered price and the “maximum fair price” for all applicable units.

The Act imposes rebates on drug manufacturers that increase prices faster than inflation to limit annual increases in drug prices for Medicare enrollees. The rebate is based on the Average Sales Price beginning in 2023 relative to Q3 2021. The rebates only apply to drugs in Medicare Part B without competition and Part D drugs that cost more than $100 a year.

The Act also makes a number of changes to the structure of Medicare Part D by eliminating the five percent cost-sharing in the catastrophic phase of Part D in 2024. The Act also caps out-of-pocket costs at $2,000 in 2025, and limits premium growth to 6 percent each year for the next five years.

The Act also caps out-of-pocket costs for Medicare Part D purposes at $35 per month.

Note: On a related note, involving Medicaid, the Administration announced in mid-August its intent to stop paying for COVID vaccines and treatments. Vaccines and treatments have been provided at no-charge to patients, but providers have been compensated with taxpayer dollars. With any renewed mandates, private insurance companies will have to cover the costs of their insureds. This will drive up premiums and create larger co-pays. It's practically a certainty that the Centers for Medicare and Medicaid Services will require all contracted insurance companies to provide vaccines, boosters and anti-viral drugs. Fees will increase to do so, and the additional cost will be borne by taxpayers. It is reasonable to anticipate that rural hospitals will be disaffected the most.

More IRS funding and statute of limitation changes:

The IRS gets approximately $80 billion in IRS funding (over next 10 years) to hire 87,000 agents. The IRS currently has 78,000 agents, but 50,000 are set to retire in the next few years. $46 billion is to be dedicated to enforcement and is anticipated to increase the number of audits by $1.2 million annually. $25 billion is earmarked for IRS operations, $5 billion for business systems modernization. IRS taxpayer services, which many tax practitioners would say as the most in need of funding, gets the short end of the stick with $4 billion.

Note: Nikole Flax, most recently the deputy administrator in charge of the IRS' Large Business & International Division, has been tabbed to lead the creation of a new centralized office for implementation of all IRS-related provisions in the Act. Ms. Flax, it should be noted, worked alongside Lois Lerner during the Obama-era scandal involving the IRS targeting of conservative and tea party affiliated groups as a political arm of the Obama Administration. She is one of several senior IRS officials during that scandal that had their emails conveniently "get lost."

Along with the increased IRS funding and additional taxpayer audits that will be forthcoming, the "PPP Bank Fraud and Harmonization Act of 2022" (HR7352) establishes a 10-year statute of limitations for criminal charges and civil enforcement against a borrower who engages in fraud with respect to a PPP loan. Likewise, the "COVID-19 EIDL Fraud Statute of Limitations Act of 2022" (HR 7334) gives prosecutors 10 years to file fraud charges (from date offense was committed) connected to loan applications from the COVID-19-related EIDL program, including EIDL advances and targeted EIDL advances.

Student Loan Forgiveness

"People think that the President of the United States has the power for debt forgiveness. He does not." He can postpone, he can delay, but he does not have that power. That has to be an act of Congress."

U.S. House Speaker, Nancy Pelosi. July 2021

On August 24, 2022, the Administration via the U.S. Department of Education announced that it would be canceling up to $20,000 in student debt for Pell Grant recipients and up to $10,000 in student loans for those making under $125,000 a year ($250,000 mfj). The cost is projected to be more than $500 billion and effectively amounts to a debt transfer from borrowers to taxpayers. Simultaneously with that announcement was the Administration's announcement that the student-loan repayment moratorium would be extended through the end of 2022 (no interest has accrued since March of 2020 at a cost to the federal government of $5 billion per month). The Committee for a Responsible Federal Budget estimates that since the moratorium on student-loan repayments began, those with medical degrees have received the equivalent of $48,500 in debt cancellation due to no interest payments required to be made, and those with law degrees have received the equivalent of $29,500.

Note: The Penn Wharton Budget Model estimates that about 70 percent of the borrowers qualifying for the $10,000 debt cancellation are in the top 60 percent of income earners because a disproportionate amount of debt is held by couples close to the applicable income threshold. In addition, more than half of student-loan debt is held by households with graduate degrees. Junlei Chen, *"Forgiving Student Loans: Budgetary Costs and Distributional Impact,"* Penn Wharton Budget Model, University of Pennsylvania, August 23, 2022, https://budgetmodel.wharton.upenn.edu/issues/2022/8/23/forgiving-student-loans.

Constitutionality

The primary question, of course, is whether such executive action is constitutional or whether it is merely an unconstitutional exploitation of emergency powers.

Administration's position. The administration is using a post-9/11 law, the Higher Education Relief Opportunities for Students (Heroes Act of 2003, to justify the action. That Act gave the education Secretary authority to waive rules related to student financial aid programs in times of war or national emergency. Because COVID was declared a national emergency in 2020, the Administration claims the forgiveness allows borrowers to not be placed in a worse position financially as a result of the emergency ("affected by an emergency"). This is despite a memo from the Office of the General Counsel at the U.S Department of Education (DOE) detailing that the DOE has no authority to forgive or cancel student loans across the board. *Reed Rubinstein, "Memorandum to Betsy Devos, Secretary of Education, Re: Student Loan Principal Balance Cancellation, Compromise, Discharge, and Forgiveness Authority," January 12, 2021, https://static.politico.com/d6/ce/3edf6a3946afa98eb13c210afd7d/ogcmemohealoans.pdf.* The current Administration now views the prior memo as "substantively incorrect" with no detailed legal analysis as to why. *Letter from Lisa Brown to Miguel A. Cardona, U.S. Department of Education, August 23, 2022, https://www2.ed.gov/policy/gen/leg/foia/secretarys-legal-authority-for-debt-cancellation.pdf.* Specifically, the 2022 memo does not explain how forgiveness complies with the requirement of the HEROES Act that such forgiveness is necessary to protect borrowers that had the ability to repay their loans.

SCOTUS opinion. Article I of the Constitution states that, "All legislative powers herein granted shall be vested in…Congress…". This principle is commonly referred to as the "nondelegation doctrine." The Congress cannot delegate its legislative powers. But, over the last 90 years, the Congress has delegated a great deal of legislative authority to administrative agencies with only an occasional pushback from the Supreme Court (SCOTUS). *See, e.g., Food and Drug Administration v. Brown and Williamson Tobacco, Co., 529 U.S. 120 (2000).* However, in *West Virginia. v. Environmental Protection Agency, 142 S. Ct. 2587 (2022),* the U.S. Supreme Court (SCOTUS) curtailed the EPAs authority to regulate greenhouse gas emissions at coal-fired plants without express Congressional authority under the "major questions" doctrine (a variation of the nondelegation doctrine). Now, clear congressional authority is needed before executive branch agencies take "major" actions that will have large economic and political significance. The Court's analysis was not so much focused on whether a statute violates the nondelegation doctrine, but what is the specific scope of authority given to the Executive Branch via the administrative agency at issue.

Note: The SCOTUS opinion in *West Virginia v. EPA* is viewed as a big "win" for agriculture on issues such as wetlands and the WOTUS rule and other conflicts with federal government regulatory agencies (EPA; U.S. Army Corps of Engineers; U.S. Forest Service, USDA/NRCS, etc.).

Application. Does COVID-19 constitute a national emergency as of Aug. '22 that justifies the action? It's really a big stretch to suggest that the U.S. of late Aug. '22 is anything like the U.S. of post-9/11 or even the summer or fall of 2020. Even if the virus is an emergency, is that enough post-*West Virginia v. Environmental Protection Agency?* Now, merely fitting the text of the statute is just the first step. It must also clear the "major question" hurdle. The Administration's legal counsel memo ignores the major questions doctrine which requires that the purpose of the governing statute must be taken into account *along with* the text in determining whether the Executive Branch (which includes administrative agencies) has the authority to bypass Congress on a particular issue. In any event, basing it justification for the Executive Action on the HEROES Act is not likely to be bought by the SCOTUS. The HEROES Act was written in and for the 9/11 context. Using the HEROES Act for COVID is likely not a strong argument at the SCOTUS in the post-*West Virginia v. EPA* era.

Note: The Administration has already lost cases where it claimed to have emergency power – vaccine mandate imposed by the Occupational Safety and Health Administration; eviction moratorium imposed by the Centers for Disease Control and Prevention etc.

The standing issue. A lawsuit can only be brought if the party bringing the suit can prove that they have been harmed. This is known as "standing." In *Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992),* the SCOTUS said that standing requires that the plaintiff suffer an injury in fact, that there be a causal connection between the injury and the complained-of conduct, and that that injury be "particularized." So, who has standing to challenge the student loan forgiveness hand-out? Certainly, the U.S. House of Representatives and private banks or loan servicers that have a direct or indirect relationship to the loans have standing. Remember, the U.S. House challenged Obamacare and was found to have standing to do so. Also, any person with outstanding student loans with income slightly over the appliable threshold that lives in an area with a high cost of living would have standing. $125,000 in New York City doesn't go nearly as far as $125,000 does in Tightwad, MO.

So, what happens if a lawsuit is filed? First, the Administration must finalize the policy. Then a court could issue an injunction forcing the Administration to either extend the repayment pause or have borrowers start repaying loans that may later be canceled. This all may cause the Administration to more fully explain how COVID fits the purpose of the HEROES Act to better detail the legislative history of the statute to justify the current plan. The Administration could also try to fit it under Section 432 of the Higher Education Act of 1965, where the Secretary of Education has the power to waive debts in non-emergency situations. But, that still doesn't meet the Administration's conduct would pass muster under the rationale of recent SCOTUS opinions.

Tax issues. While debt forgiveness is normally taxable, this would not taxable on account of Sec. 9675 of the American Rescue Plan Act of 2021. That provision modified I.R.C. §108(f) to exclude from gross income through 2025. That's amounts to another $34 billion in lost tax revenue. While not taxable at the federal level, it would be in five states that don't couple with the Internal Revenue Code (AR, MN, MS, NC and WI).

Conclusion

The Act and the Executive action on student loan debt, are troubling on many fronts. They essentially do nothing to address the core economic problems the nation faces at the present time. Continuing to fund economically inefficient methods of energy production as a means of forcing the economy to shift to politically popular (currently) technologies will hit middle-to-lower income people the hardest. It will also hit energy intensive industries (such as agriculture) particularly hard. The massive increase in funding for the EPA also could be potentially very troublesome for agriculture. Likewise, the increased funding of environmental ag programs will certainly come with strings. Farmers that take the "carrot" will be more susceptible of being hit with the USDA's regulatory "stick." Also, the tremendously enhanced funding of the IRS to be overseen by a political partisan with connections to a prior IRS scandal raises concerns as to how that additional resulting power will be used.

The Act and student loan forgiveness (if it withstands a court challenge) will pour more fuel on the current inflationary fire. Stimulating inflation during an economic recession when inflation is already at a 40-year high is particularly a poor policy choice, as is increasing taxes on practically every income group. The fourth quarter of 2022 promises to be very difficult for many people. This Act does nothing to help that.

While Midwest grain farmers look to have a high-income year for 2022, 2023 doesn't look to be as good. Also, while crop prices are good for Midwest grain farmers, livestock ranchers in the Plains and West don't have it so good this year. Drought and buyer-power being exerted by the major packers has caused economic pain for cattle ranchers.

For Midwest grain farmers, the traditional tax planning techniques in high-income years of deferring income and accelerating deductions don't apply in the current economy. Deferring taxes into next year with higher costs and taxes is not a good idea. Likewise accelerating deductions related to input prices to the current year may not be a good idea either. While it is not popular "medicine" for a farmer to take, 2022 may be a "good" year to pay tax. It's also a good year to pay down (or off) debt. Interest rates will be going up further in the Federal Reserve's attempt to reduce inflation. Congress shows no interest in curbing spending or reducing tax rates. This all means that "cash is king" and little-to-no debt will provide the greatest flexibility to adjust to future economic uncertainties. Also, getting debt reduced or eliminated could provide an opportunity to buy land for cash as values fall in the future (which they will).

One other problem that the Act does nothing to address are supply chain issues. Getting needed parts and supplies on a timely basis is an issue for many farmers. Throw in the possibility of a rail worker strike about the time harvest starts to heat up, and there is a toxic brew that could hit agriculture hard. In addition, more IRS audits headed up by a person with an historic political bias spells trouble.

Inflation Reduction? About the only thing in the Act that will reduce inflation are the tax increases. If those slow the economy enough, inflation might be reduced. Indeed, that might be the quiet expectation of some.

And then there's the continued funding of a war in Ukraine and its inflationary effect domestically. And, what about China? Will 2023 (or late 2022) involve a war on one side of world and another one on the other side? What are the implications for U.S. agriculture if that happens?

Much to think about and plan accordingly for. 2019 seems so far in the past….