Dear Client:

The Consolidated Appropriations Act, 2021 (the CCA, 2021), signed into law on December 27, 2020, is a further legislative response to the coronavirus (COVID-19) pandemic. The CCA, 2021 include--along with spending and other non-tax provisions and tax provisions primarily affecting individuals--the numerous business tax provisions briefly summarized below. The provisions are found in two of the several acts included in the CCA, 2021, specifically, (1) the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (the TCDTR) and (2) the COVID-related Tax Relief Act of 2020 (the COVIDTRA).

BUSINESS TAX PROVISIONS

Tax provisions made permanent (without other changes). The TCDTR makes permanent without other changes (1) the railroad track maintenance credit and (2) the exclusion of the aging period in determining the mandatory interest capitalization period in producing beer, wine or distilled spirits.

Tax provisions extended (without other changes). The TCDTR extends the following tax credits without other changes: (1) the new markets tax credit, (2) the work opportunity credit, (3) the employer credit for paid family and medical leave that was provided by the 2017 Tax Cuts and Jobs Act (2017 TCJA), (4) the carbon sequestration credit, (5) the business energy credit (the ‘‘Code Sec. 48 credit’’) both as regards termination dates and phase-downs of credit amounts, (6) the credit for electricity produced from renewable resources (the ‘‘Code Sec. 45 credit’’) and the election to claim the Code Sec. 48 credit instead for certain facilities (but the phase-down of the amount of the Code Sec. 45 credit for wind facilities isn’t deferred), (7) the Indian employment credit, (8) the mine rescue team training credit, (9) the American Samoa development credit, (10) the second generation biofuel producer credit, (11) the qualified fuel cell motor vehicle credit as applied to businesses, (12) the alternative fuel refueling property credit as applied to businesses, (13) the two-wheeled plug-in electric vehicle credit as applied to businesses, (14) the credit for production from Indian coal facilities, and (15) the energy efficient homes credit.

Additional provisions extended by the TCDTR without other changes are the following: (1) the exclusion from employee income of certain employer payments of student loans, (2) the 3-year recovery period for certain racehorses, (3) favorable cost recovery rules for business property on Indian reservations, (4) the 7-year recovery period for motor sports entertainment complexes, (5) expensing for film, television and live theatrical productions, (6) empowerment zone tax incentives except for the increased section 179 expensing for qualifying property and the deferral of capital gain for dispositions of qualifying assets, and (7) the exclusion from being personal holding company income for certain payments or accruals of dividends, interest, rents, and royalties from a related person that is a controlled foreign corporation.

Energy provisions. The TCDTR makes changes to energy provisions in addition to making them permanent or extending them.

The TCDTR adds ‘‘waste energy recovery property’’ to the types of property that qualify for the Code Sec. 48 credit (above). And the credit rate assigned is 30%. ‘‘Waste energy recovery property’’ is property (1) the construction of which begins before 2024, (2) that has a capacity of no more than 50 megawatts, and (3) generates electricity solely from heat from buildings or equipment if the primary purpose of that building or equipment isn't the generation of electricity. But it doesn't include property eligible for the Code Sec. 48 credit for cogeneration property unless the taxpayer doesn't take the Code Sec. 48 credit for that property.

For wind facilities that are ‘‘qualified offshore wind facilities,’’ the TCDTR relaxes the rules under which wind facilities that are eligible for the Code Sec. 45 credit can, by election (see above), be eligible instead for the Code Sec. 48 credit.

The TCDTR makes permanent the energy efficient commercial buildings deduction. Additionally, the TCDTR indexes for inflation the per-square-foot dollar caps on the full and partial versions of the deduction. And the TCDTR provides that to the extent that deductibility depends on specified recognized energy efficient standards, the referred-to standards will be standards issued within two years of construction (rather than the standards bearing now-stale dates that applied under pre- TCDTR law).

PPP provisions

The return of the PPP is of particular interest to accountants, who played a significant role in helping millions of small businesses acquire $525 billion in forgivable loans during the five months the program was accepting applications, according to SBA reporting. The new round of PPP, or PPP2 as some are calling it, contains many similarities to the first round of the PPP but also has several important differences. The following is a high-level view of the PPP provisions.

Who is eligible to apply

PPP2 loans will be available to first-time qualified borrowers and, for the first time, to businesses that previously received a PPP loan. Specifically, previous PPP recipients may apply for another loan of up to $2 million, provided they:

- Have 300 or fewer employees.
- Have used or will use the full amount of their first PPP loan.
- Can show a 25% gross revenue decline in any 2020 quarter compared with the same quarter in 2019.

PPP2 also makes the forgivable loans available to Sec. 501(c)(6) business leagues, such as chambers of commerce, visitors' bureaus, etc., and "destination marketing organizations" (as defined in the act), provided they have 300 or fewer employees and do not receive more than 15% of receipts from lobbying. The lobbying activities must comprise no more than 15% of the organization's total activities and have cost no more than $1 million during the most recent tax year that ended prior to Feb. 15, 2020.

PPP2 will also permit first-time borrowers from the following groups:

- Businesses with 500 or fewer employees that are eligible for other SBA 7(a) loans.
- Sole proprietors, independent contractors, and eligible self-employed individuals. Not-for-profits, including churches.
- Accommodation and food services operations (those with North American Industry Classification System (NAICS) codes starting with 72) with fewer than 300 employees per physical location.

The bill allows borrowers that returned all or part of a previous PPP loan to reapply for the maximum amount available to them.

PPP loan terms

As with PPP1, the costs eligible for loan forgiveness in PPP2 include payroll, rent, covered mortgage interest, and utilities. PPP2 also makes the following potentially forgivable:

- 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.

To be eligible for full loan forgiveness, PPP borrowers will have to spend no less than 60% of the funds on payroll over a covered period of either eight or 24 weeks — the same parameters PPP1 had when it stopped accepting applications in August.

PPP borrowers may receive a loan amount of up to 2.5 times their average monthly payroll costs in the year prior to the loan or the calendar year, the same as with PPP1, but the maximum loan amount has been cut from $10 million in the first round to the previously mentioned $2 million maximum. PPP borrowers with NAICS codes starting with 72 (hotels and restaurants) can get up to 3.5 times their average monthly payroll costs, again subject to a $2 million maximum.

Simplified application and other terms of note

The new COVID-19 relief bill also:

- Creates a simplified forgiveness application process for loans of $150,000 or less. Specifically, a borrower shall receive forgiveness if a borrower signs and submits to the lender a certification that is not more than one page in length, includes a description of the number of employees the borrower was able to retain because of the loan, the estimated total amount of the loan spent on payroll costs, and the total loan amount. The SBA must create the simplified application form within 24 days of the bill's enactment and may not require additional materials unless necessary to substantiate revenue loss requirements or satisfy relevant statutory or regulatory requirements. Borrowers are required to retain relevant records related to employment for four years and other records for three years, as the SBA may review and audit these loans to check for fraud.
- Repeals the requirement that PPP borrowers deduct the amount of any EIDL advance from their PPP forgiveness amount.
- Includes set-asides to support first- and second-time PPP borrowers with 10 or fewer employees, first-time PPP borrowers that have recently been made eligible, and for loans made by community lenders.

Tax deductibility for PPP expenses

The bill also specifies that business expenses paid with forgiven PPP loans are tax-deductible. This supersedes IRS guidance that such expenses could not be deducted and brings the policy in line with what the AICPA and hundreds of other business associations have argued was Congress's intent when it created the original PPP as part of the $2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act, P.L. 116-136 (see the Dec. 3 letter from the AICPA and state societies to congressional leaders).

The COVID-19 relief bill clarifies that "no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided" by Section 1106 of the CARES Act (which has been redesignated as Section 7A of the Small Business Act). This provision applies to loans under both the original PPP and subsequent PPP loans.

While the CARES Act excluded PPP loan forgiveness from gross income, it did not specifically address whether the expenses used to achieve that loan forgiveness would continue to be deductible, even though they would otherwise be deductible. In April, the IRS issued Notice 2020-32, which stated that no deduction would be allowed under the Internal Revenue Code for an expense that is otherwise deductible if the payment of the expense results in forgiveness of a PPP loan because the income associated with the forgiveness is excluded from gross income for purposes of the Code under CARES Act Section 1106(i).

In November, the IRS then expanded on this position by issuing Rev. Rul. 2020-27, which held that a taxpayer computing taxable income on the basis of a calendar year could not deduct eligible expenses in its 2020 tax year if, at the end of the tax year, the taxpayer had a reasonable expectation of reimbursement in the form of loan forgiveness on the basis of eligible expenses paid or incurred during the covered period. Treasury Secretary Steven Mnuchin also argued against businesses being able to deduct business expenses paid with forgiven, tax-free PPP funds, calling it an unwarranted double benefit for businesses.

Clarifications of tax consequences of PPP loan forgiveness. The COVIDTRA clarifies that the non-taxable treatment of Payroll Protection Program (PPP) loan forgiveness that was provided by the 2020 CARES Act also applies to certain other forgiven obligations. Also, the COVIDTRA clarifies that taxpayers whose PPP loans or other obligations are forgiven as described above, are allowed deductions for otherwise deductible expenses paid with the proceeds and that the tax basis and other attributes of the borrower's assets won't be reduced as a result of the forgiveness.

Waiver of information reporting for PPP loan forgiveness. The COVIDTRA allows IRS to waive information reporting requirements for any amount excluded from income under the exclusion- from-income rule for forgiveness of PPP loans or other specified obligations. Note: IRS had already waived information returns and payee statements for loans that, before enactment of the COVIDTRA, were guaranteed by the Small Business Administration under section 7(a)(36) of the Small Business Act.

Extensions and modifications of earlier payroll tax relief. The TCDTR extends the CARES Act credit (employee retention credit), allowed against the employer portion of the Social Security (OASDI) payroll tax or of the Railroad Retirement tax, for qualified wages paid to employees during the COVID-19 crisis. Under the extension, qualified wages must be paid before July 1, 2021 (instead of January 1, 2021). Additionally, beginning on January 1, 2021, the credit rate is increased from 50% to 70% of qualified wages. and qualified wages are increased from $10,000 for the year to $10,000 per quarter. Many other rules are also relaxed. And the TCDTR makes some retroactive clarifications and technical improvements to the credit as initially enacted. *Additional clarification is needed to determine if every 941 quarterly tax return needs to be amended or if the fourth quarter 941 can claim all possible quarterly credits. Stay tuned for more on this important credit.*

The COVIDTRA extends (1) the credits provided by the Families First Coronavirus Response Act (FFCRA) against the employer portion of OASDI and Railroad Retirement taxes for qualifying sick and family paid leave and (2) the equivalent FFCRA-provided credits for the self-employed against the self-employment tax. Under the extension of the employer credits, wages taken into account are those paid before April 1, 2021 (instead of January 1, 2021). Under the extension of the credits for the self employed, the days taken into account are those before April 1, 2021 (instead of January 1, 2021).

The COVIDTRA also makes retroactive clarifications of (1) the employer (but not self-employed equivalent) FFCRA paid leave credits that were extended as discussed above, (2) the exclusion of qualifying paid leave in calculating the employer portion of Railroad Retirement taxes and (3) and the increase in the amount of the FFRCA paid leave credits against the employer portion of Railroad Retirement taxes by the amount of the Medicare payroll taxes on qualifying paid leave. Additionally, the COVIDTRA directs IRS to extend the Presidentially ordered deferral of the employee's share of OASDI and Railroad Retirement taxes. As first provided by IRS, the deferral was of taxes to be withheld and paid on wages and other compensation (up to $4,000 every two weeks) paid in the period from September 1, 2020 to December 31, 2020 so that the taxes were instead withheld and paid ratably in the period from January 1, 2021 to April 30, 2021. Under the deferral, the period over which the deferred-from-2020 taxes are ratably withheld and paid is extended to all of 2021 (instead of the four-month period ending on April 30, 2021).

Employee benefits and deferred compensation. The TCDTR provides that expenses for business-related food and beverages provided by a restaurant are fully deductible if they are paid or incurred in calendar years 2021 or 2022, instead of being subject to the 50% limit that generally applies to business meals (see below for more detail). The TCDTR temporarily allows (1) carryovers and relaxed grace period rules for unused flexible spending arrangement (FSA) amounts, whether in a health FSA or a dependent care FSA, (2) the raising of the maximum eligibility age of a dependent under a dependent care FSA from 12 to 13 and (3) prospective changes in election limits set forth by a plan (subject to the applicable limits under the Code).

With a view to layoffs in the current economic climate, the TCDTR relaxes rules that would otherwise cause a partial qualified retirement plan termination if the number of active participants decreases.

Because of market volatility during the COVID-19 pandemic, the COVIDTRA relaxes, if certain conditions are met, the funding standards that, if met, allow a defined benefit pension plan to transfer funds to a retiree health benefits account or retiree life insurance account within the plan. The CARES Act's relaxed rules for ‘‘coronavirus-related distributions’’ are retroactively amended by the COVIDTRA to additionally provide that a coronavirus-related distribution that is a during-employment withdrawal from a money purchase pension plan meets the distribution requirements of Code Sec. 401(a).

And under a provision of narrow applicability, the TCDTR lowers to 55 years, from the usually applicable 59½ years, the age at which certain employees in the building or construction trades can, though still employed, receive pension plan payments under certain multiple employer plans without affecting the status of trusts that are part of the pension plans as qualified trusts.

Residential real estate depreciation. For tax years beginning after December 31, 2017, the TCDTR assigns a 30-year ADS depreciation period to residential rental property even though it was placed in service before January 1, 2018 (when the 2017 TCJA first applied the more-favorable 30-year period) if the property (1) is held by a real property trade or business electing out of the limitation on business interest deductions and (2) before January 1, 2018 wasn't subject to the ADS.

Farmers' net operating losses. The COVIDTRA allows farmers who had in place a two-year net operating loss carryback before the CARES Act to elect to retain that two-year carryback rather than claim the five-year carryback provided in the CARES Act. It also allows farmers who before the CARES Act waived the carryback of a net operating loss, to revoke the waiver.

Low-income housing credit. The TCDTR provides a 4% per year credit floor for buildings that aren't eligible for the 9% per-year credit floor. (Both floors are alternatives to the calculation under which the per-year credit is generally a percentage, prescribed by IRS, that is intended to result in a credit that, in the aggregate over the 10-year credit period, has a present value of 70% of the qualified basis for certain new buildings and 30% of the qualified basis for certain other buildings.)

Life insurance. The TCDTR changes the interest rate assumptions that determine whether a contract meets the cash value and premium caps for qualifying as a life insurance contract. The change is to designated floating rates from the respective 4% and 6% rates fixed by prior law.

Disaster relief. The TCDTR includes several provisions targeted at ‘‘qualified disaster areas,’’ some of which affect individuals and some which affect businesses as described below. ‘‘Qualified disaster areas’’ are areas for which a major disaster was Presidentially declared during the period beginning on January 1, 2020 and ending February 25, 2021. The incidence period of the disaster must begin after December 27, 2019 but not after December 27, 2020. Excluded are areas for which a major disaster was declared only because of COVID-19.

The relief includes relief for retirement funds that consists of the following: (1) waiver of the 10% early withdrawal penalty for up to $100,000 of certain withdrawals by individuals living in a qualified disaster area and that have suffered economic loss because of the disaster (qualified individuals), (2) a right to re-contribute to a plan distributions that were intended for home purchase but not used because of a qualified disaster, and (3) relaxed plan loan rules for qualified individuals. Changes to plan amendment rules facilitate the relief.

The relief also provides to employers in the harder-hit parts of a qualified disaster area an up-to-$ 2,400-per-employee employee retention credit, subject to coordination with certain other employer tax credits. Generally, tax-exempt organizations can take it as a credit against FICA taxes.

Corporations are provided with relaxed charitable deduction rules for qualified-disaster-related contributions, and individuals are provided with relaxed loss allowance rules for qualified-disaster-related casualties.

The low-income housing credit is modified to allow, subject to various limitations, increases in the state-wide credit ceilings to the extent allocations are made to harder-hit parts of qualified disaster areas.

Excise taxes. The TCDTR makes various excise tax changes for beer, wine and distilled spirits. The TCDTR also provides that the temporary increase in the Black Lung Disability Trust Fund tax won’t apply to coal sales after 2021 (instead of after 2020). And the end of the liability imposed because of the Oil Spill Liability Trust Fund Rate is deferred until after 2025. Additionally, the alternative fuels credit against the diesel and special motor fuels tax is extended.

Business meals

As mentioned above, the recent stimulus legislation included a provision that removes the 50% limit on deducting business meals provided by restaurants in 2021 and 2022 and makes those meals fully deductible. Here are the details.

In general, the ordinary and necessary food and beverage expenses of operating your business are deductible. However, the deduction is limited to 50% of the otherwise allowable expense.

The new legislation adds an exception to the 50% limit for expenses for food or beverages provided by a restaurant. This rule applies to expenses paid or incurred in calendar years 2021 and 2022.

The use of the word "by" (rather than "in") a restaurant makes it clear that the new rule isn't limited to meals eaten on the restaurant's premises. Takeout and delivery meals provided by a restaurant are also fully deductible.

It's important to note that, other than lifting the 50% limit for restaurant meals, the legislation doesn't change the rules for deducting business meals. All the other existing requirements continue to apply. Thus, to be deductible:

- The food and beverages can't be lavish or extravagant under the circumstances.

- You or one of your employees must be present when the food or beverages are served.

- This is defined as a current or prospective customer, client, supplier, employee, agent, partner, or professional adviser with whom you could reasonably expect to engage or deal in your business.

If food or beverages are provided at an entertainment activity, either they must be purchased separately from the entertainment or their cost must be stated on a separate bill, invoice, or receipt. This is required because the entertainment, unlike the food and beverages, is nondeductible**.**

INDIVIDUAL TAX PROVISIONS

Here is an overview of key provisions in the recent COVID relief legislation that affect individuals. The legislation is the COVID-related Tax Relief Act of 2020 (the "Act" or COVIDTRA) and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (TCDTR), both of which are part of the Consolidated Appropriations Act, 2021.

Recovery rebate/economic impact payment

Direct-to-taxpayer recovery rebate. The Act provides for a refundable recovery rebate credit for 2020 that will paid in advance to eligible individuals, often automatically, early in 2021. (Code Sec. 6428A, as added by COVIDTRA Sec. 272) These payments are in addition to the direct payments/rebates provided for in earlier Federal legislation, the 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES Act, PL 116-136, 3/27/2020), which were called Economic Impact Payments (EIP).

The amount of the rebate is $600 per eligible family member—$600 per taxpayer ($1,200 for married filing jointly), plus $600 per qualifying child. Thus, a married couple with two qualifying children will receive $2,400, unless a phase-out applies. At the writing of this newsletter, Congress is debating higher rebates. The credit is phased out at a rate of $5 per $100 of additional income starting at $150,000 of modified adjusted gross income for marrieds filing jointly and surviving spouses, $112,500 for heads of household, and $75,000 for single taxpayers.

Treasury must make the advance payments based on the information on 2019 tax returns. Eligible taxpayers who claimed their EIPs by providing information through the nonfiler portal on IRS's website will also receive these additional payments.

Nonresident aliens, persons who qualify as another person's dependent, and estates or trusts don't qualify for the rebate. Taxpayers without a Social Security number are likewise ineligible, but if only one spouse on a joint return has a Social Security number, that spouse is eligible for a $600 payment. Children must also have a Social Security number to qualify for the $600-per-child payments.

Taxpayers who receive an advance payment that exceeds the amount of their eligible credit (as later calculated on the 2020 return) will not have to repay any of the payment. If the amount of the credit determined on the taxpayer's 2020 return exceeds the amount of the advance payment, taxpayers receive the difference as a refundable tax credit.

Advance payments of the rebates are generally not subject to offset for past due federal or state debts, and they are protected from bank garnishment or levy by private creditors or debt collectors.

Pro-taxpayer changes to CARES Act Economic Impact Payment rules. As noted above, the CARES Act provided EIPs.

The Act makes the following changes to the CARES Act EIP:

- Provides that the $150,000 limit on adjusted gross income before the credit amount starts to phase out, which, under the CARES Act, applied to joint returns, also applies to surviving spouses. (Code Sec, 6428(c)(1), as amended by Act Sec. 273(a)) This change may allow taxpayers who qualify to use the surviving-spouse filing status to claim a larger EIP on their 2020 returns.

- Makes the requirement to provide IRS with the taxpayer's identification number identical to the same requirement under the new rebate, described above under "Direct-to-taxpayer recovery rebate." (Code Sec. 6428(g), as amended by COVIDTRA Sec. 273(a))

Deductions

$250 educator expense deduction applies to PPE, other COVID-related supplies. The Act provides that eligible educators (i.e., kindergarten-through-grade-12 teachers, instructors, etc.) can claim the existing $250 above-the-line educator expense deduction for personal protective equipment (PPE), disinfectant, and other supplies used for the prevention of the spread of COVID-19 that were bought after March 12, 2020. IRS is directed to issue guidance to that effect by Feb. 28, 2021. (COVIDTRA Sec. 275; Code Sec. 62(a)(2)(D)(ii))

7.5%-of-AGI "floor" on medical expense deductions is made permanent. The Act makes permanent the 7.5%-of-adjusted-gross-income threshold on medical expense deductions, which was to have increased to 10% of adjusted gross income after 2020.

The lower threshold will allow more taxpayers to take the medical expense deduction in 2021 and later years. (Code Sec. 213(a**)**, as amended by Act Sec. 101)

Mortgage insurance premium deduction is extended by one year. The Act extends through 2021 the deduction for qualifying mortgage insurance premiums, which was due to expire at the end of 2020. The deduction is subject to a phase-out based on the taxpayer's adjusted gross income. (**Code Sec. 163(h)(3)(E)(iv)(I)**, as amended by Act Sec. 133)

Above-the-line charitable contribution deduction is extended through 2021; increased penalty for abuse. For 2020, individuals who don't itemize deductions can take up to a $300 above-the-line deduction for cash contributions to "qualified charitable organizations." The Act extends this above-the-line deduction through 2021 and increases the deduction allowed on a joint return to $600 (it remains at $300 for other taxpayers). (Code Sec. 170(p), as added by Act Sec. 212(a)) Taxpayers who overstate their cash contributions when claiming this deduction are subject to a 50% penalty (previously it was 20%). (Code Sec. 6662(l), as added by Act Sec. 212(b))

Extension through 2021 of allowance of charitable contributions up to 100% of an individual's adjusted gross income. In response to the COVID pandemic, the limit on cash charitable contributions by an individual in 2020 was increased to 100% of the individual's adjusted gross income. (The usual limit is 60% of adjusted gross income.) The Act extends this rule through 2021. (Code Sec. 170(b)(1)(G), as amended by Act Sec. 213)

Exclusions from income

Exclusion for benefits provided to volunteer firefighters and emergency medical responders made permanent. Emergency workers who are members of a "qualified volunteer emergency response organization" can exclude from gross income certain state or local government payments received and state or local tax relief provided on account of their volunteer services. This exclusion was due to expire at the end of 2020, but the Act made it permanent. (Code Sec. 139B, as amended by Act Sec. 103)

Exclusion for discharge of qualified mortgage debt is extended, but limits on amount of excludable discharge are lowered. Usually, if a lender cancels a debt, such as a mortgage, the borrower must include the discharged amount in gross income. But under an exclusion that was due to expire at the end of 2020, a taxpayer can exclude from gross income up to $2 million ($1 million for married individuals filing separately) of discharge-of-debt income if "qualified principal residence debt" is discharged. The Act extends this exclusion through the end of 2025, but lowers the amount of debt that can be discharged tax-free to $750,000 ($375,000 for married individuals filing separately). (Code Sec. 108(a)(1)(E), as amended by Act Sec. 114(a))

Extension of exclusion for certain employer payments of student loans. Qualifying educational assistance provided under an employer's qualified educational assistance program, up to an annual maximum of $5,250, is excluded from the employee's income. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act, PL 116-136, 3/27/2020) added to the types of payments that are eligible for this exclusion, "eligible student loan repayments" made after Mar. 27, 2020, and before Jan. 1, 2021. These payments, which are subject to the overall $5,250 per employee limit for all educational payments, are payments of principal or interest on a qualified student loan by the employer, whether paid to the employee or a lender. The Act extends the exclusion for eligible student loan repayments through the end of 2025. (Code Sec. 127(c)(1)(B), amended by Act Sec. 120)

Tax credits

Individuals may elect to base 2020 refundable child tax credit (CTC) and earned income credit (EIC) on 2019 earned income. If an individual's child tax credit (CTC) exceeds the taxpayer's tax liability, the taxpayer is eligible for a refundable credit equal to 15% percent of so much of the taxpayer's taxable "earned income" for the tax year as exceeds $2,500. And the earned income credit (EIC) equals a percentage of the taxpayer's "earned income." For both of these credits, earned income means wages, salaries, tips, and other employee compensation, if includible in gross income for the tax year. But for determining the refundable CTC and the EIC for 2020, the Act allows taxpayers to elect to substitute the earned income for the preceding tax year, if that amount is greater than the taxpayer's earned income for 2020. (Act Sec. 211(a))

Health coverage tax credit (HCTC) for health insurance costs of certain eligible individuals is extended by one year. A refundable credit (known as the health coverage tax credit or "HCTC") is allowed for 72.5% of the cost of health insurance premiums paid by certain individuals (i.e., individuals eligible for Trade Adjustment Assistance due to a qualifying job loss, and individuals between 55 and 64 years old whose defined-benefit pension plans were taken over by the Pension Benefit Guaranty Corporation). The HCTC was due to expire at the end of 2020, but the Act extended it through 2021. (Code Sec. 35(b)(1)(B), amended by Act Sec. 134)

New Markets tax credit extended. The New Markets credit provides a substantial tax credit to either individual or corporate taxpayers that invest in low-income communities. This credit was due to expire at the end of 2020, but the Act extended it through the end of 2025. Carryovers of the credit were extended, as well. (Code Sec. 45D(f)(1)(H), amended by Act Sec. 112(a))

Nonbusiness energy property credit extended by one year. A credit is available for purchases of "nonbusiness energy property"—i.e., qualifying energy improvements to a taxpayer's main home. The Act extends this credit, which was due to expire at the end of 2020, through 2021. (Code Sec. 25C(g)(2**)**, amended by Act Sec. 141)

Qualified fuel cell motor vehicle credit extended by one year. The credit for purchases of new qualified fuel cell motor vehicles, which was due to expire at the end of 2020, was extended by the Act through the end of 2021. (Code Sec. 30B(k)(1), as amended by Act Sec. 142)

2-wheeled plug-in electric vehicle credit extended by one year. The 10% credit for highway-capable, two-wheeled plug-in electric vehicles (capped at $2,500) was extended until the end of 2021 by the Act. (Code Sec. 30D(g)(3)(E)(ii), amended by Act Sec. 144)

Residential energy-efficient property (REEP) credit extended by two years, bio-mass fuel property expenditures included. Individual taxpayers are allowed a personal tax credit, known as the residential energy efficient property (REEP) credit, equal to the applicable percentages of expenditures for qualified solar electric property, qualified solar water heating property, qualified fuel cell property, qualified small wind energy property, and qualified geothermal heat pump property. The REEP credit was due to expire at the end of 2021, with a phase-down of the credit operating during 2020 and 2021. The Act extends the phase-down period of the credit by two years—through the end of 2023; the REEP credit won't apply after 2023. (Code Sec. 25D(h), as amended by Act Sec. 148(a))

The Act also adds qualified biomass fuel property expenditures to the list of expenditures qualifying for the credit, effective beginning in 2021. (Code Sec. 25D(a), as amended by Act Sec. 148(b)).

Disaster-related changes in retirement plan rules

10% early withdrawal penalty does not apply to qualified disaster distributions from retirement plans. A 10% early withdrawal penalty generally applies to, among other things, a distribution from employer retirement plan to an employee who is under the age of 59½. The Act provides that the 10% early withdrawal penalty doesn't apply to any "qualified disaster distribution" from an eligible retirement plan. The aggregate amount of distributions received by an individual that may be treated as qualified disaster distributions for any tax year may not exceed the excess (if any) of $100,000, over the aggregate amounts treated as qualified disaster distributions received by that individual for all prior tax years. (TCDTR Sec. 302(a))

Increased limit for plan loans made because of a qualified disaster. Generally, a loan from a retirement plan to a retirement plan participant cannot exceed $50,000. Plan loans over this amount are considered taxable distributions to the participant. The Act increases the allowable amount of a loan from a retirement plan to $100,000 if the loan is made because of a qualified disaster and meets various other

I will be pleased to hear from you at any time with questions about the above news or any other matters.

Very truly yours,

Larry F. Warner Jr. CPA

Larry F. Warner Jr., Managing Partner