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TECHNICAL TAX COMMITTEE REPORT

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Summary of Tax Provisions of the Consolidated Appropriations Act

2021

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Introduction

There are over 70 tax-related provisions sprinkled throughout the Consolidated Appropriations Act (the CAA), which is nearly 5,600 pages in length. Almost half are extensions of existing provisions set to expire at the end of 2020. Some are extended permanently, while others are extended for as short as one additional year.

There aren't many new tax related provisions aimed at providing additional forms of stimulus and/or relief. Several changes have been made to provisions of the Families First Coronavirus Response Act and the Coronavirus Aid, Relief and Economic Security (CARES) Act, while also extending them beyond their initial expiration date.

The CAA does include another round of direct payments to taxpayers (with proposed additional amounts being contemplated by Congress), extensions of the charitable contribution provisions and employee retention tax credit, relief for lower income taxpayers and a clarification of the treatment of business expenses for small businesses with forgiven PPP loans. It also includes extensions of popular individual and business tax breaks scheduled to expire at the end of 2020.

The CAA itself is an aggregation of different bills proposed in the House or Senate over the course of 2020. The omnibus legislation contains three named acts that impact federal taxes (a discussion of the changes to the Paycheck Protection Program (PPP) are beyond the scope of this summary. Please see our website for details www.schneiderdowns.com/our-thoughts-on/interim-final-rule-ppp-economic-aid-act):

i. The COVID-Related Tax Relief Act of 2020

This act includes the extensions and expansions of tax relief contained in the Families First Coronavirus Response Act and the CARES Act. It also includes some new provisions aimed at providing tax relief to taxpayers who are suffering medical and economic hardship due to the ongoing pandemic.

ii. The Taxpayer Certainty and Disaster Tax Relief Act of 2020

This act contains a number of different titles and chapters, including tax provisions that account for (i) an extension of rules related to charitable contributions; (ii) deductions for meals and entertainment; (iii) extensions of over 40 provisions set to expire at end of 2020; and (iv) disaster tax relief for federally declared disasters during 2020.

iii. No Surprises Act

The highlight of this act is a prohibition on surprise medical bills, wherein a patient receives a separate – and often sizable – bill from an out-of-network health provider while receiving treatment at an in-network facility. Due to the specifics of healthcare-related legislation, largely due to the Affordable Care Act, many changes are made to the Internal Revenue Code, but the breadth of actual tax impact is narrow and, in most cases, nonexistent. These provisions will not be discussed here.

COVID-Related Tax Relief Act 2020

Division N Additional Coronavirus Response and Relief
Title II – Assistance to Individuals, Families and Businesses
Subtitle B: COVID-Related Tax Relief Act 2020

1. Clarification of Tax Treatment of Forgiveness of Covered (PPP) Loans (Act Section 276)
   a. The CAA reiterates that PPP loan forgiveness shall not be included in gross income
   b. Provides that by reason of the exclusion of gross income from loan forgiveness
      i. No tax deductions will be denied;
      ii. No tax attributes will be reduced;
      iii. Increases in tax basis of S corporation stock and partnership interests will be allowed;

    iv. S corporations and partnerships will treat the loan forgiveness as tax exempt for purposes under sections 1366 and 705, respectively.

TAX CONSIDERATION

The timing of the recognition of the tax-exempt income may be critical. Recognizing income in 2020 versus 2021 may, in certain instances, impact net proceeds after tax, depending on a taxpayer's specific facts and circumstances.

Further, the classification of employee compensation in the PPP loan forgiveness calculation can have an impact on the amount of other tax benefits, including the employee retention credit and research and development credit.

2. Clarification of Tax Treatment of Certain Other Loan Forgiveness and Other Business Financial Assistance (Act Section 278)
    a. The CARES Act provided for other Small Business Adminstration (SBA) assistance, including $10,000 emergency EIDL grants, loan repayment assistance and forgiveness of other loans.
    b. The CAA provides that rules essentially identical to the PPP rules discussed in item 1 above will apply.

3. Clarification of Tax Treatment of Grants for Shuttered Venue Operations (Act Section 278)
    a. Other provisions of the CAA provide grants to Shuttered Venue Operators (museums, theatres, performance halls, etc.).
    b. The CAA provides that rules essentially identical to the PPP forgiveness rules above will apply to the grants.

    See our December 29, 2020 OTO article for additional information.

4. Extension of Certain Deferred Employee Payroll Taxes (Act Section 274)
    a. President Trump's Social Security deferral for employees, for which details were provided in Notice 2020-65 and which many taxpayers chose not to follow, has been modified.
    b. The due date for withholding from employees has been extended from the period ending April 30, 2020 to December 31, 2021.
    c. Penalties and interest will not start accruing until January 1, 2022 rather than May 1, 2020.
    d. Certain language in the original rebate provisions has been amended to be consistent with current legislation.

5. Additional 2020 Recovery Rebates for Individuals (Act Section 272)
    a. The additional rebate is similar to the original rebate program, but with a smaller amount. The rebate acts as an advance credit against 2020 tax liability.
    b. Stimulus checks of $600 per taxpayer ($1,200 for taxpayers married-filing jointly);
    c. Additional $600 per qualifying child. Individuals age 17 and older who are claimed as a dependent on someone else's tax return do not qualify for payments. This category includes college students whose parents claim them as dependents and elderly people who are claimed as dependents on a relative's tax return.
    d. Similar AGI Phase-Outs apply:
        i. $150,000 in the case of a joint return or a surviving spouse;
        ii. $112,500 in the case of a head of household: and
        iii. $75,000 in the case of a taxpayer not listed above
        iv. The credit rebate shall be reduced (but not below zero) by 5% of so much of the taxpayer's adjusted gross income exceeding the above limits.
    e. No repayment requirement if applicable 2020 credit is less than the payment received.

6. Educator Expense Tax Deduction (Act Section 275)
   a. Authorizes the Secretary to issue regulations that permit educators to include personal protective equipment expenses, disinfectant and other supplies used to prevent the spread of COVID-19 in their $250 educator expense deduction. This provision is retroactive to March 12, 2020.

7. Emergency Financial Aid Grants (Act Section 277)
   a. Students receiving qualified emergency financial aid grants do not need to report the amount as gross income. Further, the grant is not counted as a reduction in arriving at the American Opportunity Tax Credit or the Lifetime Learning Credit.

8. Authority to Waive Certain Information Reporting Requirements (Act Section 279)

   Provides that taxpayers may not be receiving 1099s for the cancellation of income related to PPP and similar loans. The provision gives Treasury the authority to waive information filing requirements for any amount excluded from income by reason of the exclusion of covered loan amount forgiveness, exclusion of emergency financial aid grants or exclusion of certain loan forgiveness and other business financial assistance under the CARES Act.

9. Extension of and Technical Improvements to FFMLA Sick Pay and Emergency Family Medical Leave Credits (Act Section 286 and 288)
   a. The Families First Medical Leave Act, passed in March, requires smaller employers (generally those with less than 500 employees) not previously required to provide sick pay and family medical leave. Requirements to pay this compensation, along with credits generated to offset the cost, were set to expire on December 31, 2020.
   b. The expiration date has been extended until March 31, 2021.
   c. Makes technical changes coordinating the definitions of qualified wages within the paid sick leave, paid family and medical leave.
   d. Excludes such leave from employer Social Security tax (OASDI 6.2%).

Taxpayer Certainty and Disaster Tax Relief Act of 2020

Division EE - Taxpayer Certainty and Disaster Tax Relief Act of 2020
Title I – Extension of Certain Expiring Provisions
Subtitle A – Certain Provisions Made Permanent (Selected Provisions - see additional details in chart below) (Act Sections 101 through 110)

Several previously expiring tax provisions have been extended permanently, including:

1. Medical Deductions Section 212 (Act Section 101): Reduction in itemized medical expense deduction floor made permanent at 7.5%, reduced from 10%, beginning in 2021.

2. Section 179D: Energy Efficient Commercial Buildings Deduction is made permanent and certain standards have been updated (Act Section 102). A maximum cumulative deduction of $1.80 per square foot is allowed for all or part of the cost of energy efficient commercial building property. The act permanently extends the benefit beginning January 1, 2020. (See the following Our Thoughts On article on our website for more information).

3. Section 139B – Benefits provided to volunteer firefighters and emergency medical responders (Act Section 103). Volunteer firefighters and emergency medical responders may exclude from income any amount of state and local tax benefit and an amount of qualified payments they receive in exchange for their volunteer service. The act removes Subsection (d), which appears to make the provision retroactive to open tax years.

4. Education Deductions and Credits (Act Section 104)
   a. IRC Act Section 222 allowing a deduction against gross income for qualifying tuition and related expenses has been repealed. It is not extended for years after 2020.
   b. The Act removes the different phaseout rules for the American Opportunity Tax Credit and the Lifetime Learning Credit and replaces them with a single phaseout, effective for tax years beginning after Dec. 31, 2020 ($80,000 for individuals and $160,000 for married-filing jointly). This provision provides for an increase in the income limitation before the phaseout of the Lifetime Learning Credit.

5. Other Provisions
   a. Railroad track maintenance credit rate is reduced for tax years beginning after December 31, 2022.
   b. Beer, Wine and Distilled Spirits businesses will see changes in 263A calculations, making permanent previously temporary reductions in excise taxes, along with other miscellaneous topics, including providing rules for importers.

Division EE - Taxpayer Certainty and Disaster Tax Relief Act of 2020
Title I – Extension of Certain Expiring Provisions
Subtitle B – Certain Provisions Extended Through 2025 (Selected Provisions - see additional details in chart below) (Act Sections 111 through 121)

Several credit provisions have been extended through 2025, including the new markets credit, work opportunity tax credit, the 7-year depreciation recovery method for motorsports entertainment facilities and the employer credit for paid family medical leave. Other items include:

1. The amount of the exclusion from gross income of discharge of indebtedness of qualified principal residence has been modified from $2,000,000 to $750,000 beginning in 2021 (Act Section 114)

2. The 7-year depreciation recovery method for motorsports entertainment facilities has been extended. (Act Section 115)

3. The election under IRC Section 181 to deduct the cost of any qualified film or television production and any qualified live theatrical production as an expense that is not chargeable to a capital account has been extended. (Act Section 116)

Division EE - Taxpayer Certainty and Disaster Tax Relief Act of 2020
Title I – Extension of Certain Expiring Provisions
Subtitle C – Extensions of Certain Other Provisions (Selected Provisions - see additional details in chart below) (Act Sections 131 through 149)

1. Depreciation of Racehorses and Business Property on Indian Reservations (Act Sections 137 and 138).
   a. The Act extends the three-year recovery period to racehorses two years-old or younger placed in service before Jan. 1, 2022
   b. The Act extends the use of accelerated depreciation for qualified Indian reservation property through 2021, applicable to property placed into service after Dec. 31, 2020

2. The deduction as qualified residence interest allowed under Section 163(h)(3)(E) for premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness with respect to a qualified residence of the taxpayer has been extended for one year, through 2021.

Division EE - Taxpayer Certainty and Disaster Tax Relief Act of 2020
Title II – Selected Other Provisions

1. Temporary 100% allowance for Business Meals Provided by a Restaurant (Act Section 210)
   a. A temporary allowance of full deduction for business meals paid or incurred between December 31, 2020, and January 1, 2023.
   b. Statutory language uses the term restaurant but does not define the term. An expansive definition of the term to include meals provided by caterers and other prepared food providers is hoped for.

2. Extension, Modification, Clarification and Improvement to Employee Retention Credit (Act Sections 206 and 207).
   a. Retroactive change in law that now allows employers who obtained or will be obtaining a PPP loan to also qualify for the Employee Retention Credit (ERC). Wages used for loan forgiveness calculation cannot be used for ERC calculations; there is no double utilization of the same wages.
   b. Period of eligibility for ERC has been extended until June 30, 2021.
   c. Favorable improvements in the ERC calculation:
      i. While the wage base remains the same at $10,000, effective January 1, 2021, it is increased from $10,000 annually to $10,000 per quarter.
      ii. The credit amount is increased to 70% of qualified wages (from 50%).
      iii. The credit is capped at $7,000 per quarter for first two quarters of 2021.
      iv. Total amount of the total credit allowed per employee could be as much as $19,000 counting both 2020 and 2021 credits.
   d. Effective January 1, 2021, business operations that are either fully or partially suspended by a COVID-19 lockdown order for a quarter in 2021 qualify for the credit if gross receipts are less than 80% of gross receipts for the same quarter in 2019. Prior law provided that the credit applied when business operations were either fully or partially suspended by a COVID-19 lockdown order or for any quarter in 2020 when gross receipts were less than 50% of gross receipts for the same quarter in 2019.
   e. Effective January 1, 2021, employers with 500 employees or less will be eligible for the credit, even if employees are working. This is a change from the previous law threshold of 100 employees. Note that in calculating this 500-employee threshold, the employees of all affiliated companies sharing more the 50% common ownership are aggregated. For employers with greater than 500 employees, employees must be paid by the employer for not working.
   f. Effective Jan. 1, 2021, an exception will allow the credit for state- and local-run colleges, universities, organizations providing medical or hospital care and certain organizations chartered by Congress (which includes organizations like Fannie Mae, FDIC, Federal Home Loan Banks and federal credit unions).
   g. See also Section 303 below for expansion of ERC for a natural disaster.

TAX CONSIDERTATION

- Companies, including affiliates, that did not claim the credit due to their receiving a PPP loan should review credit requirements to determine if they might be eligible to claim the credit for qualified wages paid after March 12, 2020. Such companies should also consider their forgiveness application to ensure they have the largest pool of wages available for the ERC, if applicable.
- Companies should continue to monitor government orders regarding full or partial shutdown, including capacity limitations.
- Eligible employers whose employee wages were capped in 2020 at $10,000 may also be eligible for a credit in 2021.
- For more information, see our video blog at https://vimeo.com/497989407/50ddac206e

3. Change in Residential Rental Property Depreciation Period (Act Section 202)
    a. The TCJA reduced the alternative depreciation system (ADS) recovery period from 40 years to 30 years for residential rental property, but as clarified in Revenue Procedure 2019-08, the recovery period of residential rental property under IRC Act Section 168(g)(2)(C) is:
        i. 30 years for residential rental property placed in service by the taxpayer after December 31, 2017; and
        ii. 40 years for residential rental property placed in service by the taxpayer before January 1, 2018.
    b. Rules have been changed to allow the 30-year ADS recovery period to all residential rental real estate, including property placed in service before 2018.

TAX CONSIDERATION

Prior to the tax law change, real property trade or businesses had a decision to make concerning the election to be a real property trade or business. This election may have been made by many taxpayers if the ADS recovery period for the previously placed in service residential rental property was 30 years rather than the 40 years that applied under prior law. Regulatory relief allowing taxpayers to make late elections, as appropriate, may be forthcoming. If such relief is granted, taxpayers may have a significant opportunity to reevaluate their current and prior tax positions.

4. Charitable Contribution Changes (Act Sections 212 and 213)
    a. Deduction for Nonitemizers
        i. Beginning 2021, $300 for single and $600 for married-filing jointly
        ii. Must be in cash
        iii. Donations to Donor Advised Funds do not qualify
    b. Increased Penalties for Tax Underpayments Attributed to Overstated Noncash Charitable Deductions by Nonitemizers of 50%
    c. Deduction for Itemizers - The 100% of AGI limitation has been expanded to include contributions made in 2021 in addition to contributions made in 2020

5. Minimum age for distributions during working retirement (Act Section 208)
    a. Distributions allowed to employees over 59½ who have not separated from service of employer
    b. Limited distributions allowed to employees over 59½ who have not separated from service of employer in the building and construction industries

6. Temporary Special Rules for Health and Dependent Care Flexible Spending Arrangements (Act Section 214)
    a. Generally a cafeteria plan may permit the carryover of amounts remaining in a health FSA at the end of a plan year to pay or reimburse a participant for medical care expenses incurred during the following plan year, subject to the carryover limit (currently $550).

b. Under the Act, employers are allowed to extend the grace period for plan years ending in 2020 and 2021 to 12 months after the end of such plan year for unused benefits and contributions to health flexible spending and dependent care flexible spending arrangements.
c. Under the Act, an employer may allow an employee who ceases to participate in the plan during calendar year 2020 or 2021 to continue to receive reimbursements from unused benefits or contributions through the end of the plan year in which the employee's participation ceased, including any extended grace period.

7. Earned Income Tax Credit (EITC) and Child Tax Credit (CTC) Calculation Flexibility (Act Section 211)
   a. In determining refundable CTC and the EITC for 2020, taxpayers may elect to substitute the earned income for the preceding tax year if it's greater than the taxpayer's earned income for 2020.

   Certain Other Miscellaneous Tax Credit Changes
   b. Minimum Low Housing Tax Credit - Creates a 4% rate floor for calculating credits related to acquisitions and housing bond-financed developments for purposes of the Sec. 42 low-income housing tax credit, effective in 2021. (Section 201)
   c. Waste Energy Recovery Credit – Makes waste energy recovery property eligible for the Sec. 48 energy investment tax credit, effective for 2021 through 2023. Waste energy recovery property generates electricity from the heat from buildings or equipment. (Section 203)
   d. Energy Credit for Offshore Wind Facilities - Extends the Sec. 48 investment tax credit for electing offshore wind facilities that begin construction through 2025. (Section 204)

Division EE - Taxpayer Certainty and Disaster Tax Relief Act of 2020
Title III – Disaster Tax Relief

1. Employee Retention Credit for Employers Affected by Qualified Disasters (Section 303)

   A limited employee retention credit shall be provided for under Section 38 general business credit provisions. The statutory language related to this provision covers 11 pages; full details are beyond the scope of this summary.

   a. The credit is 40% of qualified wages with respect to each eligible employee
   b. Total eligible wages are limited to $6,000
   c. A trade or business must be inoperable at some point after the qualified disaster
   d. There are limitations on double benefits related to the qualified wages

   The Act also provides that a payroll tax credit shall be allowed for tax exempt organizations impacted by a natural disaster. For this purpose, a natural disaster excludes a disaster by virtue of COVID-19.

   The credit is generally allowed only for the period beginning January 1, 2020 and ending on February 25, 2021 (60 days after enactment).

2. Special C Corporation Qualified Disaster Relief Contributions to 100% of Taxable Income (Section 304(a))

   The bill modifies the CARES Act's adjustment of charitable contribution limits for 2020 to allow C corporations to make qualified disaster relief contributions of up to 100% of their taxable income. The 100% allowance applies only from January 1, 2020 through February 25, 2021 (60 days after legislation is signed).

3. Special Qualified Disaster Related Personal Casualty Loss Deduction for Individuals (Section 304(b))

   The bill permits individuals who have a net disaster loss (as modified by the bill) to increase their standard deduction amount by the amount of the net disaster loss.

Provisions Extended by the Taxpayer Certainty and Disaster Tax Relief Act of 2020

(NOTE: Charts created by Wolters Kluwer/CCH Incorporated)

Permanent Extensions – Sections 101 to 110

Code Sec.	General Description of Provision	Description of Modification
213(a)	7.5 percent of AGI floor for medical and dental expense deduction	Permanent extension
179D	Energy efficient commercial buildings deduction	Permanent extension (with modifications)
139B	Exclusion from gross income of benefits provided to volunteer firefighters and emergency medical responders	Permanent extension
222 (repealed)	Above-the-line deduction for qualified tuition and related expenses	Not extended, expires after 2020
45G	Railroad track maintenance credit	Permanent extension (with modifications)
263A(f); 5001(c); 5041; 5051(a); 5212; and 5414(b)	Miscellaneous provisions related to beer, wine and distilled spirits	Permanent extension (with modifications)

Provisions Extended Through 2025 – Sections 111 to 121

Code Sec.	General Description of Provision	Description of Modification
954(c)(6)(C)	Look-thru rule for related controlled foreign corporations	Extended through 2025
45D(f)(1)	New markets tax credit	Extended through 2025
51(c)(4)	Work opportunity credit	Extended through 2025
108(a)(1)(E)	Exclusion from gross income of discharge of qualified principal residence indebtedness	Extended through 2025 (with modifications)
168(i)(15)(D)	7-year recovery period for motorsports entertainment complexes	Extended through 2025
181(g)	Special expensing rules for certain productions	Extended through 2025
4611(f)(2)	Oil spill liability trust fund financing rate	Extended through 2025
1391(d)(1)(A)(i)	Empowerment zone tax incentives	Extended through 2025 (with modifications)
45S(i)	Credit for paid family and medical leave	Extended through 2025
127(c)(1)(B)	Exclusion from gross income of certain employer payments of student loans	Extended through 2025
45Q(d)(1)	Carbon oxide sequestration credit (scheduled expiration after 2024)	Extended through 2025

Extensions of Certain Other Provisions

Code Sec.	General Description of Provision	Description of Modification
45(d) and 48(a)(5)(C)(ii)	Credit for electricity produced from certain renewable sources	Extended through 2021
163(h)(3)(E)(iv)(I)	Mortgage insurance premiums treated as qualified residence interest	Extended through 2021
35(b)(1)(B)	Credit for health insurance costs of eligible individuals	Extended through 2021
45A(f)	Indian employment tax credit	Extended through 2021
45N(e)	Mine rescue team training credit	Extended through 2021
168(e)(3)(A)(i)	Classification of certain racehorses as 3-year property	Extended through 2021
168(j)(9)	Accelerated depreciation for business property on an Indian reservation	Extended through 2021
Tax Relief and Health Care Act	American Samoa economic development credit	Extended through 2021
40(b)(6)(J)(i)	Second generation biofuel producer credit	Extended through 2021
25C(g)(2)	Credit for nonbusiness energy property	Extended through 2021
30B(k)(1)	Credit for new qualified fuel cell motor vehicles	Extended through 2021
30C(g)	Credit for alternative fuel vehicle refueling property	Extended through 2021
30D(g)(3)(E)(ii)	Credit for 2-wheeled plug-in electric vehicles	Extended through 2021
45(e)(10)(A)	Production credit for Indian coal facilities	Extended through 2021
45L(g)	Credit for energy-efficient new homes	Extended through 2021
6426(d)(5); 6426(e)(3); 6427(e)(6)(C)	Excise tax credits relating to alternative fuels	Extended through 2021
25D(h)	Residential Energy Efficient Property Credit	Extended through 2022
4121(e)(2)(A)	Black lung liability trust fund excise tax	Extended through 2021

About Schneider Downs

Schneider Downs is a regional certified public accounting firm providing tax, audit and business advisory services to public and private companies and not-for-profit organizations. The firm offers more than 80 services from five business units: Assurance and Tax Advisors; Business Advisors; Technology Advisors; Wealth Management Advisors; and Corporate Finance Advisors. With offices in Pittsburgh and Columbus, Schneider Downs serves clients throughout the United States and around the world.

Schneider Downs' team of tax advisors address client tax preparation and planning needs and provide a variety of specialized services. We also complement our client's tax departments with our outsource capabilities assisting with manpower shortages by responding to critical tax deadlines. Our in-depth understanding of current issues and your core business ensures that you are in compliance with tax filing requirements and maximizing tax saving opportunities.

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