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Practice Update

Summary of Tax Provisions in the Consolidated Appropriations Act, 2021

January 26, 2021

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On December 27, 2020, President Trump signed the new $900 billion stimulus package – the Consolidated Appropriations Act, 2021 (the CAA), which, among other things, advances legislation intended to provide additional help for Americans and businesses to survive a continued public health and economic crisis due to COVID-19. This article provides a summary of certain key tax provisions in the CAA. The CAA also extended various expiring tax provisions, which are not included in this summary.

Rebates and Other Individual Tax Provisions

Additional 2020 Recovery Rebates for Individuals. In addition to the credit allowed under the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), all U.S. residents with adjusted gross income of up to $75,000 ($112,500 for head of household and $150,000 for married individuals) who are not a dependent of another taxpayer and have a valid social security number are eligible for a $600 rebate check ($1,200 for married individuals), plus an additional $600 per child. The rebate amount is reduced by $5 for each $100 that a taxpayer's income exceeds the phase-out threshold.

Regulations or Guidance Clarifying Application of Educator Expense Tax Deduction. Expenses paid or incurred for certain personal protective equipment, disinfectant and other supplies (with further

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guidance to be provided not later than February 28, 2021) used for the prevention of the spread of COVID-19 since March 12, 2020 are treated as expenses eligible for the $250 above-the-line deduction by certain elementary and secondary school teachers.

Application of Special Rules to Money Purchase Pension Plans. The penalty-free withdrawal from certain retirement plans for COVID-related expenses allowed by individuals pursuant to the CARES Act is expanded to include money purchase pension plans.

Election to Waive Application of Certain Modifications to Farming Losses. Farmers may irrevocably elect to use a two-year net operating loss (NOL) carryback for tax years beginning in 2018, 2019 and 2020 rather than the five-year carryback pursuant to the CARES Act. Farmers who made a two-year NOL carryback under the pre-CARES Act rules are deemed to have made such election unless a timely amendment is made. Farmers who previously waived the two-year NOL carryback election are allowed to revoke such waiver and carry back the NOL for five years pursuant to the CARES Act.

Emergency Financial Aid Grants. The gross income of a student does not include “emergency financial aid grants” provided to such student, which includes (1) any emergency financial aid grant awarded by an institution of higher education (i) under section 3504 of the CARES Act or (ii) made with funds available under section 18004 of the CARES Act and (2) any other emergency financial aid grant made to a student in response to a qualifying emergency from a Federal agency, a State or certain institutions.

Business Tax Provisions

Extension of Certain Deferred Payroll Taxes. Employers generally are required to withhold and pay the employee share of 6.2 percent Social Security tax. IRS Notice 2020-65 allowed a deferral of the withholding and payment of such employee share of Social Security tax on certain qualifying wages paid between September 1, 2020 and December 31, 2020, and required the employers to pay such deferred amount ratably between January 1, 2021 and April 30, 2021. The CAA extends the due date for the payment of such deferred amount to December 31, 2021, such that the deferred amount is paid ratably between January 1, 2021 and December 31, 2021.

Clarification of Tax Treatment of Forgiveness of Covered Loans. The gross income does not include any amount by reason of forgiveness of Paycheck Protection Programs (PPP) loans and subsequent PPP loans. Deductions are allowed for otherwise deductible expenses paid with the forgiven PPP loan proceeds. Tax attributes and tax basis will not be reduced due to the PPP loan forgiveness. This effectively overrides the IRS Notice 2020-32 and Rev. Rul. 2020-27, which disallowed a deduction for otherwise deductible expenses paid with the PPP loan proceeds that are reasonably expected to be forgiven.

Clarification of Tax Treatment of Certain Loan Forgiveness and Other Business Financial Assistance. The gross income does not include emergency Economic Injury Disaster Loans (EIDL) provided under the CARES Act, loan subsidy payments under section 1112(c) of the CARES Act and grants to shuttered venue operators and deductions are allowed for otherwise deductible expenses paid with the amounts not included in the gross income.

Extension and Modification of Employee Retention and Rehiring Tax Credit. The CAA extended and expanded the employee retention credit available under the CARES Act, by allowing employers to be eligible for the credits until July 1, 2021, and increasing the maximum tax credit amount per employee from $5,000 to $14,000 by changing the calculation of the credit from 50 percent of wages paid up to $10,000 for all calendar quarters to 70 percent of wages paid up to $10,000 for any calendar quarter. The modification also includes an increase in the number of employees counted for calculation of "qualified wages" from more than 100 to more than 500, which allows an eligible employer with 500 or fewer employees to claim credits for wages paid to all working employees. Employers with more than 500 employees may claim credits for wages paid to employees who are not working due to the governmental order or reduction in gross receipts. In addition, employers who receive PPP loans may still qualify for the employee retention tax credit for wages to the extent such wages were not paid with forgiven PPP loan proceeds.

Extension of Credits for Paid Sick and Family Leave. Refundable employment tax credits made available to employers pursuant to the Families First Coronavirus Response Act are extended through March 31, 2021 (in lieu of December 31, 2020).

Certain Miscellaneous Tax Provisions

Depreciation of certain residential rental property over 30-year period. The CAA reduces the alternative depreciation system recovery period for residential real property from 40 years to 30 years for tax years beginning after December 31, 2017, if the real property is (i) held by an "electing real property trade or business" and (ii) the property was not subject to the alternative depreciation system prior to January 1, 2018.

Waste energy recovery property eligible for energy credit. Waste energy recovery property (property that generates electricity solely from heat from buildings or equipment, the primary purpose of which is not the generation of electricity) is eligible for the 30 percent energy investment tax credit, effective between 2021 and 2023. To be eligible, the construction of the property must begin before January 1, 2024.

Extension of energy credit for offshore wind facilities. Energy tax credits are allowed for electing qualified offshore wind facilities that begin construction before January 1, 2026.

Minimum age for distributions during working retirement. Certain pension plans may make distributions to employees who have attained age 59½ (55 for certain building and construction industry) and are still working.

Temporary allowance of full deduction for business meals. A business taxpayer may utilize a full (instead of 50 percent under the current law) business expense deduction for business-related food or beverages provided by a restaurant and paid or incurred after December 31, 2020 and before January 1, 2023.

Temporary special rule for the determination of earned income. For purposes of the Child Tax Credit and the Earned Income Credit, taxpayers may elect to apply earned income for the preceding taxable year if the earned income for taxable year beginning in 2020 is less than the same for the preceding taxable year.

Certain charitable contributions deductible by non-itemizers. Individuals that do not itemize deductions may claim a $300 ($600 in the case of a joint return) above-the-line deduction for cash contributions to qualified charitable organizations made at any time during 2021. The penalty for underpayments attributable to overstated deduction is increased from 20 percent to 50 percent.

Modifications of limitations on charitable contributions. The increased limit for itemized deductions equal to 100 percent of adjusted gross income for cash contributions to certain charitable organizations under the CARES Act is extended for contributions made in 2021.

Temporary expansions related to flexible spending accounts (FSA). A taxpayer may rollover the unused amount in his/her FSA in 2020 and 2021 to 2021 and 2022, respectively.

Disaster Tax Relief Provisions

For purposes of the summaries below, (1) "qualified disaster area" means any area that a major disaster (other than COVID-19) was declared between January 1, 2020 and 60 days after the enactment of the CAA, (2) "qualified disaster zone" means a portion of any qualified disaster area that was determined to warrant individuals public assistant from the Federal government, (3) "qualified disaster" means the disaster by reason of which a disaster was declared with respect to a qualified disaster area, and (4) "incident period" means the period a qualified disaster occurred.

Special disaster-related rules for use of retirement funds. A resident of qualified disaster areas any time during the incident period may take a penalty-free disaster distribution up to $100,000 from certain retirement plans, the amount of which may be repaid during the 3-year period after the distribution was received or included ratably in gross income over 3-taxable-year period.

Employee retention credit for employers affected by qualified disasters. A tax credit of 40 percent of qualified wages (maximum of $6,000 per employee) is available to certain employers, which conducted an active trade or business in a qualified disaster zone. "Qualified wages" mean wages paid on or after the date on which the trade or business first became inoperable through the date on which such trade or business has resumed significant operations.

Special rules for qualified disaster relief contributions. Corporations making a qualified disaster relief contribution may deduct up to 100 percent of their taxable income. A "qualified disaster relief contribution" means any qualified contribution make for relief efforts in qualified disaster areas between January 1, 2020 and 60 days after the enactment of the CAA.

Special rules for qualified disaster-related personal casualty losses. The standard deduction amount for an individual with a net disaster loss will be increased by the net disaster loss amount.
