



**Consolidated Appropriations Act -
2021
Tax Provisions**



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What the Webinar Is and Is Not

This webinar is an overview of current developments in federal tax law originating from the Consolidated Appropriations Act – 2021. This webinar is not meant to be a comprehensive study or a substitute for the in-depth reading, interpretation, study, and application of the discussed law or comments that are discussed.



What the Webinar Is and Is Not - Continued

- **This webinar will focus on the main provisions of the Act that affect our clients in general and not on specific provisions of the law that concentrate on very specialized industries and situations.**



Webinar Procedures

- ▶ **Duration of webinar and a break.**
- ▶ **Questions and interactive nature of session.**
- ▶ **Will answer your questions later that I cannot answer during the session.**

Stimulus Payments





General Rules

- **The IRS will use the same methodology for calculating payments as they did the first time.**
- **However, there are some changes.**
- **Other than the filers, adult dependents claimed on the tax return will *NOT* be qualified in receiving a payment.**



General Rules - Continued

- Under the original CARES Act, joint returns of couples where only one individual of the couple has a social security number were ineligible for a payment.
- Under the new legislation, all family members (other than the non-filing adult dependents) that have social security numbers will be eligible to receive the payments.



Amount Allowed

The credit is:

- **\$600 per taxpayer.**
- **\$1,200 for couples filing jointly *plus* \$600 per qualifying child.**



Phase-out

The credit will be phased out at:

- **\$75,000 of modified adjusted gross income for single filers.**
- **\$112,500 of modified adjusted gross income for heads of household.**
- **\$150,00 of modified adjusted gross income for married- filing jointly.**



Phase-out - Continued

- The credit is phased-out at the rate of \$5 per \$100 of the adjusted gross income above the previously discussed phase-out thresholds.
- The IRS is to issue the stimulus payments in the same manner as they did under the CARES Act including issuing debit cards in some instances (approximately four million were previously issued).



Debit Cards

- **The debit cards are called Economic Impact Payment cards and are being sent in a plain envelope from Money Network Cardholder Services.**
- **The card will have the VISA name on the front of the card and the issuing bank is MetaBank on the back of the card.**



Deceased Taxpayers

The IRS has stated the following:

- **Any payment made to a spouse who died *before* receiving the stimulus payment should be returned to them.**
- **If a joint return was filed with a deceased spouse who died before receiving the payment, the decedent's portion of the payment should be returned to the IRS.**



Deceased Taxpayers - Continued

- **If the check cannot be cashed or deposited because it was issued to the taxpayer and their dependent spouse, return the check with a letter stating why the check is being returned and requesting a replacement check.**
- **If a taxpayer did not receive a stimulus payment, they will be eligible to claim the recovery rebate when they file the 2020 tax return.**



**Stimulus Payments to Deceased
Individuals - Continued**

Address to Return the Check:

**Internal Revenue Service
333 W. Pershing Road
Kansas City, MO 64108**



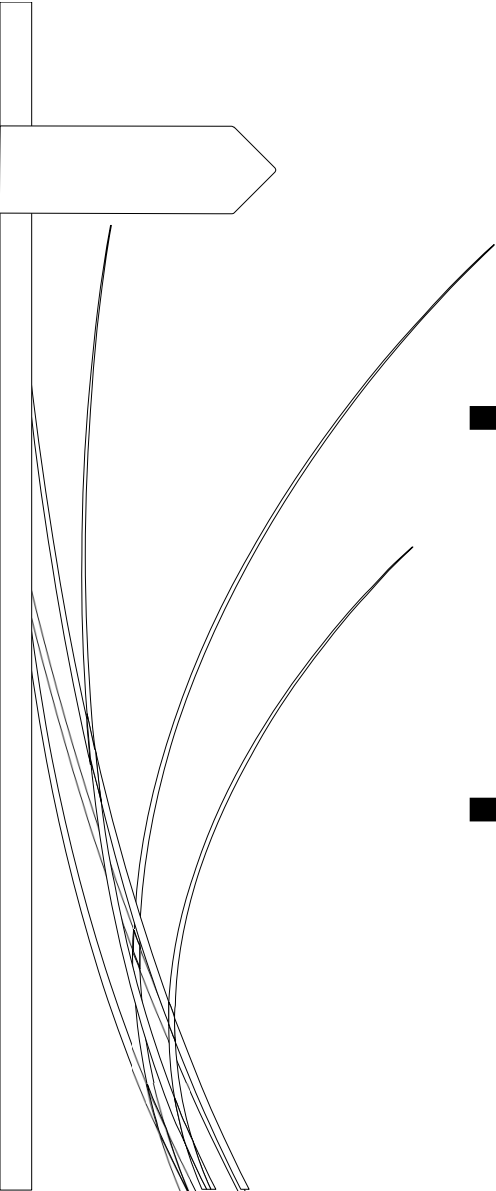
Stimulus Payments to Deceased Individuals - Continued

- 1. Write “void” in the endorsement section on the back of the check and**
- 2. Mail the voided check to the IRS address specified for its return and**
- 3. Do not staple, bend, or paper clip the check.**



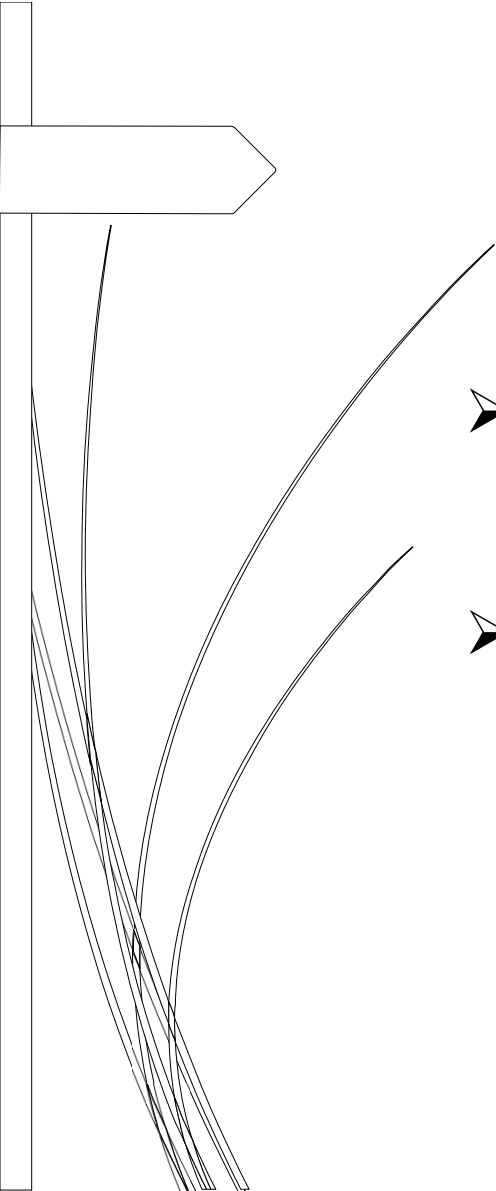
Bottom Line! – Reconciliation On 2020 Form 1040

- **The stimulus amount received by an individual is an advanced payment of a tax credit to be applied to the 2020 form 1040.**
- **If the amount that was received, when reconciled to the 2020 tax return, was *less* than the amount the taxpayer qualified for based upon the 2020 return, then the additional amount is a credit on the 2020 form 1040.**



Bottom Line! – Reconciliation On 2020 Form 1040 - Continued

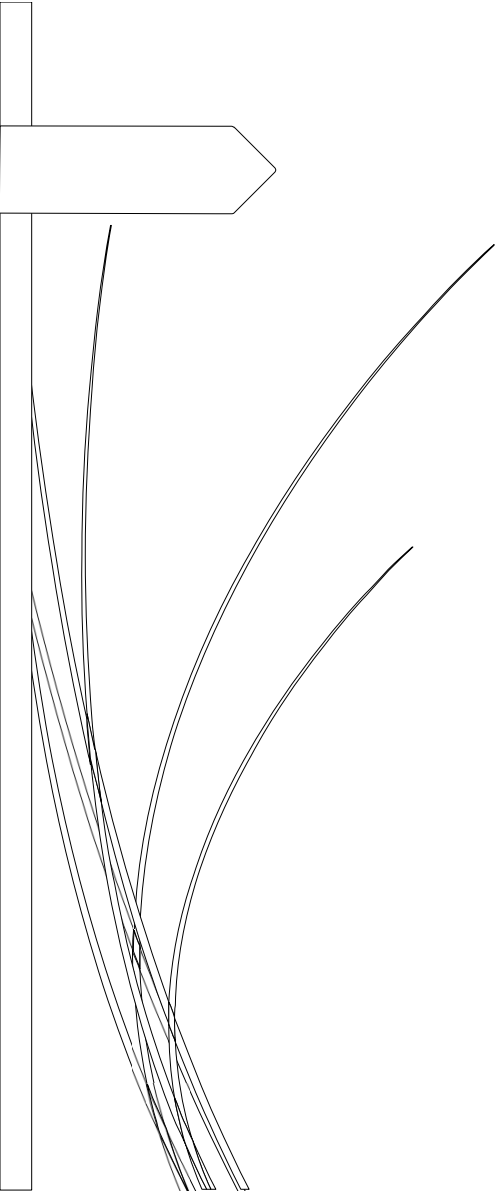
- ▶ **If the amount that was received, when reconciled to the 2020 tax return, was *greater* than the amount the taxpayer qualified for based upon the 2020 return, then the taxpayer *does not* have to pay it back!**
- ▶ **Thus, it all depends on the income, filing status, and qualified dependents on the 2020 form 1040.**



Bottom Line! – Reconciliation On 2020 Form 1040 - Continued

- **Therefore, any mistakes made by the IRS in issuing the stimulus payments will be corrected on the 2020 form 1040.**
- **The practitioner should encourage the clients to keep their Notice 1444 –“Your Economic Impact Payment” to determine whether they will qualify for a larger impact payment through the refundable tax credit when they file their form 1040 for 2020.**

Business Provisions





Forgiveness of Paycheck Protection Loan Proceeds

- **This provision in the law provides that deductions that are paid with the proceeds of a PPP loan that is forgiven are deductible.**
- **The effective date of this provision is retroactive to the date of the CARES Act.**



Forgiveness of Paycheck Protection Loan Proceeds - Continued

- **This provision totally reverses the IRS position in Notice 2020-32 which did not allow taxpayers to deduct ordinary expenses paid with the proceeds of the PPP Loan that were forgiven.**
- **Therefore, this Notice is no longer applicable!**



Forgiveness of Paycheck Protection Loan Proceeds - Continued

- ▶ Furthermore, the subsequent IRS rulings in Revenue Ruling 2020-27 and Revenue Procedure 2020-51 which dictated reporting requirements of the nondeductible expenses are rendered obsolete.
- ▶ However, you must still deal with the fact that the AICPA has given the position that once the loan proceeds are *forgiven*, you must reflect the amount that is forgiven as income from the extinguishment of debt.



Forgiveness of Paycheck Protection Loan Proceeds - Continued

- **Therefore, be sure to make a schedule M-1 adjustment for “income recorded on books this year not included on tax return” for the amount forgiven in the year that it is forgiven.**
- **Thus, if it is not forgiven in 2020, the entry will be made on schedule M for 2021.**



Forgiveness of Paycheck Protection Loan Proceeds - Continued

► The schedule M-1 entry lines are:

- 1. Form 1120 – line 7.**
- 2. Form 1120S – line 5.**
- 3. Form 1065 – line 5.**



Forgiveness of Paycheck Protection Loan Proceeds - Continued

- ▶ The Act clarifies that gross income *does not include* forgiveness of certain loans, emergency Economic Injury Disaster Loan grants (not EDIL Advances which are nontaxable), and certain loan repayment assistance that *are provided* by the CARES Act.
- ▶ Please note that these items are only the ones specified under the CARES Act.
- ▶ Furthermore, the Act clarifies that payment of expenses with the proceeds of such loans and assistance that are forgiven are deductible.



Forgiveness of Paycheck Protection Loan Proceeds - Continued

- ▶ The Act does not address the taxability of state and local grants, loans, and assistance.
- ▶ Such grants, loans, and assistance to *businesses*, if they are not required to be paid back, are to be *included* in the gross income of the taxpayer as they are taxable.
- ▶ State and local grants to *individuals* (not businesses) are *not* taxable per IRC Section 139 and the related deductions are allowed.



Forgiveness of Paycheck Protection Loan Proceeds - Continued

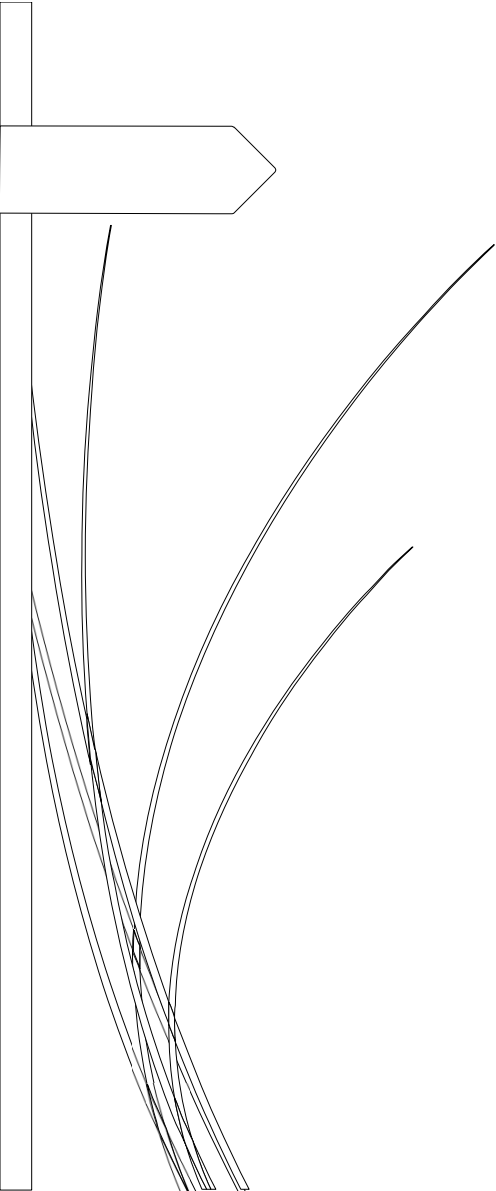
- **The Act also gives the IRS the authority to not require any information filing requirements (e.g., forms 1099) for any amounts excluded from income by reason of the exclusion (just discussed) of covered loan amounts, emergency financial aid grants, certain loan forgiveness, and other business financial assistance under the CARES Act.**



Forgiveness of Paycheck Protection Loan Proceeds - Continued

- ▶ The IRS had earlier instructed financial institutions *not* to issue forms 1099-C.
- ▶ However, there will be “accidents” where certain financial institutions and other providers issue a form 1099.
- ▶ If you cannot get them to withdraw the form 1099 (and you probably won't be able to) then you should.....

Paycheck Protection Program2





Paycheck Protection Program2

- **The Act provides for a new series of paycheck protection program loans and is unofficially titled the PPP2.**
- **It would be very advisable that you consider immediately if your client is to apply for the new loans as funds will be depleted rapidly.**



PPP2 – Qualifications

- ▶ **Will be available to both first time participants and to entities that had previously received a PPP loan.**
- ▶ **Previous participants may apply for a loan of up to \$2 million.**



PPP2 – Qualifications – Previous Recipients

Previous participants in the PPP loan program must:

- 1. Have 300 or fewer employees and**
- 2. Have expended or will expend their first PPP loan and**
- 3. Can show a 25% gross revenue decline in any of the 2020 quarters compared with the same quarter in 2019.**



PPP2 – Qualifications – Previous Recipients - Continued

- **Please note the requirement in number 3 in which the applicant may select any of the quarters in 2020 and compare it with the same quarter in 2019 to make the determination of how much, if any, gross receipts declined.**
- **This is a significant liberalization and requires planning....**



PPP2 – Forgiveness

- **The costs that will qualify for the forgiveness of the PPP2 loans are the same as with the first PPP loan program.**
- **They are: payroll, rent, covered mortgage interest, and utilities.**
- **Additional other costs are added to the forgiveness provisions.**



PPP2 – Forgiveness - Continued

- **The PPP2 loan adds the following costs to qualify and allow for the forgiveness:**
 1. **Covered worker protection such as personal protective equipment as well as facility modifications that are necessary to comply with COVID 19 federal health and safety guidelines such as:**



PPP2 – Forgiveness - Continued

- 1. A drive through window facility.**
- 2. An indoor, outdoor, or combined air or air pressure ventilation or filtration system.**
- 3. Sneeze guards.**
- 4. An expansion of additional indoor, outdoor, or combined business space.**
- 5. An on-site or off-site health screening.**
- 6. Any expenditure to accomplish social distancing.**



PPP2 – Forgiveness - Continued

- 2. Expenditures made to suppliers that are essential at the time of purchase to the recipient's current operations.**
 - This particular category has a broad interpretation and is very confusing and “applies to contracts, orders, etc. that are in effect prior to the covered period or with respect to perishable goods in effect before or at any time during the covered period”.**



PPP2 – Forgiveness - Continued

- 3. Cost of any software or cloud computing service that facilitates business operations such as product or service delivery, processing payments, tracking of payroll expenses, human resources, sales and billing functions, accounting or tracking of supplies, inventory, records, and expenses.**
- What this means is....**



PPP2 – Forgiveness - Continued

- 4. Property damage costs related to damage, vandalism, or looting due to public disturbances that occurred during 2020 that were not covered by insurance or any other form of compensation.**



PPP2 – Forgiveness - Continued

- **Similar to the requirements of the first PPP loan forgiveness, the recipient must spend no less than 60% of the funds on payroll over a covered period of either eight or twenty-four weeks.**



PPP2 – Amount That May Be Borrowed

- **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 with the maximum loan of \$2 million.**
- **Borrowers with NAICS codes starting with 72 which is hotels and restaurants can get up to 3.5 times their average payroll costs.**



PPP2 – Simplified Application Method

- **Creates a simplified forgiveness application process for loans of \$150,000 or less.**
- **The forgiveness application shall be no more than one page in length and include the 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 cost and the total loan amount.**



PPP2 – Simplified Application Method - Continued

- **Interestingly enough and in order to keep the SBA from running wild the Act required that the SBA create the simplified application form within 24 days of the Act's enactment.**
- **The simplified application form may not require additional materials unless it is necessary to substantiate revenue loss requirements.**



PPP2 – Simplified Application Method - Continued

- **Requires borrowers to retain relevant records related to the employment for four years and all other records for at least three years.**
- **The SBA may review and audit these loans.**



PPP2 – Simplified Application Method - Continued

- **Significantly, the Act repeals the requirement that PPP borrowers deduct the amount of any Economic Injury Disaster Loans Advances from the PPP loan forgiveness amount.**



PPP2 – Eligible Applicants – First Time

PPP2 will permit first time borrowers from the following groups:

- 1. Businesses with 500 or fewer employees.**
- 2. Sole proprietors, independent contractors, and eligible self-employed individuals.**
- 3. Not-for-profits including churches.**



PPP2 – Eligible Applicants – First Time - Continued

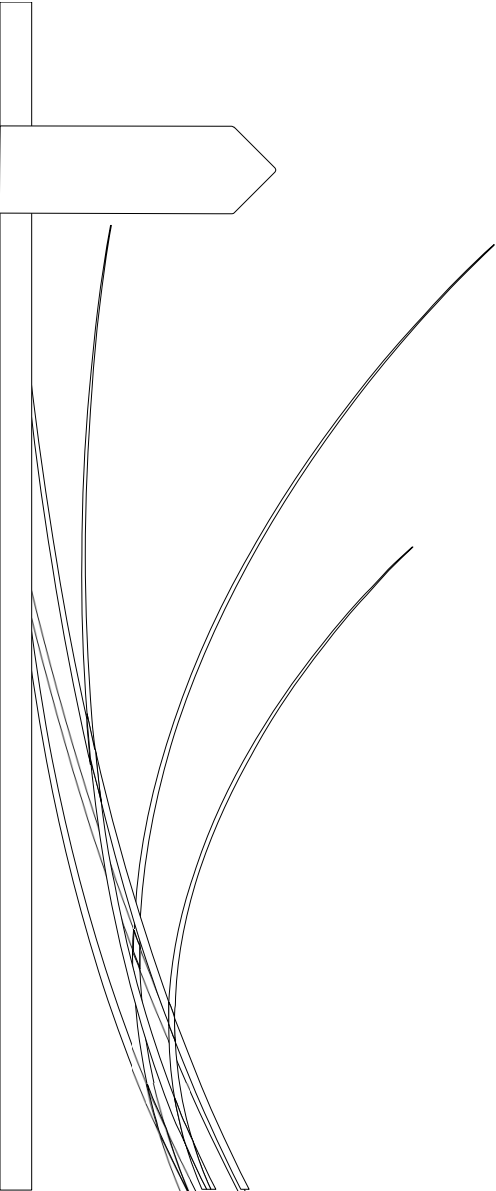
- 4. Accommodation and food services operations which have a NAICS code starting with 72 that have fewer than 300 employees per physical location.**
- 5. The requirement for previous PPP recipients that mandates a decline in gross receipts between 2019 and 2020 does not apply to the first time applicants.**



PPP2 – Eligible Applicants – Second Time

The PPP2 program expands the eligible applicants to include Section 501(c) business leagues such as chambers of commerce, visitors' bureaus and “destination marketing organizations” providing they have fewer than 300 employees and that lobbying does not total more than 15% of the organization's total activities.

Sick Leave, Family Leave, and Employee Retention Credits





Sick and Family Leave Payroll Tax Credits

- **The Act extends the payroll tax credits for sick and family leave through March 31, 2020.**
- **Modifies the payroll tax credits so that they apply as if the corresponding employer mandates were extended through March 31, 2021.**



Sick and Family Leave Payroll Tax Credits - Continued

- **Allows taxpayers to elect to use their average daily self-employment income from 2019 rather than 2020 when computing the credit.**



Employee Retention Tax Credits – For 2021

- **The Act extends the credit through June 30, 2021.**
- **The following changes were made to the credit:**
 - 1. The credit rate is increased from 50% to 70%.**
 - 2. An increase in the limit on per employee wages subject to the credit from \$10,000 for the entire year to \$10,000 for each quarter.**



Employee Retention Tax Credits - Continued

- **Thus, in 2021, the maximum credit is \$7,000 per employee per quarter.**
- 3. A gross receipts test for the first and second quarters of 2021 requires that the taxpayer's gross receipts are less than 80% of the same quarter in 2019**

OR



Employee Retention Tax Credits - Continued

The taxpayer can elect to meet this requirement by comparing the preceding calendar quarter compared to the same quarter in 2019.

- 3. A safe harbor provision which allows employers to use prior quarter gross receipts to determine eligibility.**



Employee Retention Tax Credits - Continued

- 6. An increase in the number of allowed employees from 100 to 500 when determining the relevant qualified wage base.**
- 7. Certain rules placed into effect that allow new employers who were not in existence for all or part of 2019 to be able to claim the credit.**



Employee Retention Tax Credits - Continued

**The problem lies in the confusion
regarding the retroactive
application of the provisions that
we are about to discuss**



Employee Retention Tax Credits – Retroactive Provisions

These are very key provisions that liberalize the qualification for the credit and are retroactive:

- **Employers who receive PPP loans may still qualify for the credit with respect to wages that are paid with *forgiven* PPP proceeds.**
- **Clarifies the determination of gross receipts for certain tax exempt organizations.**



Employee Retention Tax Credits – Retroactive Provisions

These are very key provisions that liberalize the qualification for the credit and are retroactive:

- **Employers who receive PPP loans may still qualify for the credit with respect to wages that are paid with *forgiven* PPP proceeds.**
- **There is confusion on this provision because while the provision is retroactive, the employer may file a “catch-up” credit in the whatever quarter the Act becomes law.**



Employee Retention Tax Credits – Retroactive Provisions - Continued

- **However, many commentators believe this is wrong and it would be difficult for a taxpayer to claim the credit.**
- **However, the taxpayer can claim the credit on wages that were *not utilized* in obtaining the forgiveness of the PPP loan proceeds.**
- **IRS guidance is needed.**
- **My thoughts are....**



Employee Retention Tax Credits – Retroactive Provisions - Continued

Thus, the requirements in 2020:

- **All employers are eligible even those who receive a PPP loan (new provision).**
- **Gross receipts for any quarter in 2020 must be less than 50% of the gross receipts in the same quarter in 2019.**



Employee Retention Tax Credits – Retroactive Provisions - Continued

Thus, The Requirements in 2020 Are:

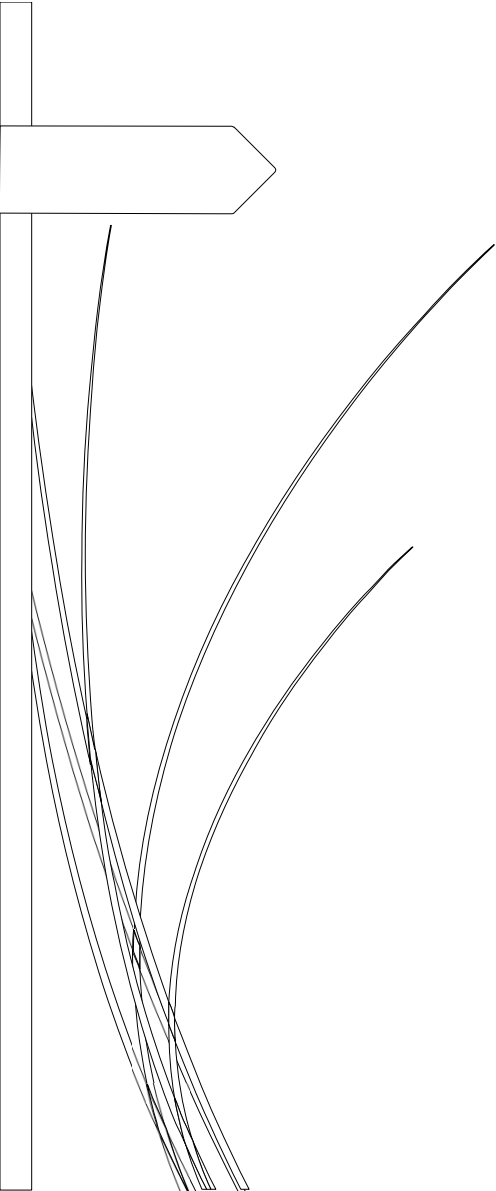
- **The wage limit is 50% of wages up to \$10,000 for a maximum credit of \$5,000 per employee for the year.**
- **Once the gross receipts in a given quarter return to 80% of the same quarter in 2019, they are no longer eligible for the credit.**
- **Cannot use the proceeds of the PPP loan for the same wage expense for the forgiveness of the loans and the retention credit.**



Employee Retention Tax Credits – Retroactive Provisions - Continued

- **Again, this is confusing in light of our prior discussion and the conflict generated by a lack of IRS guidance on how to claim the credit retroactively.**
- **My recommendation is to apply the new legislation to 2021 and not 2020 until we obtain guidance.**
- **Clarifies that group health plan expenses can be considered qualified wages even when no other wages are paid to the employees.**

Other Tax Provisions





Presidential Order Allowing Deferral of Employees FICA Tax

- **The Act extends the date that the employee repayment of any social security tax which was deferred has to be repaid from April to December 31, 2021.**
- **Note: the Act *does not* forgive any amounts that were not withheld and deferred.**



Money Purchase Plans

- **The provision in the CARES Act that allows individuals to make penalty-free withdrawals from certain retirement plans for COVID related reasons and to compute the resulting tax liability over a three period, recontribute withdrawn funds, and allows increases to the limits on retirement plan loans.**
- **Has added money purchase pension plans as qualifying plans to the retirement plans subject to this provision.**
- **This provision is retroactive to the date of the CARES Act.**



Net Operating Losses - Farmers

- **The Act provides that farmers who elected a two year net operating loss carry back prior to the CARES Act to retain the two year carry back rather than have to carry back the net operating losses over the five year period as required in the CARES Act.**
- **This provision allows farmers who had previously elected to waive (through an election) the carry back of the NOL to revoke that election.**



Net Operating Losses – Farmers - Continued

- **My thoughts are.....**
- **Note: As discussed in prior seminars the taxpayer must still file an election to *not* carry back the net operating losses to the five year period as required by the CARES Act.**



Depreciation of Certain Residential Rental Property

- **The Act provides that the recovery period which is applicable to residential rental property placed in service before January 1, 2018 and held by an electing real property trade or business is 30 years.**
- **In my opinion, a correction to this recovery period will require a change in accounting via form 3115.**



Charitable Contributions - Corporations

The Act extends for a one year period, through 2021, the increased limit for charitable contributions by corporations from 20% to 25% as provided by the CARES Act.



Deduction of Meals Expense

- **This is one of the most incredible tax provisions of the Act that was criticized by even the *Wall Street Journal*.**
- **The Act provides that meal expenses which are currently limited to a deduction of 50% of their actual costs is increased to 100%.**



Deduction of Meals Expense - Continued

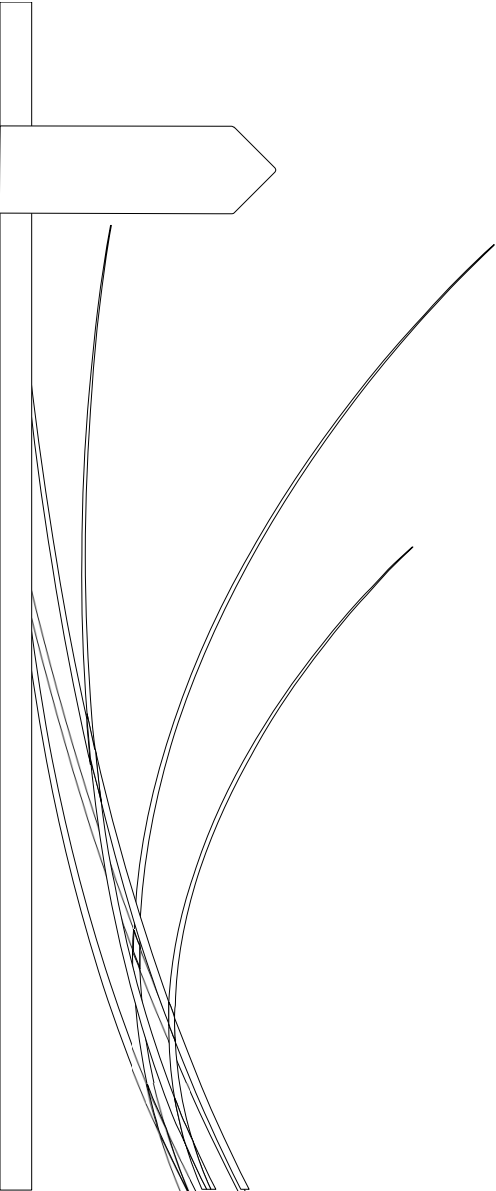
- **The meals expense is allowed for food and beverages as long as they are provided by a restaurant.**
- **The provision allowing meals and beverages at 100% is effective for 2021 and 2022 only.**
- **My thoughts are....**



Deduction of Meals Expense - Continued

- **The meals expense is allowed for food and beverages as long as they are provided by a restaurant.**
- **The provision allowing meals and beverages at 100% is effective for 2021 and 2022 only.**
- **My thoughts are....**

Individual Provisions





Earned Income and Child Tax Credits

- ▶ **As we had discussed in prior seminars, a substantial number of our clients who qualified for the earned income credit and child tax credits will probably not qualify in 2020 because of the increase and duration of unemployment insurance payment combined with the lack of earned income from being laid off and/or having a reduction in net profit.**
- ▶ **Congress has addressed this issue in a somewhat convoluted manner with a provision in the Act.**



Earned Income and Child Tax Credits - Continued

- **The Act provides that taxpayers may choose either to use their 2019 earned income if that is more advantageous than their 2020 earned income.**
- **Obviously, this is going to require a major alteration in the computation of the credit and more investigatory work on the practitioner's part.**



Charitable Contributions

- **The Act provides an increase in the charitable contributions deduction for non-filers from \$300 to \$600.**
- **The increase to \$600 is effective for 2021.**
- **The \$600 deductible amount is for couples who file jointly.**
- **The amount is \$300 for individuals filing married-separate.**



Charitable Contributions - Continued

- A frequently asked question is whether the \$300 deduction for non-itemizers in 2020 is allowed per individual or only on a joint return.
- The amount per married-filed separately is \$150 per individual and \$300 for a joint return.



Charitable Contributions - Continued

In what is a “nod” by Congress to the likelihood of widespread abuse of many non-itemizing taxpayers automatically claiming the deduction of whether they qualified for the deduction or not, the Act increases the Section 6662 penalty from 20% to 50% of the underpayment resulting from taxpayers who overstate this deduction.



Charitable Contributions - Continued

- **The Act also provides that the limitation on the deduction of charitable contributions that was increased to 100% in the CARES Act is extended for one year through 2021.**



Education Expenses

- **The Act repeals the deduction for qualified tuition and related expenses.**
- **However, it increases the phase-out limits on the lifetime learning credit so that these limits are equal to the phase-out limits for the American Opportunity Credit.**
- **This provision is effective for tax years beginning after December 31, 2020.**



Education Expenses - Continued

- **The Act requires that the IRS issue regulations or other guidance that allows an educator to claim as part of the educator deduction the cost of personal protective equipment and other supplies (e.g. disinfectant wipes) used for the prevention of the spread of the COVID 19 virus.**
- **This provision is retroactive to March 12, 2020.**



Minimum Age For Distributions During A “Working Retirement”

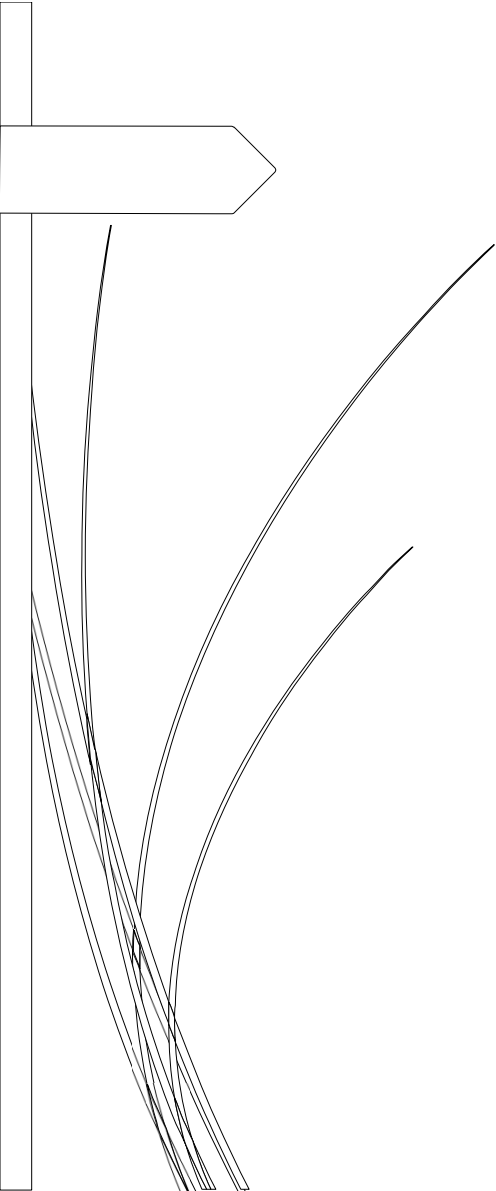
- **The Act allows for certain distributions from qualified pensions to be made to individuals who are still working if they are 59 ½ or older.**
- **If the individual works in the construction and billing trades, the age is 55 or older.**



Flexible Savings Accounts

- **The Act allows taxpayers to roll over unused amounts in their health and flexible care spending arrangements from 2020 to 2021 and from 2021 to 2022.**
- **Furthermore, employers are now permitted to allow employees to make a 2021 midyear prospective change in their contribution amounts.**

Disaster Tax Relief Provisions





Disaster Relief Provisions - Qualifications

- **The Act provides for disaster tax relief for all individuals and businesses in a presidentially declared disaster area for major disasters.**
- **Does not apply to the COVID 19 pandemic.**
- **It is in effect for all disasters declared after December 31, 2019 through 60 days after the date of the enactment.**



Retirement Funds

- **The Act provides that residents of a qualified disaster area, as defined in the Act, may take a distribution of up to \$100,000 from a retirement plan or individual retirement account without a penalty.**
- **Amounts that are withdrawn may be included in income over three years or may be recontributed to the plan.**



Personal Casualty Losses

The Act permits individuals who have suffered a net disaster loss, which is modified by the Act, to increase their standard deduction by the amount of the net disaster loss.



Qualified Disaster Relief Contributions

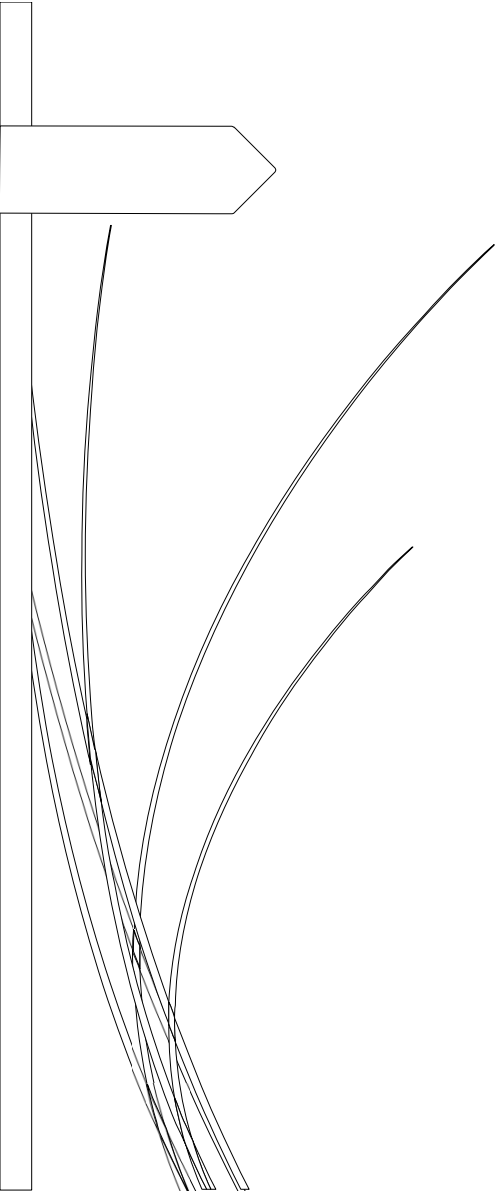
The Act modifies the CARES Act modification of the charitable contributions limits for 2020 to allow corporations to make qualified disaster relief contributions of up to 100% of their taxable income.



Employee Retention Credit

- **The Act allows a tax credit for employers of 40% of wages up to \$6,000 per employee who conducted an active trade or business in a qualified disaster zone which is defined in the Act.**
- **The credit applies to wages paid without regard to whether the employee performed any services associated with those wages.**

Expired Tax Provisions





Tax Extenders In General

The Act addressed 40 expiring tax provisions by making:

1. Ten provisions permanent.
 2. Eleven provisions extended until the end of 2025.
 3. Two provisions extended for two years.
 4. Seventeen provisions extended for a single year until December 31, 2021.
- We will now discuss the extenders that are of a general nature.



Permanent Provisions

The Act makes permanent the following provisions:

- 1. The 7.5% of adjusted gross income threshold for the deduction of medical expenses rather than the scheduled 10% threshold limitation.**
- 2. A deduction for energy efficient commercial buildings with the deduction being adjusted for inflation after 2020.**



Permanent Provisions - Continued

- 3. The gross income exclusion for certain benefits provided to volunteer firefighters and emergency responders.**



Five Year Extensions

The Act extends for five years the following provisions:

- 1. The new markets tax credit.**
- 2. Employer credit for paid family and medical leave.**
- 3. Work opportunity credit.**



Five Year Extensions - Continued

- 4. Gross income exclusion for discharge of indebtedness on a principal residence.**
- 5. Exclusion for certain employer payments of student loans.**
- 6. Seven year recovery period for motorsports entertainment complexes.**



Two Year Extensions

The Act provides a two year extension for the following provisions:

- 1. Residential energy efficient property credit .**
- 2. Energy investment tax credit for solar and residential energy efficient property.**



One Year Extensions

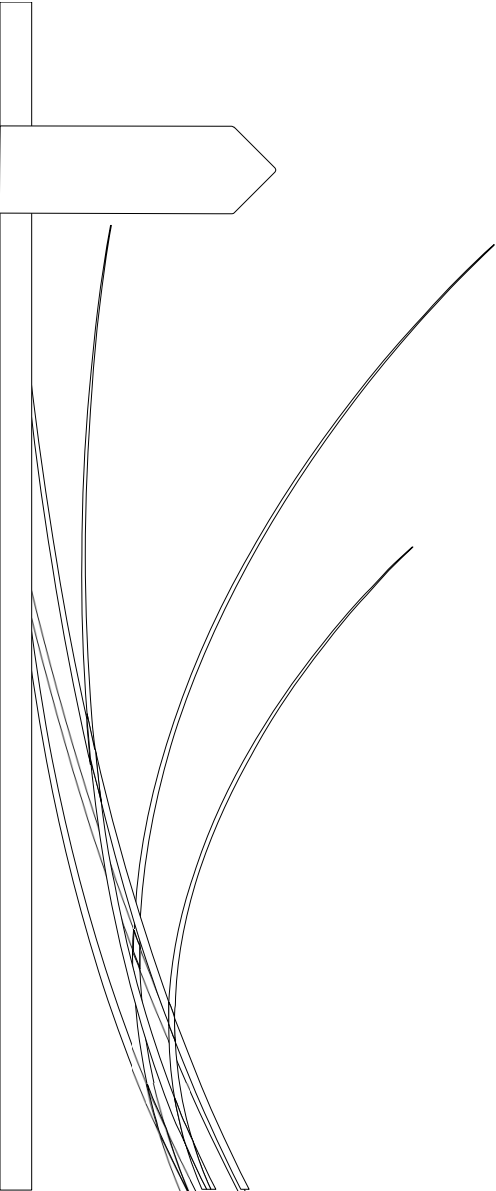
The Act provides a one year extension for the following provisions:

- 1. 10% credit for qualified nonbusiness energy property.**
- 2. Credits for qualified fuel cell motor vehicles.**
- 3. 10% credit for plug-in electric motorcycles and two-wheeled vehicles.**



One Year Extensions

4. Health coverage tax credit.
5. Energy-efficient homes credit.
6. Treatment of qualified mortgage insurance premiums as qualified residence interest.
7. Three year recovery period for racehorses that are two years or younger.



Good Luck and Go For It!!!!

