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COVID Relief Package – Key Tax Provisions for 2021

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On December 27, 2020, President Trump signed into law another COVID-19 aid package, the COVID-related Tax Relief Act of 2020 (the Act). The Act includes several key tax provisions that are intended to provide relief and stimulate the economy. The Act includes aid for individuals in the form of direct payments, jobless aid and rental assistance as well as aid to airlines, small lenders, entertainment venues, farmers, Amtrak and small businesses.

The key tax provisions included:

- Paycheck Protection Program (PPP) Expansion and Modifications
- Temporarily allows a 100 percent deduction for business meals
- Extends deadlines for CARES Act payroll and leave credits
- Expands the employee retention credit
- Creates a grant for entertainment venues
- Makes numerous changes and extensions for tax credits and incentives, including work opportunity credit, empowerment zone tax incentives, exclusion for employer payments of student loans, and renewable energy credits
- Permanently extends lower excise taxes on beer, wine and spirits
- Extends the $300 charitable contribution deduction to 2021

Paycheck Protection Program

The Act contained an expansion and modification to the PPP program. For more detail on the expansion and modification of the programs see, Paycheck Protection Program (PPP) Revived and Expanded Under Recent Stimulus Legislation and SBA Guidance. For tax purposes, the Act reverses an IRS rule regarding the denial of a deduction for expenses paid with the proceeds of a PPP loan that is forgiven. Namely, those expenses are now fully deductible, and the tax basis and other attributes of the borrower's assets will not be reduced as a result of the loan forgiveness. This change is retroactive to the enactment of the CARES Act on March 27, 2020.

The Act also makes clear that employers are eligible for PPP forgiveness and the

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Employee Retention Credit.

There are traps for the unwary that business owners and taxpayers should consider regarding the deductibility of the expenses.

Amended returns

Prior to the clarification, some borrowers may have already received forgiveness and filed tax returns that did not claim deductions for the expenses paid with PPP proceeds. The clarification that expenditures are deductible applies retroactively. Borrowers that previously filed returns and did not claim these deductions should consider filing amended returns to claim the now permissible deductions. Such amended returns may result in tax refunds or other tax benefits (such as an expanded net operating loss).

Loss limitations

The deductions may be limited due to inadequate basis or amounts at risk. For a more detailed discussion of loss limitations see, [It's All About That Basis: NOL Limitation Considerations for Noncorporate Taxpayers].

State Income Taxes

The special federal rules for PPP loan forgiveness might not apply for state or local income tax purposes. As such, a taxpayer could incur state income taxes as a result of PPP loan forgiveness.

Deduction for Business Meals

The Act temporarily reinstates the deduction for business meals under Section 274. The Tax Cuts and Jobs Act had suspended deductions for entertainment including the deduction for meals. The Act allows a 100 percent deduction for business-related food or beverage expenses provided by a restaurant that are paid or incurred before January 1, 2023. The change applies to business meals paid or incurred after December 31, 2020.

Payroll and Leave Credits

- [Optional Payroll Deferral] – On August 8, 2020, President Trump signed an executive order in the form of a memorandum directing the Secretary of the Treasury to allow employers to defer the withholding, deposit and payment of a certain portion of social security taxes in light of the ongoing COVID-19 pandemic. The president's order and IRS Notice 2020-26 permit employers to defer withholding the 6.2 percent employee portion of social security tax on wages paid between September 1, 2020 and December 31, 2020. Section 274 of the Act changes the expiration of the program from December 31, 2020 to April 30, 2021, and the repayment deadline form April 30, 2021 to December 31, 2021.

- Families First Coronavirus Response Act (FFCRA) – FFCRA provided two credits to eligible employers. The first credit was the **Paid Leave Credit**, which offered a credit of up to 100 percent of qualifying paid sick leave wages (including health plan expenses, and the employer portion of Medicare tax) paid April 1, 2020 through December 31, 2020, capped at $511 per employee per day or $200 per employee per day depending on the reason for leave, in both cases for a maximum of 10 days per employee. The second credit was the **FMLA Credit**, which offered a credit of up to 100 percent of qualifying FMLA expansion wages (including health plan expenses and the employer portion of Medicare tax) paid April 1, 2020 through December 31, 2020, up to $10,000 per employee. The Act extended the expiration date for certain required paid sick and family leave credits from December 31, 2020 to March 31, 2020. The Act did not extend employee's entitlement to FFCRA leave beyond December 31, 2020, meaning employers will no longer be required to provide such leave. The U.S. Department of Labor's Wage and Hour Division has published additional guidance regarding these changes in the form of Frequently Asked Questions on their website.

- Employee Retention Credit – The Employee Retention Credit (the ERC) is a credit against an employer's portion of payroll tax for an eligible business that is forced to suspend or close operations due to COVID-19, or otherwise has a significant revenue decrease, and continues to pay its employees while not currently working. Under the CARES Act, employers received a credit of up to 50 percent of qualifying wages and allocable health plan expenses paid after March 12, 2020, and before January 1, 2020, up to $10,000 per employee for certain eligible employers. The Act extended the credit allowing it to cover wages paid through June 30, 2021 instead of January 1, 2020. The Act also expands the credit by increasing the credit from 50 percent to 70 percent of "qualified wages," increasing the compensation limit from $10,000 for all calendar quarters to $10,000 for any calendar quarter," and increasing the threshold from employers from 100 employees to not more than 500 employees. Lastly, the threshold for the decline in gross receipts to qualify as an eligible employer is reduced to 20 percent from 50 percent.

If you would like more information regarding the COVID-19 relief package, please contact Lucien Beaudry, Michael Goller, or your Reinhart attorney.

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