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TAX ADVISORY

Consolidated Appropriations Act, 2021: Key Tax Provisions

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Unlike the original coronavirus relief bill (the CARES Act), which included numerous changes and modifications to the Tax Code, the latest stimulus bill includes relatively few tax-related provisions. Nonetheless, a couple of those new provisions are very important.

Most notably, in this latest bill, Congress has clarified that business expenses funded with the proceeds of a Paycheck Protection Program (PPP) loan will be deductible under the Tax Code, even if the PPP loan is ultimately forgiven. Shortly after the PPP program was originally created in the CARES Act, the Internal Revenue Service (IRS) issued guidance, taking the position that any expenses funded with forgiven loan proceeds would be nondeductible, citing Section 265 of the Tax Code, which generally denies deductions for expenses funded with tax-exempt income. Although the IRS's position was supportable, it was very controversial, because it had the overall effect of essentially requiring businesses to pay taxes on PPP loan proceeds once those proceeds were forgiven under the PPP program. Such a result was clearly never intended by Congress in the CARES Act; thus, the clarification in the latest bill that PPP loan-funded expenses *are* deductible is a welcome development for any business that obtained a PPP loan.

Another business-related tax change in the new stimulus bill is the allowance, for tax years 2021 and 2022, of a 100% deduction for the cost of business meals, including carry-out and delivered meals. Prior to this change, only 50% of the cost of a business meal was deductible. The change is meant to help the struggling restaurant industry, but whether it survives after 2022 is yet to be seen.

The stimulus bill also extends certain charitable deduction benefits that were added by the CARES Act. In particular, the new bill extends to 2021 certain increases to the annual limits on charitable contributions that, under the CARES Act, applied only to the 2020 tax year. For example, this includes extending to

2021 the 100% of adjusted gross income (AGI) limit for cash contributions made to public charities. Similarly, the new bill extends to 2021 the allowance by the CARES Act of up to a $300 deduction by non-itemizing taxpayers for cash charitable contributions.

The new bill extended and, in some cases, broadened various tax credits, including certain credits added by the CARES Act itself. Most notably, the refundable tax credit (the Employee Retention Tax Credit or ERTC) created by the CARES Act, which is allowed to employers that retain employees even in the face of significantly declining revenues, has been increased from 50% to 70% of qualified wages. Perhaps more importantly, employers who receive PPP loans can now also take advantage of the ERTC. Prior to the new bill, employers had to decide between taking the ERTC or obtaining a PPP loan.

Finally, the new bill also extends the repayment period for those employers who chose to take advantage of the Presidential Order issued in late August of 2020, allowing for the “voluntary” deferral of employee Social Security taxes on wages paid in the last four months of 2020. Originally, those taxes would have been due in April of 2021, but now the repayment period has been extended to December 31, 2021. Because there was so much confusion surrounding the original Presidential Order, it is not clear how many businesses actually took advantage of the deferral last year.

Questions

If you have any questions, please contact a member of our Trusts & Estates Planning Group.