Spidell's Quarterly Tax Update®

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SPIDELL'S QUARTERLY TAX UPDATE®

Course objectives: This Quarterly Tax Update provides an analysis of issues in tax law and practice that have come to the forefront in the quarter leading up to February 2021. Topics discussed include: economic impact payments; unemployment benefits; $10,000 SALT cap workaround; PPP second draw loans and supplemental funding requests; loan forgiveness; Employee Retention Credit; paid sick and family leave credits; rental assistance grants; disaster legislation; highlights of the Consolidated Appropriations Act of 2021; Form 1099-NEC; Proposition 19; and much more.

After completing this course, you will be able to:

- Determine how to handle overpayments of Pandemic Unemployment Assistance
- Recall who pays state and local income taxes for a passthrough entity under IRS Notice 2020-75
- Identify the requirements of obtaining a second draw PPP loan under the ACRRA
- Recall the process for obtaining simplified loan forgiveness for PPP loans
- Identify who is eligible to receive a rental assistance grant under the ACRRA
- Determine the Employee Retention Credit as amended by the TCDTRA

Category: Taxes

Recommended CPE Hours: CPAs — 2 Tax
EAs — 2 Federal Tax Update
CRTPs — 2 Federal Tax Update

Level: Basic

Prerequisite: None

Advance Preparation: None

Expiration Date: February 2022

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QUARTERLY TAX UPDATE — FEBRUARY 2, 2021

The most significant news we received this quarter was the passage of the Consolidated Appropriations Act of 2021 (H.R. 133) (CAA), signed by President Trump on December 27, 2020, which includes significant benefits for taxpayers. Those benefits are included in the following acts, which are part of Consolidated Appropriations Act:

- The Additional Coronavirus Response and Relief Act (ACRRA); and
- The Taxpayer Certainty and Disaster Tax Relief Act of 2020 (TCDTRA).

We will breakdown the ACRRA, the TCDTRA, and all other significant new items based on the type of taxpayer to which the provisions mainly apply, and then we'll talk about the next stimulus bill put forth by President Biden.

INDIVIDUAL ISSUES

ECONOMIC IMPACT PAYMENTS

The maximum economic impact payment (EIP) taxpayers could receive from the CARES Act and the ACRRA is:

- **CARES Act:** $1,200 per taxpayer and spouse, plus $500 per qualifying child under the age of 17 paid beginning in April 2020; and
- **ACRRA:** $600 per taxpayer and spouse, plus $600 per qualifying child paid beginning in December 2020.

Advanced credits against 2020 income tax liability

Both the payments are treated as advances against 2020 tax credits. (CARES Act §2201; IRC §6428; ACRRA §272; IRC §6428A) It does not matter that most ACRRA economic impact payments were sent out in January 2021 — they are still treated as 2020 tax credits.

Comment

As of today, February 2, 2021, all economic impact payments should have been sent out to eligible recipients. Any taxpayer who did not receive an EIP or feels they should have received a larger EIP must file an income tax return and go through the credit reconciliation. If an additional tax credit is warranted, then it will be issued at that time.

In most situations where the taxpayer has encountered problems with their EIP, it would be a waste of the tax professional's resources to help hunt down the EIP. You should go through the credit reconciliation on the 2020 tax return first.

The IRS will begin accepting tax returns on February 12. The date was extended due to the recently signed CAA 2021 Act.

Credit reconciliation process

Both the CARES Act and the ACRRA economic impact payments must be reconciled using the Recovery Rebate Credit worksheet contained in the Form 1040 instructions. If the taxpayer is entitled to an additional credit, it will be reported on Form 1040, line 30.

If the taxpayer received too much of a credit when the payments were sent out, there is no liability to repay any portion of the economic impact payments received.

Example of Recovery Rebate Credit calculation

Tommy and Tammy are married and have one child under the age of 17. Their 2020 AGI is $165,000 and they received the following economic impact payments:

- $2,100 received in April 2020;
- $1,000 received in January 2021.

See the following page for their recovery rebate credit calculation (the EIP reconciliation).

FORM 1040 OR 1040-SR, LINE 30
RECOVERY REBATE CREDIT

1. CAN YOU BE CLAIMED AS A DEPENDENT ON ANOTHER PERSON'S 2020 RETURN? IF FILING A JOINT RETURN, GO TO LINE 2. - NO. GO TO LINE 2.	
2. DOES YOUR 2020 RETURN INCLUDE A VALID SOCIAL SECURITY NUMBER FOR YOU AND, IF FILING A JOINT RETURN, YOUR SPOUSE? - YES. SKIP LINES 3 AND 4, AND GO TO LINE 5.	
3. WAS AT LEAST ONE OF YOU A MEMBER OF THE U.S. ARMED FORCES AT ANY TIME DURING 2020, AND DOES AT LEAST ONE OF YOU HAVE A VALID SSN? - SKIP	
4. DOES ONE OF YOU HAVE A VALID SSN? - SKIP	
5. IF YOUR EIP 1 WAS $1,200 ($2,400 IF MFJ) PLUS $500 FOR EACH QUALIFYING CHILD, SKIP LINES 5 AND 6, ENTER ZERO ON LINES 7 AND 16, AND GO TO LINE 8. OTHERWISE ENTER: $1,200 IF SINGLE, HOH, MFS, QUALIFYING WIDOW(ER), OR IF MFJ AND YOU ANSWERED "YES" TO QUESTION 4, OR $2,400 IF MFJ AND YOU ANSWERED "YES" TO QUESTION 2 OR 3	2,400.
6. MULTIPLY $500 BY THE NUMBER OF QUALIFYING CHILDREN UNDER AGE 17 AT THE END OF 2020 LISTED IN THE DEPENDENTS SECTION ON PAGE 1 OF FORM 1040 OR 1040-SR FOR WHOM YOU EITHER CHECKED THE "CHILD TAX CREDIT" BOX OR ENTERED AN ADOPTION TAXPAYER IDENTIFICATION NUMBER	500.
7. ADD LINES 5 AND 6	2,900.
8. IF YOUR EIP 2 WAS $600 ($1,200 IF MFJ) PLUS $600 FOR EACH QUALIFYING CHILD, SKIP LINES 8 AND 9, ENTER ZERO ON LINES 10 AND 19 AND GO TO LINE 11. OTHERWISE ENTER: $600 IF SINGLE, HOH, MFS, QUALIFYING WIDOW(ER), OR IF MFJ AND YOU ANSWERED "YES" TO QUESTION 4, OR $1,200 IF MFJ AND YOU ANSWERED "YES" TO QUESTION 2 OR 3	1,200.
9. MULTIPLY $600 BY THE NUMBER OF QUALIFYING CHILDREN UNDER AGE 17 AT THE END OF 2020 LISTED IN THE DEPENDENTS SECTION ON PAGE 1 OF FORM 1040 OR 1040-SR FOR WHOM YOU EITHER CHECKED THE "CHILD TAX CREDIT" BOX OR ENTERED AN ADOPTION TAXPAYER IDENTIFICATION NUMBER	600.
10. ADD LINES 8 AND 9	1,800.
11. ENTER THE AMOUNT FROM LINE 11 OF FORM 1040 OR 1040-SR	165,000.
12. ENTER THE THRESHOLD AMOUNT FOR YOUR FILING STATUS	150,000.
13. IS THE AMOUNT ON LINE 11 MORE THAN THE AMOUNT ON LINE 12? - YES. SUBTRACT LINE 12 FROM LINE 11	15,000.
14. MULTIPLY LINE 13 BY 5% (0.05)	750.
15. SUBTRACT LINE 14 FROM LINE 7. IF ZERO OR LESS, ENTER 0	2,150.
16. ENTER THE AMOUNT, IF ANY, OF EIP 1 THAT WAS ISSUED TO YOU (BEFORE OFFSET FOR ANY PAST-DUE CHILD SUPPORT PAYMENT). YOU MAY REFER TO NOTICE 1444 OR YOUR TAX ACCOUNT INFORMATION AT IRS.GOV/ACCOUNT FOR THE AMOUNT TO ENTER HERE	2,100.
17. SUBTRACT LINE 16 FROM LINE 15. IF ZERO OR LESS, ENTER 0. IF LINE 16 IS MORE THAN LINE 15, YOU DON'T HAVE TO PAY BACK THE DIFFERENCE	50.
18. SUBTRACT LINE 14 FROM LINE 10. IF ZERO OR LESS, ENTER 0	1,050.
19. ENTER THE AMOUNT, IF ANY, OF EIP 2 THAT WAS ISSUED TO YOU. YOU MAY REFER TO NOTICE 1444-B OR YOUR TAX ACCOUNT INFORMATION AT IRS.GOV/ACCOUNT FOR THE AMOUNT TO ENTER HERE	1,000.
20. SUBTRACT LINE 19 FROM LINE 18. IF ZERO OR LESS, ENTER 0. IF LINE 19 IS MORE THAN LINE 18, YOU DON'T HAVE TO PAY BACK THE DIFFERENCE	50.
21. RECOVERY REBATE CREDIT. ADD LINES 17 AND 20. ENTER THE RESULT HERE AND, IF MORE THAN ZERO, ON LINE 30 OF FORM 1040 OR 1040-SR	100.

Notices

The IRS was required to send out notices to taxpayers after each EIP. The first EIP issued under the CARES Act was Notice 1444 and the second EIP issued under the ACRRA was Notice 1444-B.

Practice Pointer

Every tax professional knows they will face many clients who didn't keep their 1444 or 1444-B notices and can't remember the amount of their EIP. Despite this, the IRS has decided that creating an EIP lookup tool is not necessary.

For clients in this situation, you have only two options to determine the amount of their EIP:

- IRS account transcript (The IRS's CAF unit is currently taking over six weeks to process powers of attorney); or
- Your client's bank statements (this doesn't work if the EIP was provided to the client using a debit card).

Comment

Because a taxpayer's final credit amount is calculated based on their 2020 AGI, your tax software will likely have very little necessary input points to calculate the Recovery Rebate Credit. It will require you to enter the amounts from Notices 1444 and 1444-B, then it's largely a calculator function of your software to compute the credit.

CARES Act and ACRRA EIPs are separate credits

The second round of EIPs authorized by the ACRRA are made available through new IRC §6428A. The first round of EIPs authorized by the CARES Act were made available through IRC §6428. Because the authorizations for the EIPs are made under different sections of the Internal Revenue Code, each round of EIPs is treated as its own separate credit. This means that the income thresholds apply separately to each credit, not on a cumulative basis.

Differences in EIP Payments Authorized Under the CARES Act and the ACRRA		
Issue	**CARES Act**	**ACRRA**
Amount of payment	$1,200 per qualifying individual plus $500 per qualifying child who is under age 17 at the end of 2020	$600 per taxpayer ($1,200 for MFJ) plus $600 per dependent who is under age 17 at the end of 2020
Based on AGI	From 2018 or 2019 (depending on whether the taxpayer's 2019 tax return was filed prior to payments being issued)	From 2019
AGI limits	Full payments for taxpayers with AGI as follows: • $75,000 single taxpayers • $112,500 HOH • $150,000 MFJ Payment phased out by $5 for every $100 (or 5%) over the AGI threshold and completely phased out at: • $99,000 single taxpayers • $146,500 HOH • $198,000 MFJ if no children • Add $10,000 for each qualified child	Full payments for taxpayers with AGI as follows: • $75,000 single taxpayers • $112,500 HOH • $150,000 MFJ Payment phased out by $5 for every $100 (or 5%) over the AGI threshold and completely phased out at: • $87,000 single taxpayers • $136,500 HOH • $174,000 MFJ if no children • Add $12,000 for each qualified child
Nonfilers	Payments made to Social Security recipients, Social Security disability recipients, VA disability recipients	Same as CARES Act
Social Security number requirements	To receive the payment, the Social Security numbers for the taxpayer, spouse, and qualifying dependent must be included on their tax return. The only exceptions are: • If one spouse is a member of the Armed Forces, then a Social Security number need only be provided for one of the spouses; and • If the credit is taken for a qualifying child who is adopted or placed for adoption, the adoption taxpayer identification number should be used	U.S. citizens and their children are eligible even if they are married to noncitizens. In other words, the U.S. citizen parent with an SSN will receive $600, plus $600 for each child under the age of 17, as long the child has an SSN This expansion would be retroactive and would apply to first round EIPs authorized under CARES Act. However, additional first round EIPs won't be sent if a taxpayer didn't qualify under the original CARES Act, but they do under the ACRRA. Taxpayers in this situation will receive their additional EIP when they reconcile their credit and file their 2020 income tax return
Ineligible taxpayers	The credit is not available to: • Nonresident aliens; • Individuals who may be claimed as a dependent on another person's tax return (even if they are not actually claimed); and • Estates or trusts	Same as CARES Act. ACRRA also disallows credit for individuals who were deceased prior to January 1, 2020, (the deceased individual is treated as if his or her valid identification number was not included on the return) (IRC §6428A(e))

UNEMPLOYMENT BENEFITS

Under the ACRRA, COVID-19-related unemployment benefits are extended for an additional 11 weeks, for a total of 50 weeks. (ACRRA §201) These benefits became available beginning December 27, 2020, and will run at least through March 14, 2021.

The additional $600 per week benefits that were available under the unemployment assistance provision of the CARES Act have been reduced to $300 per week for weeks of unemployment beginning after December 26, 2020. (ACRRA §203(b))

☑ Planning Pointer

The total additional unemployment compensation available to a worker through the Continued Assistance for Unemployed Workers Act of 2020 is $3,300 ($300 per week × 11 weeks). Remember, Pandemic Unemployment Assistance is taxable on the recipient's federal income tax return, but withholding is not available on the benefits. Taxpayers with other sources of income should plan ahead for the additional income tax liability and consider making estimated tax payments.

States can elect to modify their agreements with the federal government to provide an additional $100 per week, which is available to earners who have self-employment income of at least $5,000 in the most recent taxable year ending prior to the taxpayer's application for regular UI compensation. (ACRRA §261) These additional payments end on March 14, 2021.

Pandemic unemployment assistance overpayments

Individuals who were paid Pandemic Unemployment Assistance to which they were not entitled must repay the overpayments. However, the state agency administering unemployment benefits may waive such repayment if it determines that:

- The payment was without fault on the part of the individual; and
- Such repayment would be contrary to equity and good conscience.
  (ACRRA §201(d))

Plan ahead for clients who must repay unemployment benefits

For a multitude of different reasons, many taxpayers received more unemployment benefits than they were entitled and will be required to repay them.

If the amount is repaid in the same year as the benefits, you simply reduce the taxable benefits by the amount repaid. However, if the benefits are repaid in a later year, you may be able to use IRC §1341, the claim of right doctrine.

The claim of right doctrine holds that if a taxpayer receives property without restriction as to its use (i.e., "unrestricted claim of right"), then the taxpayer has received income that must be included in gross income in the year of receipt. Unemployment compensation is received without a restriction as to its use because the taxpayer can spend the money received right away.

If the taxpayer is required to return the property in a later taxable year, he or she may deduct the amount — or, possibly, claim a credit — in the year of repayment.

The type of deduction allowed in the year of repayment is of the same character as the type of income reported in the earlier year. (IRS Form 1040, Schedule A instructions)

For example:

- If the income was reported on Schedule C, report the deduction on Schedule C;
- If the income was reported as capital gain, report the repayment as a capital loss; or
- If the income was reported as wages, unemployment compensation, or other nonbusiness income, it is deductible on Schedule A as a miscellaneous itemized deduction, not subject to the 2% threshold. (Under IRC §67, a claim of right of more than $3,000 is still an allowable miscellaneous itemized deduction not subject to 2% of federal AGI.)

If the amount of repayment is $3,000 or less, you must report the repayment as previously stated. However, if the amount is greater than $3,000, you may elect to claim a credit in the year repaid equal to the tax paid on the income in the year it was originally reported. (IRC §1341(a))

Making the credit election allows for a full repayment of tax

To compute the credit, you recompute the tax for the year (or years) in which the income was reported and claim a credit for the difference between the tax paid including the income and the tax liability without the income. The credit will apply to all years, even those in which the statute of limitations has passed. (Treas. Regs. §1.1341-1(d)(4)(ii))

You will need copies of the affected returns. The elimination of the income in each year can have secondary effects including:

- Reduces Social Security income subject to tax;
- Reduces phaseouts of various tax benefits including taxable Social Security, IRC §199A deductions, medical expenses, etc.; and
- Increases deductible passive losses.

Example of computing the credit

Joe reported $25,000 in unemployment benefits received in 2020. It turns out his employer was paying him for part-time work, and he was not entitled to any benefits. In 2021, the California Employment Development Department notified Joe that he was overpaid, and he repaid the benefits in 2021. His credit is computed as follows:

Tax liability (2020) including the $25,000 of benefits	$15,000
Recomputed tax liability without the $25,000	(9,500)
Credit allowed on the 2021 return	$ 5,500

Assume instead that Joe was only overpaid by $2,500. He would be required to take a deduction for the $2,500 on Schedule A and could not use the claim of right credit.

Claiming the credit

Claim the credit in the "Payments" section of the 1040. The credit is treated as a payment and is, therefore, effectively a refundable credit. See IRS Publication 525 for current reporting requirements.

Benefit reduction

If the repayment is made by reducing current benefits, the taxpayer will be taxable on the net benefits paid.

> ***Example of benefit reduction***
>
> Joe from the prior example was permanently laid off his job in 2021. If his benefits are reduced in 2021 for the repayment of his overpaid 2020 benefits, he will report the reduced amount.

CHARITABLE CONTRIBUTIONS

The CARES Act provisions regarding charitable contributions are extended and modified for the 2021 taxable year. Specifically:

- Nonitemizers may claim a $300 above-the-line deduction for cash contributions made to qualified organizations, no matter their filing status (excluding donations to private foundations or donor advised funds) for 2021. Unlike the above-the-line deduction for the 2020 taxable year, the act clarifies that joint filers may claim up to $600 on the 2021 return (TCDTRA §212; IRC §§63(b), 170(p));
- A 50% accuracy-related penalty will be imposed on any underpayments attributable to overstatements of the 2021 above-the-line deduction. This penalty will not be imposed automatically but must be approved by an IRS supervisor prior to assessment (TCDTRA §212; IRC §§6662(b)(9), 6751(b)(2)(A)); and
- The increased charitable contribution limits for cash contributions applicable to individuals (100% of AGI) and corporations (25% of taxable income) and for donations of food inventory (25%) also apply for contributions made in 2021. (TCDTRA §213)

FLEXIBLE SPENDING ACCOUNT CARRYOVERS

Individuals may carry over any unused 2020 benefits or contributions remaining in any health and dependent care flexible spending accounts to their 2021 accounts without disqualifying the cafeteria plan. Individuals may likewise carry over any unused 2021 benefits to a plan year ending in 2022.

Other amendments soften the "use it or lose it" treatment for flexible spending accounts by allowing:

- Plans to extend the annual grace period to 12 months after the plan year ending in 2020 or 2021;
- Health care flexible spending accounts to provide post-termination reimbursements for anyone terminated in 2020 or 2021 throughout the end of the plan year (including the 12-month grace period);
- Dependent care flexible account payments for children under age 14 (increased from age 13) during the plan year if there were unused amounts from the preceding year;
- Participants in either a health or dependent care flexible spending arrangement to prospectively modify their employee contribution amounts for the 2021 plan year; and
- Employers must amend their cafeteria plans to allow rollover of funds from 2020 to 2021 and from 2021 to 2022. They may make the amendments retroactive to the beginning of the previous calendar year as long as the amendment is consistent with how the plan was operated. (TCDTRA §214)

$10,000 SALT CAP WORKAROUND

The IRS has given its blessing for a limited workaround of the $10,000 state and local tax (SALT) itemized deduction limitation created by the TCJA. (IRS Notice 2020-75; IRC §164(b)(6)) The IRS's guidance came in Notice 2020-75, which in a nutshell states that:

- If specified state and local income taxes are imposed directly on a partnership or an S corporation on its income; and
- The income taxes are actually paid by the partnership or S corporation; then
- The entity can deduct the taxes in computing its non-separately stated income or loss for the tax year (reported on each owner's Schedule K-1, line 1).

The significance of Notice 2020-75 is that these taxes are assessed to, and paid by, the passthrough entity and not the owner of the passthrough entity. Therefore, the income taxes are fully deductible by the entity and escape the $10,000 SALT cap on the owner's individual federal income tax return. These taxes are deductible to the owner because the net income is reduced by those taxes.

Offsetting benefits to the individual taxpayer

The various states that have passed laws imposing income taxes directly on a partnership or an S corporation (or those contemplating such laws) also provide the partners/shareholders with either a deduction at the state level for state income taxes, an exclusion, a credit for taxes paid by the passthrough entity, and/or some combination thereof.

A few states have already enacted, and a few are contemplating enacting, tax laws that impose either a mandatory or elective entity-level income tax on partnerships and S corporations. With some variations among the states that have enacted such laws, the state then provides a corresponding or offsetting owner-level tax benefit, such as a full or partial credit, deduction, or exclusion.

The states that have enacted such laws so far are:

- Connecticut;
- Louisiana;
- Maryland;
- New Jersey;
- Oklahoma;
- Rhode Island; and
- Wisconsin.
  (Conn. Gen. Stat. §12-699; La. Rev. Stat. Ann. §47:287.732.2; Md. Code Ann. Tax-Gen. §10-102.1(b); N.J. Rev. Stat. §54A:12-3; Okla. Stat. Title 68 §2358(A); R.I. Gen. Laws §44-11-2.3; Wis. Stat. §71.21(6))

With the exception of Connecticut, each of the states listed provides an election for partnerships and S corporations where the entity can choose whether to pay income tax at the entity level. The fact that an entity can make such an election in these states has no effect on the IRS's position.

California conformity

California has introduced SB104 that provides a similar SALT workaround as the states listed here. Interestingly, SB104, if passed, would only apply for tax years beginning on or after January 1, 2021, and before January 1, 2026 (the date the TCJA's $10,000 SALT cap is set to sunset).

SB104 is still in its early stages, so its provisions can still change drastically. We will keep you updated if the bill progresses further.

Illustration: Connecticut's passthrough entity tax

Connecticut's passthrough entity tax provides that each partnership and S corporation is subject to a state entity-level income tax of 6.99%. The passthrough entity then must report to its owners the owner's direct share of the entity-level tax imposed on the passthrough entity.

Then, when the individual owner files his or her personal income tax return in Connecticut, he or she can claim a refundable state tax credit of 87.5% against their share of the entity level tax. So, for example, if the net income is $100,000, the entity will pay $6,990 in entity level tax, and the members receive a credit on their Connecticut return of $6,116 ($6,990 × 87.5%).

Example of the workaround

John lives in Connecticut and is a 40% partner in the JS General Partnership. JS's Connecticut taxable income is $500,000.

JS's Connecticut passthrough entity tax is $34,950 ($500,000 taxable income × 6.99% passthrough entity tax). Of this amount $13,980 is attributable to John ($34,950 × 40% ownership interest in JS).

Because the Connecticut passthrough entity tax is assessed and paid at the entity level, John's ordinary income reported on his federal K-1, line 1, is only $186,020, calculated as follows:

JS's ordinary income (not including state taxes)	$500,000
Connecticut passthrough entity tax	- 34,950
JS's ordinary income (Schedule K, line 1)	465,050
John's ownership percentage	× 40%
John's ordinary passthrough income (Schedule K-1, line 1)	$186,020

John's ordinary passthrough income, as reported on his federal Schedule K-1, line 1, is reduced by the Connecticut passthrough entity tax, so he effectively gets to deduct the state taxes on his federal income tax return without being subject to the $10,000 SALT cap on the passthrough income.

Additionally, when John files his Form CT-1040, Connecticut Resident Income Tax Return, he can claim a refundable state income tax credit of $12,233 ($13,980 × 87.5%).

Contrast this treatment with California, which has not enacted a law similar to Connecticut's. If John were a California resident rather than a Connecticut resident, then John's ordinary income for California purposes would be $200,000 ($500,000 × 40%) because California does not currently allow the deduction for the Connecticut tax paid on the net income.

This increases his state income tax on his California Form 540, which would then be subject to the federal $10,000 SALT cap.

Note: There may be additional multistate tax considerations that aren't discussed here.

Limited application

Notice 2020-75 is not a complete workaround of the $10,000 SALT cap. First, a state or local jurisdiction must enact an entity-level income tax. At this point, only seven states have done so. Second, only the partner or S corporation shareholder's share of the passthrough entity tax escapes the $10,000 SALT limitation. Any other sources of income for the passthrough entity owner, such as state withholding from wages and property taxes on personal-use real property, remain subject to the $10,000 limitation.

Distinguish from passthrough withholding

The rules from Notice 2020-75 must be contrasted against tax withheld at the entity level and paid over to a state or local taxing jurisdiction on an owner's behalf. In this situation, the passthrough entity is merely withholding taxes that will be assessed upon the individual owners. Because this type of withholding is not an income tax assessed directly upon the passthrough entity, Notice 2020-75 does not apply.

Effective dates

Notice 2020-75 applies to specified income tax payments made on or after November 9, 2020. However, the forthcoming proposed regulations will also permit taxpayers to apply these rules to specified income tax payments made in a taxable year of the partnership or S corporation ending after December 31, 2017, and made before November 9, 2020, providing that the specified income tax payments were made to satisfy the liability for income tax imposed on the partnership or S corporation pursuant to a law enacted prior to the year at issue.

BUSINESS ISSUES

PPP PROVISIONS

The ACRRA reopened the Paycheck Protection Program (PPP). The program is now extended to March 31, 2021, with an additional $284.45 billion in funding for PPP loans, with set-asides for certain businesses.

This new round of PPP funding makes the following new PPP funds available to borrowers:

- New "second draw loans" for smaller businesses whose gross receipts have dropped;
- Supplemental funding for "first draw" PPP loans allowing:
    - Additional draws on original loans, where the loan amount would have changed due to new rules that have been released; and
    - Businesses that never received a PPP loan to apply for a first draw loan.

The bill also makes changes to the existing PPP loan provisions adopted under the CARES Act, including allowing a simplified loan forgiveness application process and expanding the expenses that are qualified and eligible for loan forgiveness.

> **Practice Pointer**
>
> The TCDTRA also retroactively allows borrowers to claim the Employee Retention Credit. However, wages paid with forgiven PPP debt are not included in payroll costs taken into account in computing the Employee Retention Credit. See the discussion beginning on page 24 for more information.

Second draw loans

The ACRRA creates a second loan from the Paycheck Protection Program, called a "PPP second draw" loan for smaller and harder-hit businesses, with a maximum loan amount of $2 million per eligible entity. These are loans for businesses that can show significant losses in 2020 over 2019.

In order to receive a second draw PPP loan, eligible entities must:

- Employ not more than 300 employees (including part-time and seasonal employees); and
- Demonstrate at least a 25% reduction in gross receipts in the first, second, or third quarter of 2020 relative to the same 2019 quarter. (If the entity was not in business during all of 2019, then the business must show a 25% reduction in gross receipts during any quarter in 2020 from the 2019 calendar quarters it was in operation. If the application is submitted on or after January 1, 2021, then the fourth quarter of 2020 may be used as well.)
  (ACRRA §311)

Comment

Borrowers must have used, or will use, the first loan prior to the disbursement of a second draw loan.

For second draw PPP loans in excess of $150,000, the borrower must submit its loan forgiveness application for the first draw PPP loan before or simultaneously with the loan forgiveness application for the second draw PPP loan, even if the calculated amount of forgiveness on the first draw PPP loan is zero. (13 CFR Part 120)

Related business groups

The same waiver of affiliation rules that applied to the initial PPP loans will apply to the second draw PPP loans. Similarly, the rule covering hotels and restaurants with more than one physical location that applied for the first PPP loans applies to the second draw loans, except the employee limit per location is 300 employees.

There is also a limit on the dollar amount of second draw PPP loans for related corporate groups. Businesses that are part of the same corporate group cannot receive second draw PPP loans in a total amount of more than $4 million. For purposes of this limit, businesses are part of a single corporate group if they are majority owned, directly or indirectly, by a common parent.

Comment

The CARES Act provided loans to businesses with fewer than 500 employees that were "impacted by the COVID-19 pandemic," but did not require that the borrower demonstrate a specified decline in revenues in order to qualify.

Gross receipts

What are "gross receipts" for the purpose of determining eligibility for a second draw PPP loan? For a for-profit business, gross receipts generally are all revenue in whatever form received or accrued (in accordance with the entity's accounting method, i.e., accrual or cash) from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances but excluding net capital gains and losses. These terms carry the definitions used and reported on IRS tax return forms.

Gross receipts do not include the following:

- Taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers (this does not include taxes levied on the concern or its employees);
- Proceeds from transactions between a concern and its domestic or foreign affiliates; and
- Amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder, or customs broker.

All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, investment income, and employee-based costs such as payroll taxes, may not be excluded from gross receipts.

> ***Comment***
>
> Many banks are asking for copies of 2020 income tax returns as part of their PPP second draw loan applications to verify 2020 gross receipts. This is not a requirement, and it seems that it is the big banks that are asking for it. You can go to another bank to get your second draw loan if your bank requires a tax return.
>
> The second draw loan applications opened in mid-January, so making a business file a 2020 income tax return before PPP funds run out is a big ask.

Eligible businesses

Eligible entities include businesses, certain nonprofit organizations, housing cooperatives, veterans' organizations, tribal businesses, self-employed individuals, sole proprietors, independent contractors, and small agricultural co-operatives.

Ineligible businesses

The following businesses are ineligible for the second round of PPP loans:

- Businesses that weren't in operation on February 15, 2020 (this also applied to the first round of loans);
- Businesses listed in §120.110 of Title 13 of the Code of Federal Regulations, which includes businesses located in a foreign country, businesses involving gambling or activities of a "prurient sexual nature," and private clubs;
- Persons or entities that receive a shuttered venue operator grant under the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (see page 24);
- Entities involved in political and lobbying activities;
- Entities affiliated with entities in the People's Republic of China; and
- Registrants under the Foreign Agents Registration Act.
  (ACRRA §§310, 311)

Loan terms

The loans will again be based on 2.5 times the borrower's average monthly payroll costs for the one-year period prior to the loan, or calendar-year 2019, with a maximum of $2 million. (ACRRA §311)

> ***Comment***
>
> Entities in industries assigned to NAICS code 72 (Accommodation and Food Services) may receive loans of up to 3.5 times average monthly payroll costs. This is welcome relief to hotels and restaurants.

Seasonal employers may calculate their maximum loan amount based on a 12-week period beginning February 15, 2019, through February 15, 2020, and new entities may receive loans of up to 2.5 times the sum of average monthly payroll costs for the months they existed if the entity was in existence for less than 12 months.

> ***Comment***
>
> The ACRRA defines seasonal employers as eligible borrowers that do not operate for more than seven months in any calendar year, or during the preceding calendar year had gross receipts for any six months of that year that were not more than 33.33% of the other six months of that year. (ACRRA §315) This definition applies for all PPP purposes, as if it were originally included in the CARES Act.

The rules regarding allowable expenses (including new allowable expenses discussed on page 20), loan forgiveness, and COD exclusions for existing PPP loans, apply to these loans as well.

Supplemental funding requests

Borrowers can also submit supplemental PPP loan requests in all cases where their original first draw PPP loan amount would be higher due to new rules that have been released. This applies to partnerships where the original loan did not include the self-employment earning of the partners. But it also applies to borrowers that returned their original loans or took reduced loans to qualify for other benefits that are no longer limited for PPP recipients, such as the Employee Retention Credit. (ACRRA §312)

An interim final rule was issued in May 2020, allowing a borrower to request a supplemental loan if, subsequent to the time of application, regulations were issued that would have increased the loan amount it could have received. However, this only applied if the lender had not yet submitted what's known as SBA Form 1502 for the original loan. This meant that many borrowers were out of luck and did not receive the additional PPP funds they were entitled to. The ACRRA removes this restriction and allows supplemental requests in all cases where the loan amount would have changed due to the new rules.

✐ Practice Pointer

Borrowers must request this additional funding before forgiveness is granted on their original PPP loan. (ACRRA §312(a)(2)) So borrowers that may want to borrow additional funds should wait to apply for forgiveness and attempt to withdraw forgiveness applications that have already been submitted.

The loan amount for certain farmers and ranchers is now based on gross income, not net profit shown on the 2019 Schedule F, but is still limited to 2.5 months with a $100,000 annual gross income cap. The ACRRA specifically allows a supplemental application for these borrowers as long as they have not received any loan forgiveness on the original loan. (ACRRA §313)

Part of original PPP loan

Supplemental funding requests are considered part of the business's original PPP loan, so these borrowers will not be required to meet the requirements for second draw loans.

Example of supplemental versus first draw loan

The Mad Hatter partnership manufactures hats. When the pandemic hit, their main customers, entertainment facilities, cancelled all their orders. Because of the cancelled orders, they were worried they might have to close. The company took out a $400,000 PPP loan based on payroll costs for wages paid to employees. However, because of unclear rules at the time they applied for the loan, they did not include the self-employment earnings of the partners.

One of the partners, Mickey, had a dream in which he was trapped in a face mask.

Mickey retooled and began manufacturing masks, which he sold online. When Mad Hatter applied for forgiveness, the loan was fully forgiven. Mad Hatter's gross receipts for the year were actually higher than in 2019, and none of their quarters had a 25% drop in gross receipts compared to 2019.

Mad Hatter is not eligible for a supplemental first draw loan because forgiveness was already granted on the original loan. They are ineligible for a second draw loan because their gross receipts have increased not decreased.

Instead, assume that Mad Hatter had not applied for forgiveness of their first draw loan. Under the ACRRA, they can apply for an additional distribution on the first draw loan and include the self-employment earnings of the partners, and additional allowable payroll costs for their employees, such as disability insurance, etc.

Applying for first draw loans

On January 17, 2021, the SBA, in consultation with the Department of the Treasury, issued new guidance for PPP borrowers that wish to apply for a first draw PPP loan (available to those businesses that previously did not receive a PPP loan).

The guidance includes a step-by-step calculation methodology for various types of business entities to determine the amount of their first draw PPP loan. What is clear is that even for first draw PPP loans made in 2021, taxpayers can choose to use payroll from the 2019 calendar year, 2020 calendar year, or the 12 months prior to the application (or 2019 self-employment income for sole proprietors and partners).

The guidance can be found at the following website:

Website
https://home.treasury.gov/system/files/136/PPP--How-to-Calculate-Maximum-Loan-Amounts-for-First-Draw-PPP-Loans-and-What-Documentation-to-Provide-By-Business-Type.pdf

Expanded eligibility for PPP loans

Most 501(c)(6) organizations, i.e., trade groups, chamber of commerce groups, and certain destination marketing companies, are eligible to apply for PPP loans, provided:

- The organization doesn't receive more than 10% of receipts from lobbying activities;
- The lobbying activities of the organization do not comprise more than 10% of its total activities; and
- The organization has 150 employees or fewer.

In addition, housing cooperatives, newspapers, broadcasters, and radio stations now potentially qualify. (ACRRA §§311, 316, 317, 318, 319)

Comment

The ACRRA also provides further clarification that churches and religious organizations are eligible PPP loan recipients and prohibits the application of regulations otherwise rendering ineligible businesses principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs. It also codifies that the prohibition on eligibility for nonprofit and certain other businesses for SBA loans shall not apply for PPP loans.

Deductibility of expenses paid with forgiven PPP funds

The ACRRA makes it clear that no deduction may be denied, no tax attribute reduced, and no basis increase denied by reason of any PPP loan forgiveness under the CARES Act or the ACRRA. (ACRRA §276) This reverses the IRS's position taken in IRS Notice 2020-32 that taxpayers could not deduct expenses that were paid with forgiven PPP loans.

Example of deductibility of expenses

Lofty's Goods, Inc. received a PPP loan of $500,000 in April 2020 and had the entire loan forgiven in early December 2020. Prior to the ACRRA, Lofty would not be able to deduct the $500,000 of expenses it paid with the forgiven PPP loan funds. So, even though the $500,000 PPP loan was not considered taxable income, Lofty's bottom line would still reflect additional taxable income of $500,000.

The ACRRA now allows Lofty to deduct the $500,000 of expenses paid with the forgiven PPP loans, then goes one step further and prevents the IRS from making any other offsets or adjustments that would adversely impact Lofty, such as modifications to basis or other tax attributes.

The ACRRA provision that prevents the modification of tax attributes also appears to allow a complete IRC §199A deduction based on wages paid with forgiven PPP funds.

California nonconformity

For taxable years beginning on or after January 1, 2020, California does not treat the forgiveness as COD income but disallows deductions for any of the amounts paid with forgiven PPP debt. (AB 1577 (Ch. 20-39); R&TC §§17131.8, 24308.6) Because California passed a law that specifically disallows deductions for expenses paid with PPP loan amounts that were forgiven, absent subsequent legislation enacted in 2021, these expenses will not be deductible on the California return.

The FTB has confirmed that taxpayers are required to reduce specific categories of deductions, rather than simply making a general other deduction adjustment. In response to our question of how taxpayers should determine which deductions to reduce, the FTB stated "in identifying the deductions to reduce related to the PPP program, taxpayers should base the amount on available records indicating which expenses related to the forgiven funds. Generally, the information submitted to lenders to obtain loan forgiveness would be sufficient to document the amount of deduction reduced. However, taxpayers should use the most accurate information they have available to them in making this determination."

For Schedule C borrowers the FTB stated, "Schedule C borrowers with no employees who use borrowed funds to pay interest, rent, or utilities would be required to reduce these deductions in an amount equal to the expenses paid with such funds in accordance with R&TC §§17131.8(b) and 24308.6(b). To the extent the borrower applied all funds to payroll, no deduction would be reduced." We are working with them to get a clarification on this answer.

Legislation has been introduced (AB 281) that declares the intent to conform California law to the federal law allowing the deduction of expenses paid with forgiven PPP debt. The author of the bill is Assemblywoman Autumn Burke, the chair of the Assembly Revenue and Taxation Committee. She is also the author of last year's bill AB 1577 (Ch. 19-39), which excluded from taxable income any cancellation of debt income arising from PPP loan forgiveness, but required that deductions for expenses paid with the PPP loan forgiveness amount be reduced.

If you and your clients would like to see this bill enacted, please contact your legislators to let them know your opinion and urge them to pass this bill as soon as possible.

To find your California representative, go to:

Website
http://findyourrep.legislature.ca.gov/

Taxpayers with PPP loan forgiveness should consider putting their California returns on extension until we know whether any conformity legislation is enacted.

Basis issues

The ACRRA also clarifies that tax basis and other attributes of the borrower's assets will not be affected as a result of the loan forgiveness. (ACRRA §276) This means that for PPP loan forgiveness excluded on a partnership or S corporation return, the amount excluded is treated as tax-exempt income for purposes of IRC §§705 and 1366. Unless otherwise provided by the IRS, any increase in a partner's adjusted basis in the partner's partnership interest is equal to the partner's distributive share of deductions resulting from costs giving rise to the loan forgiveness.

These provisions are applicable to taxable years ending after March 27, 2020 (the date of the enactment of the CARES Act).

California nonconformity

California does not conform to the ACRRA, and the deductions resulting from costs giving rise to forgiveness are disallowed for California purposes. As a result, instead of an increase in the adjusted basis of a partner's interest equal to the partner's distributive share of deductions resulting from costs giving rise to forgiveness, for California purposes, there will continue to be a decrease in the adjusted basis of a partner's interest equal to the partner's distributive share of expenditures of the partnership not deductible in computing its taxable income and not properly chargeable to capital account under IRC §705(a)(2).

Differences Between CARES Act and ACRRA PPP Provisions

Issue	CARES Act	ACRRA second draw loans
Eligibility	Businesses in existence on February 15, 2020, with fewer than 500 employees (with specified exceptions) that were "impacted by COVID-19." No specific loss threshold	Businesses with 300 or fewer employees that have sustained a 25% loss in any quarter of 2020 compared to 2019
Loan amount	2.5 × average monthly payroll expenses for 2019 or one year prior to loan amount	2.5 (3.5 for restaurants and hotels) times average monthly payroll expenses for 2019 or one year prior to loan
Forgivable expenses	• Payroll costs (must be at least 60% of forgivable amount); • Mortgage interest on a mortgage taken out by the borrower for real or personal property that was in place prior to February 15, 2020 (not including prepayments); • Rent on a real or personal property lease taken out before February 15, 2020; and • Utilities for service established before February 15, 2020 (CARES Act §1106)	Same as CARES Act, plus: • Supplier costs; • Investments in facility modifications; and • Personal protective equipment to operate safely **Note:** These expanded expenses apply retroactively to first-round loans under the CARES Act
Simplified loan forgiveness application process	One-page simplified application for those taxpayers with loans of $150,000 or less	One-page simplified application for those taxpayers with loans of $150,000 or less

Loan forgiveness

Eligible expenses

Nonpayroll costs: The following expenses are now considered allowable and **forgivable** uses for PPP loan funds:

- **Covered operations expenditures:** Payment for any business software or cloud computing service that facilitates any of the following:
  - Business operations;
  - Product or service delivery;
  - The processing, payment, or tracking of payroll expenses;
  - Human resources;
  - Sales and billing functions; or
  - Accounting or tracking of supplies, inventory, records, and expenses;
- Covered property damage costs: Costs related to property damage due to public disturbances that occurred during 2020 that are not covered by insurance or other compensation;
- Covered supplier costs: Amounts paid to a supplier for goods essential to operations of the entity that are made pursuant to a contract, purchase order, or order for goods in effect prior to taking out the loan (before or during the loan covered period for perishable goods); and
- Covered worker protection expenditures: Expenses to help a loan recipient comply with federal health and safety guidelines or any equivalent state and local guidance related to COVID-19 during the period between March 1, 2020, and the end of the national emergency declaration. These include, but are not limited to, the purchase, maintenance, or renovation of assets that create or expand:
  - A drive-through window facility;
  - An indoor, outdoor, or combined air or air pressure ventilation or filtration system;
  - A physical barrier such as a sneeze guard;
  - An expansion of additional indoor, outdoor, or combined business space;
  - An onsite or offsite health screening capability; or
  - Other assets necessary to comply with various regulatory agency requirements.

Costs related to residential real property or intangible property are not eligible costs. (ACRRA §304(a))

These provisions are effective as if they were originally included in the CARES Act. As a result, they apply to all PPP loans, except for loans where borrowers have already received forgiveness.

Payroll costs: The ACRRA expands the types of group insurance benefits that are included in payroll costs for purposes of both loan eligibility and forgiveness. In addition to group health insurance provided under the CARES Act, as originally passed, eligible group insurance benefits now also include group:

- Life;
- Disability;
- Vision; and
- Dental.
  (ACRRA §308)

This provision applies retroactively to loans made before, on, or after December 27, 2020, (the date of the ACRRA's enactment) including loan forgiveness. However, borrowers who already received loan forgiveness cannot amend their forgiveness applications — they are out of luck.

Example of newly eligible costs

Youngs Restaurant received a PPP loan of $280,000 in April 2020. Youngs spent $250,000 of its loan proceeds on payroll costs and rent, but spent the other $30,000 purchasing outdoor tents and equipment necessary to provide outdoor dining, which was required during the COVID-19 pandemic.

Prior to the ACRRA, Youngs would have only been eligible for PPP loan forgiveness on $250,000 because the outdoor tents and equipment were not eligible expenses. But, because the ACRRA now allows expenses used for the expansion of outdoor business space due to the pandemic, Youngs is eligible for loan forgiveness on the entire $280,000.

However, Youngs is ineligible for the additional $30,000 of forgiveness if they already applied for and received loan forgiveness. (ACRRA §§304(c)(2), 312(a)(2))

EIDL grants

PPP forgiveness amounts will no longer be reduced by Economic Injury Disaster Loan (EIDL) advances the borrowers received. (ACRRA §333) The SBA is also directed to issue rules ensuring that borrowers that received forgiveness reduced by their EIDL advance be "made whole."

The SBA's EIDL loan program, which was in existence long before the COVID-19 pandemic, is still available for borrowers that qualify. However, the grant of up to $10,000 that was made available under the EIDL program thanks to the CARES Act is no longer available.

Simplified forgiveness for loans of $150,000 or less

The ACRRA provides simplified loan forgiveness provisions for borrowers with PPP loans of $150,000 or less and expands the types of expenses that may be forgiven.

A simplified loan forgiveness procedure is available to borrowers with loans of up to $150,000. (ACRRA §307) The simplified forgiveness application for these borrowers applies to both original PPP loans under the CARES Act and second draw PPP loans under the ACRRA. These borrowers must submit the one-page application that only requires them to provide:

- A description of the number of employees the borrower was able to retain because of the covered loan;
- An estimated amount of the loan amount spent on payroll costs;
- The total loan amount;
- The amount of forgiveness requested (which can be less than the total loan amount); and
- An attestation that the borrower accurately provided the required certification for the loan and complied with the PPP loan requirements.

The borrower must retain records to support the application in case of an audit but will not be required to submit them with the application. Employment records related to the loan must be retained for four years from the date of the loan forgiveness application submission. All other records must be retained for three years.

The simplified forgiveness application for loans of $150,000 or less was released on January 20, 2021, and can be found at:

Website
www.sba.gov/sites/default/files/2021-01/
PPP%20--%20Loan%20Forgiveness%20Application%20and%20Instructions%20--
%20Form%203508S%20%281.19.2021%29.pdf

Covered period

The ACRRA allows a borrower to choose a covered period for purposes of the loan forgiveness provisions that begins on the loan origination date and ends on any date selected by the borrower that is between eight weeks and 24 weeks after the loan origination date. (ACRRA §306) This provision applies to all PPP loans and basically codifies what banks and the SBA had been allowing. However, the flexibility to choose a covered period can benefit borrowers that have forgiveness reductions based on reductions in full-time equivalent employees (FTEEs) or reductions in salaries or wages.

Example of reduction in employees

RB Manufacturing, Inc. received a PPP loan on June 5, 2020. Prior to the pandemic, the firm had a total of 45 employees. As a result of the pandemic, many of their customers cancelled their orders. On September 12, RB had to lay off 20 employees.

RB is in an "essential" industry so government restrictions did not prevent them from continuing their operations, so they do not qualify for the business activity exemption to the FTEE reduction rules.

If RB uses an eight-week covered period, they will not qualify for full forgiveness of their PPP loan because they hadn't spent all their loan proceeds yet. If they choose a 24-week forgiveness period, they will have a significant forgiveness reduction because of the September layoffs.

Instead, RB may now choose a 14-week forgiveness period. This allows them to qualify for full forgiveness of their loan. They have enough time to use all of the loan proceeds, and they end their forgiveness period before their reduction in FTEEs.

Businesses that already applied for, and received, loan forgiveness cannot go back and change their forgiveness application.

Safe harbors extended

For new PPP loan distributions, the ACRRA extends the safe harbors for restoring FTEEs and salaries and wages to the end of the borrower's covered period until February 16, 2021. (ACRRA §311)

Prior to the revival of additional PPP loans made available by the ACRRA, taxpayers could claim full loan forgiveness if the wages or salaries paid to employees were restored to the amount paid in the borrower's pay period that included February 15, 2020, by the earlier of:

- December 31, 2020; or
- The date the loan forgiveness application is submitted.

Obviously, December 31, 2020, has come and gone, which is why the ACRRA extended the safe harbor to the end of the borrower's covered period.

The extension of the December 31, 2020, deadline also benefits borrowers that obtained their loans in July or early August because those borrowers could not use a 24-week covered period due to the December 31, 2020, deadline.

Example of safe harbor extension period

Hobbs, LLC is a retail business that had 10 employees at the time it received its PPP loan on August 1, 2020. On December 31, 2020, Hobbs only had six employees. Hobbs didn't restore its FTEEs and its salaries and wages by December 31, 2020.

Hobbs does not qualify for an exception to the FTEE reduction, so it could not receive full forgiveness prior to the ACRRA. However, the extension of the safe harbor by the ACRRA means that Hobbs had until January 16, 2021 (a full 24 weeks covered period) to restore its FTEEs and its salaries and wages.

Comment

With the additional PPP funding and changes to the forgiveness provisions, it is unclear whether borrowers with additional loan funding will submit multiple forgiveness applications. What is clear is that additional guidance is needed.

Grants for shuttered venue operators

$15 billion was provided for grants to eligible live venue operators or promoters, theatrical producers, live performing arts organization operators, museum operators, motion picture theatre operators, or talent representatives that demonstrate a 25% reduction in revenues. (ACRRA §324) Specifically:

- There is a set-aside of $2 billion for eligible entities that employ 50 full-time employees or fewer, and any amounts from this set-aside remaining after 60 days from the date of implementation of this program shall become available to all eligible applicants;
- The SBA may make an initial grant of up to $10 million to an eligible person or entity and a supplemental grant that is equal to 50% of the initial grant;
- In the initial 14-day period of implementation of the program, grants shall only be awarded to eligible entities that have faced 90% or greater revenue loss. In the 14-day period following the initial 14-day period, grants shall only be awarded to eligible entities that have faced 70% or greater revenue loss. After these two periods, grants shall be awarded to all other eligible entities; and
- Grants must be used for specified expenses such as payroll costs, rent, utilities, and personal protective equipment.

Comment

At press time, the SBA has not begun accepting applications, but we believe the following link, which provides information about the shuttered venue operator program, will also contain application information once it is made available:

Website
www.sba.gov/funding-programs/loans/coronavirus-relief-options/shuttered-venue-operators-grant

COD and deductions for non-PPP programs

ACRRA §278 clarifies that amounts that are granted or forgiven through the programs listed below are not taxable income, and expenses paid with those amounts are deductible:

- Loans forgiven under the U.S. Treasury Program's Management Authority under §1109(d)(2) of the CARES Act;
- EIDL emergency grant program under CARES Act §1110(e);
- Subsidies for certain loan payments under CARES Act §1112(c);
- Funding under §331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act; and
- Grants for shuttered venue operations under §324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act.

Example of SBA EIDL grant

Hometown Tax Pro, Inc. received an EIDL grant of $10,000 from the SBA on April 7, 2020, under §1110(e) of the CARES Act, which did not have to be paid back at all.

Pursuant to §276 of the ACRRA, the EIDL grant is not taxable income, and Hometown can deduct all expenses paid with the EIDL grant money.

Additional programs funded

The ACRRA also appropriates funding for the following new programs:

- $25 million for the Minority Business Development Centers program under the Minority Business Development Agency (MBDA);
- $50 million for PPP auditing and fraud mitigation purposes; and
- $20 billion for the Targeted EIDL Advance program, of which $20 million is for the Inspector General.

OTHER SBA LOAN PROGRAMS

Information regarding other SBA loan programs not related to COVID-19 can be found at the following website.

Website
www.sba.gov/Loanprograms

EMPLOYEE RETENTION CREDIT

The TCDTRA modifies, expands, and extends the Employee Retention Credit. (TCDTRA §207)

Coordination with PPP loans

Under the CARES Act, PPP loan recipients were ineligible to claim the Employee Retention Credit. The TCDTRA retroactively repeals this rule. Under the TCDTRA, PPP loan recipients may now claim the Employee Retention Credit.

No double benefit where PPP loans forgiven

Wages paid with forgiven PPP debt are not included in payroll costs taken into account in computing the Employee Retention Credit. (TCDTRA §206(c)) However, if the PPP loan is not forgiven, the wages may be used for purposes of computing the credit. (TCDTRA §206(c))

These amendments are effective retroactively as if included in the CARES Act.

Practice Pointer

A PPP borrower that filed their employment tax returns prior to the enactment of the TCDTRA, when they were ineligible to claim the Employee Retention Credit, may now amend their payroll tax returns and claim the Employee Retention Credit against eligible wages.

On January 20, 2021, the SBA issued interim final rules that incorporate the TCDTRA changes into their previously issued PPP rules. The updated guidance states:

"Payroll costs that are qualified wages taken into account in determining the employee retention credit are not eligible for loan forgiveness."

This quoted section indicates that the Employee Retention Credit wages are determined first, and then the PPP wages. The following example is illustrative.

Example of claiming credit after PPP loan

XYZ, Inc. received a $225,000 PPP loan in April 2020. During its covered PPP loan period, XYZ paid $80,000 in wages that are now eligible for the Employee Retention Credit under the TCDTRA for which XYZ will claim the Employee Retention Credit.

XYZ calculates its PPP forgiveness-eligible costs as follows:

Payroll costs (see note below)	$240,000
Wages used to claim Employee Retention Credits	(80,000)
Payroll costs eligible for PPP loan forgiveness	160,000
Rent	35,000
Utilities	6,000
Other eligible non-payroll costs	17,000
Total costs eligible for loan forgiveness	$218,000

Note: Even though XYZ must reduce its payroll costs that are eligible for forgiveness by the wages used to calculate the Employee Retention Credit, the SBA's interim final rule does not remove those wages from the definition of payroll costs. As such, when a borrower applies for loan forgiveness, it still determines whether it used 60% of its loan proceeds on wages based on all payroll costs ($240,000 in this example).

Comment

If the wages used to claim the Employee Retention Credit are determined first, then what does a borrower do if they already submitted and/or received forgiveness of their PPP loan? As of publication, the IRS has not provided an answer to this question.

Example of picking which costs go where

Family Affair, Inc. is an S corporation owned by Ben, who no longer works in the business. It is operated by his sons and other unrelated individuals. Family got a $200,000 PPP loan.

Family had the following expenses eligible for PPP forgiveness:

Qualified wages	$180,000
Rent and utilities	55,000
Qualified supplies	20,000
Personal protective equipment	5,000
Total	$260,000

The easiest thing to do is to claim $180,000 in qualified wages and $20,000 in other expenses, arriving at full forgiveness. However, if Family allocates $120,000 to wages and $80,000 to the other expenses, the PPP is fully forgiven, and the balance can be used for the Employee Retention Credit.

Note: The $120,000 is the amount that satisfies the requirement that 60% of the PPP forgiveness must be payroll, and his sons' wages are included in the $120,000 as they are not allowable for the Employee Retention Credit.

Let's assume that the qualified wages for purpose of the Employee Retention Credit are $60,000. Family will get a credit of $42,000 ($60,000 × 40%).

Are owner wages eligible for Employee Retention Credit?

Whether wages paid to the owner of a business are eligible for the Employee Retention Credit has become a divisive issue in the tax community. And, once again, the IRS has remained silent here. The TCDTRA at §303(c)(2) simply states that for purposes of the Employee Retention Credit, rules similar to IRC §51(i) shall apply.

IRC §51(i) defines ineligible individuals for purposes of the Work Opportunity Tax Credit. Other provisions of the Work Opportunity Tax Credit are not relevant for purposes of the Employee Retention Credit.

Wages paid to the following individuals are not in dispute for the Employee Retention Credit:

- Eligible wages: Business owners (and their relatives) who do not own, directly or indirectly, more than 50% in value of a corporation's outstanding stock;
- Ineligible wages: The following relatives of an individual who owns, directly or indirectly, more than 50% of the value of a corporation's stock, more than 50% of the capital and profits of a partnership, or is a grantor, beneficiary, or fiduciary of an estate or trust:
    - A child or a descendant of a child;
    - A brother, sister, stepbrother, or stepsister;
    - The father or mother, or an ancestor of either;
    - A stepfather or stepmother;
    - A niece or nephew;
    - An aunt or uncle; or
    - A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

    (IRC §152(d)(2))

So, that leaves us with an open question regarding the wages paid to an owner of a greater than 50% interest in a corporation. Owners of partnerships or sole proprietors are irrelevant because partners and sole proprietors cannot pay themselves a wage. The Employee Retention Credit is a credit against wages paid only and cannot be claimed against self-employment income.

IRC §51(i)(1)(A) states:

"No wages shall be taken into account … with respect to an individual who [bears one of the aforementioned familial relationships of IRC §152(d)(2)] to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than 50% in value of the outstanding stock of the corporation."

Whether you think that wages paid to a more than 50% owner of a corporation are eligible for the Employee Retention Credit depends on how you interpret the quoted portion of IRC §51(i)(1)(A). Unless and until the IRS provides guidance, tax professionals must use their own professional judgement in deciding whether to claim the Employee Retention Credit for wages paid to a more than 50% owner of a corporation.

No double benefit for other credits

Taxpayers may not claim the following credits for the wages used to determine the amount of the Employee Retention Credit:

- IRC §41 Credit for Increasing Research Activities;
- IRC §45A Indian Employment Credit;
- IRC §45P Employer Wage Credit for Employees Who are Active Duty Members of the Uniformed Services;
- IRC §45S Employer Credit for Paid Family and Medical Leave;
- IRC §51 Work Opportunity Credit; and
- IRC §1396 Empowerment Zone Employment Credit.
  (TCDTRA §207(f))

Comment

The CARES Act only precluded double benefits for the Employer Retention Credit for paid family and medical leave and the Work Opportunity Credit.

Credit extension and expansion

Under the CARES Act, employers may claim this refundable credit against quarterly employment taxes equal to 50% of the qualified wages and compensation paid to each employee. Only wages paid after March 12, 2020, and before January 1, 2021, qualify for the credit. The maximum qualified wages per employee is $10,000 *annually*, which equates to a maximum Employee Retention Credit of $5,000 per employee.

For calendar quarters beginning after December 31, 2020, the TCDTRA amends the CARES Act and:

- Extends the credit to apply to qualified wages paid prior to July 1, 2021, (so the credit now applies to wages paid after March 12, 2020, through July 1, 2021);
- Increases the credit rate from 50% of qualified wages to 70%; and
- Increases the $10,000 qualified wage limitation to apply per quarter, rather than on an annual basis.
  (TCDTRA §207(a)–(c))

Example of credit limit differences

Onyx, Inc. has 20 employees. Assuming Onyx did not receive a PPP loan, then under the CARES Act, as originally passed on March 27, 2020, it would be eligible for an Employee Retention Credit in 2020 of up to $100,000 calculated as follows:

Qualifying wages per employee (capped at $10,000 annually)	$10,000
Number of employees	× 20
Maximum qualifying wages	200,000
Credit percentage	× 50%
Maximum credit for 2020	$100,000

After the TCDTRA's amendments to the CARES Act, Onyx's maximum Employee Retention Credit in 2021 is calculated as follows:

Qualifying wages per employee (capped at $10,000 per quarter)	$20,000*
Number of employees	× 20
Maximum qualifying wages	400,000
Credit percentage	× 70%
Maximum credit for 2021	$280,000

* Remember, the TCDTRA is expanded through June 30, 2021, so the credit is only available for the first two quarters of 2021

Eligible employers expanded

In addition, under the CARES Act, an "eligible employer" was one that carried on a trade or business during the 2020 calendar year and with respect to any calendar quarter:

- Fully or partially suspended their operations due to governmental orders; or
- Experienced a significant decline in gross receipts for the calendar quarter.

A significant decline in gross receipts was defined as:

- A more than 50% decline in gross receipts for the calendar quarter compared to the comparable 2019 calendar quarter; and
- Continuing until the calendar quarter following a quarter in which its gross receipts are greater than 80% when compared to the corresponding 2019 calendar quarter.

For calendar quarters beginning after December 31, 2020, the TCDTRA amends the CARES Act, and a significant decline in gross receipts is revised to apply to any employer if the gross receipts:

- For such calendar quarter are less than 80% of the gross receipts of such employer for the same calendar quarter in 2019 (in other words, only a 20% decline in gross receipts); or
- At the election of the employer, for the immediately preceding calendar quarter, are less than 80% of the gross receipts for the corresponding calendar quarter in calendar-year 2019. (TCDTRA §207(d))

At the election of the taxpayer, if the business wasn't in operation at the beginning of a calendar quarter in 2019, the taxpayer may use the 2020 comparable quarter.

Comment

Even though the TCDTRA eased the definition of "significant decline in gross receipts," it left intact the Employee Retention Credit eligibility for employers whose operations were fully or partially suspended due to governmental orders.

So, an employer that didn't experience a significant decline in gross receipts but was subject to shutdown orders can still claim the Employee Retention Credit for any quarter during which it was subject to governmental shutdown orders.

Government employers

The following governmental agencies or instrumentalities are now eligible for the credit:

- Government agencies or instrumentalities that are tax-exempt under IRC §501(a); or
- Colleges or universities whose primary purpose or function is providing medical or hospital care. (TCDTRA §207(d)(3))

Definition of small employer expanded

Under the CARES Act, employers with an average of more than 100 full-time employees may only count wages paid to employees who are not actually working in the calculation of the credit. In contrast, employers with an average of 100 or fewer full-time employees count all wages paid, including those paid to employees who are still working.

The TCDTRA allows employers with 500 or fewer full-time employees to count all wages paid to employees in calculating the credit, not just wages paid to those employees who are not working. (TCDTRA §207(e)) Average full-time employees are measured based on the 2019 calendar year. (TCDTRA §207(g)(1)) In the case of an employer that was not in existence in 2019, then the average number of full-time employees is measured based on 2020. (TCDTRA §207(g)(1)) This is a huge boost in the credit amounts that medium- to large-size employers may now claim.

Example of expanded employer eligibility for Employee Retention Credit

Braxton, Inc. is a retail business with 10 locations and has an average of 180 full-time employees. Braxton had to close half of its locations during the first quarter of 2021 due to a governmental order. Braxton continued to pay hourly employees who were not working due to the closures 50% of their normal hourly wage rate. Braxton also reduced the hours worked by its administrative staff at its headquarters by 40% but continued to pay them at 100% of their normal hourly rate.

Braxton can claim the Employee Retention Credit for eligible wages paid to all of its employees in 2021 because it has an average of 500 or fewer full-time employees.

This is a different result than 2020 for Braxton. Under the CARES Act, employers with greater than 100 full-time employees on average were only eligible to claim the Employee Retention Credit for wages paid to employees who were not working. So, in this example, with all other facts being the same, Braxton could not claim the Employee Retention Credit in 2020 for wages paid to the administrative staff who simply had their hours reduced, but were still working because Braxton had greater than 100 full-time employees on average.

Advance payments

Under the TCDTRA, only employers with an average number of full-time employees (30 hours) of 500 or less during 2019 may elect to receive an advance payment of the credit in any calendar quarter. The amount of advance payment cannot exceed 70% of the average quarterly wages paid by the employer in calendar-year 2019. Seasonal employers can elect to pay 70% of the wages for the calendar quarter in 2019 which corresponds to the calendar quarter to which the election relates. Employers not in existence in 2019 may use the wages for 2020 rather than 2019. (TCDTRA §207(j))

Example of advance payment limit

XYZ Corp. averaged $200,000 in wages per quarter in 2019. As a result, their advance credit is limited to $140,000 ($200,000 × 70%).

The employer's FICA or railroad retirement tax liabilities will be increased by any excess advance payments received.

✐ **Practice Pointer**

Advance payments are claimed on IRS Form 7200, Advance Payment of Employer Credits Due to COVID-19.

PAID SICK AND FAMILY LEAVE CREDITS

The refundable payroll tax credits for paid sick and family leave enacted in the Families First Coronavirus Response Act are extended through March 31, 2021, (previously scheduled to expire on December 31, 2020). The act also modifies the tax credits so that they apply as if the corresponding employer mandates were extended through the end of March 2021, even though the mandates ended at the end of 2020. This provision is effective as if included in the FFCRA. (ACRRA §286)

Comment

This means that employers are no longer required to pay these FFCRA benefits, though if they do, they would be entitled to the credits. It is not clear how the limits on the amount of leave available to employees would apply to employees taking leave in both 2020 and 2021.

Claiming the credits twice for the same employee

A big question that we've been hearing is whether employers who already paid FFCRA benefits and claimed a credit for those benefits in 2020 can offer a new bucket of benefits to the same employee in 2021 and claim another credit? The answer, for now, is unclear and IRS guidance is needed, but we will provide our interpretation of the ACRRA for the two types of FFCRA benefits.

Paid sick leave

Employees are entitled to 80 hours of paid sick leave (10 days) for which the employer can claim a payroll tax credit of up to $511 per day.

Paid family leave

The FFCRA mandates most employers with fewer than 500 employees to provide up to 10 weeks of paid family leave benefits if the leave is related to COVID-19. (FFCRA §3102) This paid family leave is considered part of the Family Medical Leave Act (FMLA). However, even employers with 50 or fewer employees are subject to FFCRA COVID-19–related paid family leave requirements, unless they qualify for the small business exemption.

The FMLA only requires employers to provide benefits once within a 12-month covered period. For most businesses, this is the calendar year. If that's the case, we believe an employer may choose to provide additional paid family leave benefits in the first quarter of 2021 and claim a credit for these benefits. However, they are not required to do so.

FFCRA credits for self-employed taxpayers

Self-employed individuals claiming the FFCRA credit may elect to use their average daily self-employment income from 2019 rather than 2020 to compute the credit, applicable retroactively as if included in the FFCRA. (ACRRA §287)

Example of electing to use 2019 average self-employment income

Roxanne is a self-employed auto detailer who works part-time as an independent contractor while her children are in school. In 2019, her net income from self-employment was $90,000. In 2020, Roxanne had to quarantine in May for two weeks due to COVID-19 exposure, then she was forced to stop working immediately thereafter due to her children's school closures and could not work for the remainder of 2020. Roxanne's 2020 net income from self-employment was only $20,000.

The following calculation compares Roxanne's 2020 FFCRA credits based on her 2019 or her 2020 net income from self-employment:

FFCRA sick leave credit	**2019**	**2020**
Net earnings from self-employment	$90,000	$20,000
Divisor[1]	÷ 260	÷ 260
Average daily self-employment income[2]	346	77
Days unable to work due to required coronavirus-related care[3]	× 10	× 10
FFCRA sick leave credit	**$ 3,460**	**$ 770**

[1] See Form 7202, line 8

[2] Cannot exceed $511

[3] 10-day maximum (Roxanne's quarantine period)

FFCRA family leave credit	**2019**	**2020**
Net earnings from self-employment	$90,000	$20,000
Divisor[1]	÷ 260	÷ 260
Average daily self-employment income	346	77
Percentage of above amount eligible for family leave credit	× 67%	× 67%
Eligible daily leave credit[2]	$200	$52
Days unable to work due to care for children under age 18[3]	× 50	× 50
FFCRA family leave credit	**$10,000**	**$ 2,600**

[1] See Form 7202, line 27

[2] Cannot exceed $200

[3] 50-day maximum

Roxanne will be able to claim total FFCRA equivalent credits as a self-employed person of $13,460 ($3,460 sick leave + $10,000 family leave) by using her 2019 net income from self-employment. The FFCRA as originally enacted would have forced Roxanne to use her 2020 net income from self-employment, which would have only generated FFCRA equivalent credits of $3,370 ($770 sick leave + $2,600 family leave).

FULL DEDUCTION FOR BUSINESS MEALS

Businesses may claim a 100% deduction (rather than a 50% deduction) for food or beverages provided by a restaurant. The full deduction is available for purchases paid or incurred after December 31, 2020, and before January 1, 2023, as long as the taxpayer otherwise meets the criteria for deducting a business meal. (TCDTRA §210; IRC §274(n)(2))

Example of meal deduction

John is a tax professional and owns his own sole-proprietor tax practice. Every Friday morning during tax season, he brings bagels and coffee for breakfast for his staff. Under the TCDTRA, John's deduction for business meals for his Friday bagels and coffee depends on where he acquires them.

If John picks up bagels and coffee from the grocery store on the way to the office, he can deduct only 50% of the cost when he files his income tax return.

If John picks up bagels and coffee from the local bagel restaurant on the way to the office, he can deduct 100% of the cost when he files his income tax return.

Comment

The 100% business deduction for business meals has been promoted as a means to help revive the restaurant industry that has been devastated during the COVID-19 pandemic. But, what is a "restaurant"? It is a business that falls in the NAICS code §72.

PAYROLL DEFERRALS

Under an Executive Order issued by President Trump on August 8, 2020, then clarified pursuant to IRS Notice 2020-65, employers can choose to defer their employee's share of Social Security taxes for the period September 1, 2020, through December 31, 2020 (deferral period). Note that this deferral only applies to the employee share, not the employer share.

Any deferral under the Executive Order must be withheld from an employee's wages starting January 1, 2021, and fully repaid by April 30, 2021 (repayment period). These dates have now been extended as follows:

- **Deferral period:** September 1, 2020, through April 30, 2021;
- **Repayment period:** May 1, 2021, through December 31, 2021.
  (ACRRA §274)

✐ **Practice Pointer**

The IRS's reporting information says that an employer should only report Social Security withholding that was actually withheld in 2020 and should not include the deferral when filing W-2s. Then, when the employee repays the Social Security tax during the repayment period, the employer must issue a corrected W-2 for the 2020 tax year.

Reasons not to play this game

A business is not required to offer the employees a postponement of their Social Security. We don't recommend offering this benefit to employees for two reasons:

1. An employer must pay the unwithheld taxes in 2021. However, if the employee leaves, the employer — in many states, such as California — may not reduce the employee's final check by these amounts; and
2. Preparing an amended W-2 is a lot of work with no benefit for the employer.

FARMING LOSSES

Taxpayers claiming a farming loss under IRC §172(b)(1)(B)(ii) may make an irrevocable election to not apply the CARES Act provisions that:

- Suspended application of the NOL 80% taxable income limitation; and
- Allowed five-year carrybacks for NOLs incurred in 2018, 2019, and 2020.
  (ACRRA §281)

The election must be made by the due date (including extensions) for filing the taxpayer's return for the taxpayer's first taxable year ending after December 27, 2020 (the date of the enactment of the ACRRA).

REAL ESTATE ISSUES

RENTAL ASSISTANCE GRANTS

The ACRRA allocates $25 billion for fiscal-year 2021 in tax-free rental assistance to state and local governments and Native American tribes to be used to help pay up to 12 months (15 months in some situations) of a tenant's:

- Current and back rent;
- Current and back utilities and home energy costs; and
- Other expenses related to housing incurred due to COVID-19.

Nontaxable

Assistance provided through this program is not considered as income to the tenant and is not regarded as a resource for purposes of determining the eligibility of the household or any of its members for benefits or assistance under any governmental program. (ACRRA §501(j)) However, these amounts are considered taxable income to the landlord.

Eligible recipients

Eligible recipients are households with one or more members who have:

- Qualified for unemployment benefits; or
- Experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due to COVID-19; and
- Can demonstrate a risk of homelessness or housing insecurity (e.g., past due utility or rent notice, unsafe or unhealthy living conditions); and
- Have household income that is not more than 80% of area median income for the household.

Landlords can apply

Landlords may apply on behalf of their tenants but must obtain the tenant's original or digital signature on the application. They must provide a copy of the completed application to the tenant.

Application process

The $25 billion authorized by the federal government is granted to various cities and counties. Applicants must apply directly through the county or city where the rental unit is located. Additional information regarding the Emergency Rental Assistance Program can be found at:

Website
https://home.treasury.gov/policy-issues/cares/emergency-rental-assistance-program

EXTENDERS

PROVISIONS MADE PERMANENT

Under Division EE, The Taxpayer Certainty and Disaster Tax Relief Act (TCDTRA) of the Consolidated Appropriations Act of 2021, the following tax provisions, have been made permanent:

- 7.5% AGI threshold for medical expenses is made permanent, meaning the 10% AGI threshold that was scheduled to go into effect in 2021 will not go into effect (TCDTRA §101; IRC §213);
- The IRC §179D energy efficient commercial buildings deduction and an inflation adjustment applies to the maximum deduction limitations, effective beginning with taxable years beginning after 2020. (TCDTRA §102; IRC §179D) In addition, various energy standards are updated and revised, applicable to property placed in service after December 31, 2020;
- The exclusion of state and local tax benefits and qualified payments made to volunteer firefighters and emergency medical responders under IRC §139B (TCDTRA §103);
- The IRC §45G Railroad Track Maintenance Credit; and
- The reductions in the beer, wine, and distilled spirits excise taxes enacted by the TCJA. (TCDTRA §106)

PROVISIONS EXTENDED

The following provisions, which were scheduled to sunset at the end of the 2020 taxable year, have now been extended an additional five years through the end of the 2025 taxable year:

- Qualified principal residence COD exclusion, but reduces the maximum acquisition indebtedness that may be taken into account to $750,000 ($375,000 MFS) (TCDTRA §114; IRC §108(a)(1));
- Exclusion of employer payments of student loans under employer educational assistance program (TCDTRA §120; IRC §127(c));
- Work Opportunity Tax Credit (TCDTRA §113; IRC §51);
- Employer Credit for Paid Family and Sick Leave (TCDTRA §119; IRC §45S);
- New Markets Tax Credit (TCDTRA §112; IRC §45D);
- Carbon Oxide Sequestration Credit (TCDTRA §121; IRC §45Q);
- Empowerment zone tax incentives (TCDTRA §118; IRC §§1391, 1397, 1397B);
- Expensing rules for qualified film, television, and theatrical productions (TCDTRA §116; IRC §181);
- Seven-year recovery period for motorsports entertainment complexes (TCDTRA §115; IRC §168(i)(15)(D)); and
- The look-through rule for related controlled corporations. (TCDTRA §111; IRC §954)

The American Samoa Economic Development Credit is extended through the end of the 2021 taxable year. (TCDTRA §139)

ENERGY INCENTIVES EXTENDED

Residential energy incentives

The nonbusiness energy property credit, which is the credit for installing energy efficient windows, doors, and other similar property in a principal residence has been extended through December 31, 2021. (TCDTRA §141; IRC §25C) Remember, however, the nonbusiness energy property credit is subject to a $500 lifetime maximum.

The residential energy efficient property (REEP) credit has been extended one additional year as well. (TCDTRA §148; IRC §25D) The REEP credit is the credit for installing solar (and some other energy property) on a personal use property. The REEP credit has no lifetime maximum, and taxpayers can claim the credit as many times as they want, as long as the solar property is installed on a personal use property (not limited to just a principal residence). The REEP credit is now 26% in 2021 and 2022, 22% in 2023, and expires after that.

The TCDTRA's extender provision for the REEP credit now also includes biomass fuel property expenditures.

Nonresidential solar credits

The phaseouts for the business solar credit have been extended, allowing for construction that begins in 2021 and 2022 to qualify for a 26% credit, and the reduced 22% credit will apply to property for which construction begins in 2023. (TCDTRA §132; IRC §48)

In addition, the business Energy Credit is extended to apply to waste energy recovery property, which is defined as property that generates electricity solely from heat from buildings or equipment not normally used for generating electricity, beginning with the 2021 taxable year. (TCDTRA §203; IRC §48)

Other energy incentive extenders

The following were extended for an additional year, except as otherwise noted:

- The election to claim the IRC §48 Investment Credit in lieu of the IRC §45 Energy Credit. The election is also extended to apply to offshore wind facilities through 2025 (TCDTRA §§131(b), 204; IRC §48(a)(5));
- Credit for Electricity Produced From Certain Renewable Sources, including the phaseouts (TCDTRA §§131, 132; IRC §45(d));
- Qualified Fuel Cell Motor Vehicles Credit (TCDTRA §142; IRC §30B);
- Alternative Fuel Refueling Property Credit (TCDTRA §143; IRC §30C);
- Two-Wheeled Plug-In Electric Vehicle Credit (TCDTRA §144; IRC §30D);
- Energy Efficient Homes Credit for home builders (TCDTRA §146; IRC §45L);
- Second Generation Biofuel Producer Credit (TCDTRA §140; IRC §40); and
- Extension of Excise Tax Credits relating to alternative fuels. (TCDTRA §147; IRC §6426)

PROVISIONS EXTENDED ONE ADDITIONAL YEAR

The following provisions, which were scheduled to sunset at the end of the 2020 taxable year, have now been extended an additional year through the 2021 taxable year:

- Treatment of mortgage insurance premiums as qualified residence interest (TCDTRA §133; IRC §163(h));
- Credit for Health Insurance Costs of Eligible Individuals (TCDTRA §134; IRC §35);
- Indian Employment Credit (TCDTRA §135; IRC §45A);
- Mine Rescue Team Training Credit (TCDTRA §136; IRC §45N);
- Accelerated depreciation for Indian reservation business property (TCDTRA §138; IRC §168(j)(9)); and
- Classification of certain race horses as three-year property. (TCDTRA §137; IRC §168(e))

MISCELLANEOUS CAA PROVISIONS

ELECTION TO USE 2019 EARNED INCOME FOR EIC AND CTC

The TCDTRA allows taxpayers who claim the Earned Income Credit or the refundable Child Tax Credit to elect to base their 2020 credit on their 2019 earned income rather than their 2020 earned income, but only if their 2019 earned income is higher than 2020. (TCDTRA §211)

This provision may help lower income workers who spent a great deal of 2020 out of work and may need to use their higher 2019 AGI to claim a higher Earned Income Credit or refundable Child Tax Credit.

California nonconformity

California does not conform to the TCDTRA's election to use 2019 earned income when calculating the 2020 Earned Income Tax Credit.

SPECIAL RULES FOR MINIMUM VESTING STANDARDS

The TCDTRA provides a reprieve from the partial plan termination requirements of IRC §411(d) during any plan year that includes the period beginning on March 13, 2020, and ending on March 31, 2021, if the number of active participants covered by the plan on March 31, 2021, is at least 80% of the number of active participants covered by the plan on March 13, 2020. (TCDTRA §209)

A partial plan termination means that all the employees become fully vested. It does not stop the plan. See your plan administrator for details.

OTHER CAA PROVISIONS

The TCDTRA and ACRRA also make the following changes:

- Clarifies that money purchase pension plans are included in the retirement plans from which taxpayers may make penalty-free withdrawals to cover COVID-19 related expenses (ACRRA §280);
- Sets a minimum 4% Low-Income Housing Credit rate for federally subsidized buildings (TCDTRA §201; IRC §42(b));
- Clarifies that ADS depreciation over 30 years applies for residential rental property, no matter when the property was placed in service, for taxpayers that are electing real property trades or businesses under the business interest imitation rules (TCDTRA §202); and
- Restores taxpayer confidentiality protections removed by the CARES Act related to tax information provided by the IRS to the Department of Education for evaluating student loan applications. (ACRRA §284)

PRACTICE AND PROCEDURES

ONLINE SUBMISSION OF POA FORMS TO IRS

In late January, the IRS began allowing tax professionals to submit the following forms online:

- Form 2848, Power of Attorney and Declaration of Representative; and
- Form 8821, Tax Information Authorization.

Forms can be submitted online at the following website:

Website
www.irs.gov/tax-professionals/submit-forms-2848-and-8821-online

Keep the following in mind when submitting Forms 2848 and 8821:

- The IRS's CAF unit processes the forms in the order received, whether through fax or online submission, so submitting the forms online does not expedite processing;
- The IRS will e-mail the tax professional once the form is accepted (similar to receiving a fax confirmation); and
- Unlike a faxed form, the tax professional will receive an e-mail notifying them once the form has been processed by the CAF unit.

FILING SEASON OFFICIALLY OPENS FOR INDIVIDUALS ON FEBRUARY 12

The IRS has announced that the filing season for individual income tax returns officially opens on February 12, 2021. (IR-2021-16)

IRS ACCEPTING DIGITAL SIGNATURES THROUGH JUNE 30, 2021

The IRS has extended, through June 30, 2021, the period during which it will accept digital signatures and e-mailed documents. (IR-2020-194; IRS Internal Memo to Employees, available at: www.irs.gov/pub/irs-utl/updated-dcse-wet-signature-memorandum-12-28-2020.pdf)

ACA PROTECTIVE REFUND CLAIMS

In July 2020, The U.S. Supreme Court agreed to hear ***California v. Texas*** (U.S. Supreme Court Docket 19-840), which addresses the constitutionality of the Affordable Care Act (ACA). The Court heard oral arguments on November 10, 2020. A decision in the case won't be released until later in the Supreme Court's term in June 2021.

If the Court holds that all, or a portion, of the ACA is unconstitutional, taxpayers may be entitled to refunds for the taxes imposed by the ACA. These include the extra 0.9% Medicare tax and the 3.8% net investment income tax that have been paid on prior-year returns.

Refunds are limited to years where the statute of limitations is still open. As a result, taxpayers must file protective refund claims to protect their refund rights for tax years for which the statute of limitations is about to run. For taxes paid on timely filed 2017 returns, these protective refund claims must be filed by April 15, 2021 (October 15, 2021, if the taxpayer filed a valid extension of their 2017 income tax return).

An amended return is not required. For a refund claim to be valid, it must be in writing and signed, and it must include:

- The taxpayer's name, address, SSN or ITIN, and other contact information;
- A description of the contingencies the claim is based on (in this case, the pending outcome of ***California v. Texas***);
- The essential nature of the claim (the refund of the extra 0.9% Medicare tax and the 3.8% net investment income tax); and
- The specific year(s) for which a refund is sought (one protective refund claim can be filed for all open years – a separate claim for each year is not required).

Mail the protective claim to the mailing address that applies to the taxpayer for Form 1040X.

To download Spidell's sample refund claim letter for these taxpayers, go to:

Website
www.caltax.com/files/2020/acaprotectiveclaim.doc

Don't wait until the deadline to file claims

When the topic of protective refund claims arises, it usually generates a lot of flurried interest the week before the filing deadline. Instead of waiting until just before the April filing deadline, tax professionals should consider discussing protective refund claims with their clients and prepare them well ahead of April 15, 2021.

TIPS FOR TAX SEASON — AND BEYOND

Tax return adjustments for COVID-19 credits

See the following table for adjustments that must be made if your clients claimed credits for paid sick or family leave under the FFCRA or the Employee Retention Credit.

Tax Return Adjustments for COVID-19 Credits		
Credit	**Federal income tax return adjustments/comments**	**California income tax return adjustments (California does not allow these credits)**
FFCRA family leave and sick leave credits	• Gross income must be increased by the amount of the payroll tax credits claimed (report as "other income") (sum of Form 941, lines 11b and 13c); • No adjustment to deduction for wages; • No adjustment to §199A wages	• Back out the gross income reported on the federal return due to the FFCRA credits
Employee Retention Credit	• Deduction for wages paid must be reduced by wages used to claim ERC (sum of Form 941, lines 21 and 22); • No adjustment to gross income; • No adjustment to §199A wages	• Back out the reduction for wages paid on the federal return due to the ERC

Emphasis on reviewing payroll tax returns

Tax professionals must have their clients' 2020 payroll tax returns in-hand when preparing business income tax returns this year for two reasons:

1. To calculate the income tax returns adjustments necessary for COVID-19-related payroll tax credits (see the previous chart); and
2. To determine whether a client has claimed all the available COVID-19-related payroll tax credits.

Many payroll companies have relied on their clients to provide information necessary to claim payroll tax credits. If your client didn't tell the payroll company that they paid wages eligible for paid sick leave or family leave under the FFCRA or the Employee Retention Credit, then the payroll company didn't claim the credits on the payroll tax returns. For smaller employers, the payroll companies made little effort to help their clients make this determination.

By reviewing your clients' payroll tax returns, you will be providing them with a great service if you determine they are eligible for additional payroll tax credits. Here's the catch: Your client must file amended payroll tax returns before you can complete their income tax returns because of the income tax adjustments that are necessary.

Worksheet to help you review payroll tax returns

We have created a helpful worksheet for you to use when reviewing your client's payroll tax returns. The worksheet accomplishes three goals for you:

1. Aids in the quick review of payroll tax returns (you can even have administrative staff quickly breeze through Steps 1 and 2);
2. Provides a quick reference guide to determine if amended payroll tax returns may be warranted; and
3. Can be used as a workpaper in making tax return adjustments for clients that claim FFCRA or Employee Retention payroll tax credits.

Spidell's worksheet is available at:

Website
www.caltax.com/files/2020/ptcworksheet.pdf

Practice Pointer

The payroll tax review worksheet is for use with 2020 payroll tax returns. We will provide an updated worksheet for 2021 in our next quarterly update.

THE AMERICAN RESCUE PLAN

The American Rescue Plan (ARP) was introduced by Biden a week before taking office. It is a $1.9 trillion stimulus package, with some tax provisions, mostly directed to providing additional relief to individual taxpayers. Let's go through the most significant tax items.

A THIRD ROUND OF ECONOMIC IMPACT PAYMENTS

Both President Trump and President Biden pushed for $2,000 stimulus payments as part of the ACRRA, but the payments included in that bill were only $600. Biden's plan would provide an additional $1,400 (for a total of $2,000 when added to the $600 provided by the ACRRA). However, the ARP would expand eligibility for the third round of economic impact payments by allowing payments to:

- Adult dependents (both the first and second EIPs only provided payments to dependents who were qualifying children under the age of 17);
- Those who do not have Social Security numbers.

It is unknown at this point if the expanded eligibility would apply only to this third round of EIPs or would apply retroactively to the first and/or second round of EIPs.

EXTENSION OF FFCRA MANDATORY PAID SICK AND FAMILY LEAVE

The Families First Coronavirus Response Act's (FFCRA) mandate that employers pay sick leave and family leave to their employees expired on December 31, 2020. But, under the ACRRA, employers can claim the same payroll tax credits available under the FFCRA if they choose to continue paying sick leave and family leave through March 31, 2021. (ACRRA §286) See page 30 for a complete discussion of the ACRRA's extension of the paid sick leave and family leave payroll tax credits.

Under the plan, both the FFCRA's employer mandate to provide sick leave and family leave and the available payroll tax credits are extended through September 30, 2021, with the following modifications:

- Expands the employer mandate to require all employers, no matter their size, to provide paid sick leave and family leave, including those that employ health care workers, federal workers, and first responders. However, the payroll tax credits would only be available to employers with fewer than 500 employees; and
- Increases the total available weeks of paid leave to 14 weeks, with a maximum benefit of $1,400 per week.

INCREASE AND EXTEND UNEMPLOYMENT BENEFITS

Under the ACRRA, COVID-19-related unemployment benefits are extended for an additional 11 weeks at $300 per week, bringing federal COVID-19-related unemployment benefits to 50 total weeks. (ACRRA §201) These benefits became available beginning December 27, 2020, and will run at least through March 14, 2021. See page 6 for a complete discussion of unemployment compensation.

The ARP would add an additional $100 per week and extend the ACRRA's unemployment provision through September 30, 2021.

EXPANDED CHILD TAX CREDIT FOR 2021 ONLY

Biden's plan would expand the Child Tax Credit for the 2021 tax year only by:

- Increasing the credit amount to:
  - $3,600 per qualifying child under the age of 6; and
  - $3,000 for other qualifying children (those under the age of 17); and
- Making the entire credit refundable (under current law, only $1,400 of the Child Tax Credit is refundable).

CHILD AND DEPENDENT CARE CREDIT INCREASE FOR 2021 ONLY

The plan would expand the child and dependent care credit for the 2021 tax year only by:

- Increasing the maximum available credit from $3,000 per child to $4,000 (with a maximum total credit of $8,000);
- Make the credit fully refundable; and
- Modify the phaseout range such that the credit begins to phase out at $125,000 of AGI and is completely phased out at $400,000.

No other details were provided regarding the phaseout range, so it is unclear what filing statuses the ARP's proposed phaseout range would apply to.

EARNED INCOME CREDIT

The plan would expand the earned income credit from for the 2021 tax year only by:

- Increasing the maximum credit for childless adults from roughly $530 to close to $1,500;
- Raise the income limit for the credit from about $16,000 to about $21,000; and
- Expand the age range that is eligible including by eliminating the age cap for older workers and expanding eligibility for younger workers.

Caution

The American Rescue Plan is not a bill. We will provide you with final details if and when the bill has been enacted.

CALIFORNIA ISSUES

FILING 1099-NEC DIRECTLY WITH THE FTB

The IRS will not be sending copies of the new Form 1099-NEC, Nonemployee Compensation, to California or any other state. (The IRS will continue to send all other Forms 1099 to the states.) As a result, businesses must send copies of Form 1099-NEC directly to the FTB, even if a copy was filed with the IRS. This applies only to the Form 1099-NEC. You do not need to send copies of any other Form 1099 to the FTB.

Businesses must send the FTB copies of the federal Forms 1099-NEC (it does not have to be the red copy), along with a copy of the federal Form 1096, Annual Summary and Transmittal of U.S. Information Returns.

Here are answers to common questions we have been asked.

1. **Must copies of other 1099s be sent to the FTB?**
   No, the IRS will continue to forward other Form 1099 information to the FTB.
2. **Do I send a copy of federal Form 1096?**
   Yes, you can use either the red Form 1096 or a black and white copy.
3. **Do I send the FTB a copy of Form 1099-NEC if the payment was made to a nonresident?**
   Yes, because if the nonresident is performing services for a California business, the income is taxable to California.
4. **Must I file electronically?**
   You may file up to 249 paper returns with the FTB. If filing 250 or more returns, you must file electronically using Secure Web Internet File Transfer (SWIFT).
5. **Where do I mail the forms?**
   Mail the forms to:

Address
Franchise Tax Board
P.O. Box 942840
Sacramento, CA 94240-6090

6. **When is the due date to file?**
   For paper filed returns, the due date is February 28, 2021. For electronic copies, the due date is March 31, 2021. You can request an extension to file by submitting Form FTB 6274A, Request for Extension to File Information Returns.
7. **Will the FTB abate penalties for failure to file the Forms 1099-NEC or late filings?**
   According to the FTB, because reporting the information directly to the FTB is a new requirement, for the first year of implementation, the FTB will make a pre-penalty determination of reasonable cause for any failure to timely file a 2020 tax year Form 1099-NEC with the FTB. This is based on the FTB's determination that a failure to timely file Form 1099-NEC directly with the FTB for the first year is deemed to meet the reasonable cause exception in the statute.
8. **What do I do if I am self-employed and don't have an EDD account?**
   Leave it blank.

WHAT DOES PROPOSITION 19 MEAN FOR YOUR CLIENTS?

With the passage of Proposition 19, we will see an increase in property taxes for transfers of California real property between parents and children or vice versa.

Parent–child transfers

Under current law, a transfer of ownership in California real property generally results in a reassessment for property tax purposes with certain exceptions, including two exclusions from reassessment that can apply for transfers between parents and children:

- The principal residence exclusion allows the transfer of a principal residence of unlimited value between parents and children; and
- The $1 million lifetime non-principal residence exclusion allows the transfer between parents and children of up to $1 million of assessed value of all other types of property (for example, second homes or rental properties). For a married couple, this would be a combined $2 million lifetime exclusion. Note: Starting in 2023, this amount will be indexed for inflation.

Under Proposition 19, for transfers on or after February 16, 2021:

- In order to qualify for the principal residence exclusion, the receiving child must use the residence as their own principal residence, and only the first $1 million of additional assessed value is excluded (Proposition 19 §2.1(c)(1)); and
- The non-principal residence exclusion has been completely eliminated. However, the principal residence exclusion will apply to transfers of family farms.

Comment

The change only applies to transfers on or after February 16, 2021. Transfers that occur prior to that date will continue to follow the pre-Proposition 19 rules and will not be reassessed after the new law is enacted.

Complicated reassessment formula

Proposition 19 requires assessors to calculate the new taxable value, or new assessed value, of the property using the following formula:

- If the FMV immediately before the transfer is less than the assessed value plus $1 million, then the property will not be reassessed; and
- If the FMV immediately before the transfer is equal to or more than the assessed value plus $1 million, then the new assessed value = assessed value + FMV immediately before the transfer – (assessed value + $1 million). (Proposition 19 §2.1(c)(1)(B))

Example of reassessment

Lucy dies, and her son Leon inherits her home. At Lucy's death, the home has a FMV of $2 million and an assessed value of $500,000.

The $2 million FMV is more than $1.5 million (the $500,000 assessed value + $1 million).

As a result, the new assessed value is $1 million (($500,000 + $2 million) - ($500,000 + $1 million)).

Comment

Families with real estate that they are planning to pass from parent to child may want to make transfers before February 16, 2021, to preserve low property tax bases. If the children plan to keep the property to rent or use as a second home, this could save a tremendous amount of property tax in the future. However, if the children will likely sell the property, consider that making a lifetime gift will preserve the property tax base, but it will eliminate the income tax step-up in basis that the children would get if they inherited the property at their parent's death.

Base-year transfers

For transfers on or after April 1, 2021, Proposition 19 also allows taxpayers who are over age 55, severely disabled, or a victim of a wildfire or other natural disaster to transfer their property tax adjusted base-year value to a replacement property anywhere in the state (currently this benefit is limited to counties that have authorized the base-year property transfer). (Proposition 19 §2.1(b))

Taxpayers who are over age 55 or disabled will be able to transfer the base-year value of the relinquished property up to three times. Disaster victims can make these transfers for an unlimited number of disaster-related transfers.

In addition, these taxpayers are no longer limited to replacement properties of equal or lesser value. If they purchase a replacement property with a higher FMV than their original property, the assessed value of the replacement property would be equal to the assessed value of the original property, plus the difference in FMV between the original property and the FMV of the replacement property.

Example of higher FMV

Jane is age 65 and has decided she wants to move closer to her grandchildren. She sells her home in Orange County after April 1, with an assessed value of $400,000, for $650,000. Jane purchases a new home in San Diego for $750,000.

The assessed value of Jane's new home is $500,000 ($400,000 + ($750,000 - $650,000)).

☑ Planning Pointer

Advise your clients, like Jane, that if they dispose of their residence prior to April 1, 2021, they must use the old rules.

Unfortunately, the BOE has noted that Proposition 19 is unclear as to whether one event (either the sale of the original residence or the purchase or construction of the replacement residence) or both events must occur on or after April 1, 2021, in order to qualify for this base-year value transfer. They have stated they are awaiting legislation to clarify this issue and other items that were not addressed in the proposition language. (Letter to County Assessors No. 2020/61)

To download a client letter addressing the provisions of Proposition 19, go to:

Website
www.caltax.com/files/2020/cl-prop19.doc

YOUR PRACTICE ISSUES

OTHER STATE TAX CREDIT

Question

I have a client who is a California resident, but had capital gain from Arizona real estate. Do I claim the other state tax credit on my client's California resident return or the Arizona nonresident return?

Answer

The gain is reported on both the California and Arizona returns. In most situations, the California resident will claim the other state tax credit on the California resident return. However, if the other state, like Arizona, is a reverse credit state, then the other state tax credit is claimed on the Arizona nonresident return. The following chart will help you determine on which state income tax return you claim the other state tax credit.

Other State Tax Credit		
Taxpayer is:	**Income is from:**	**Credit is taken on:**
California resident	Arizona, Guam, Oregon,* Virginia	Other state's nonresident return
	Any state or U.S. possession not listed above	California resident return
Taxpayer is:	**Resident of:**	**Credit is taken on:**
California nonresident	Arizona, Guam, Oregon, Virginia	California nonresident return
	Any state or U.S. possession not listed above	Other state's resident return
* There is an exception for California residents who paid tax to both California and Oregon on wages for services performed in Oregon in connection with a qualifying film production. **Note:** Indiana was a reverse credit state for taxable years prior to 2017.		

TAXABILITY OF LOCAL GOVERNMENT COVID GRANTS

Question

Are COVID grants issued by local governments to businesses taxable? I have clients that received grants in 2020 from the county where their business is located.

Answer

Yes, grants provided to businesses are taxable to the business unless there is a specific exclusion. For example, EIDL grants from the Small Business Administration are excluded from federal income, but not California income. However, we are not aware of any specific exclusions applicable to grants made to businesses from local governments.

APPENDIX

The TCDTRA contained a number of non-COVID-19–related disaster relief provisions, which we have summarized in a chart comparing the disaster provisions to similar COVID-19–related provisions contained in the CARES Act. Go to:

Website
www.caltax.com/files/2020/disasterprovisions.pdf

We have also created a chart highlighting the Consolidated Appropriations Act of 2021. Go to:

Website
www.caltax.com/files/2020/caahighlights.pdf

GLOSSARY

ACRRA: Additional Coronavirus Response and Relief Act, part of the Consolidated Appropriations Act of 2021

American Rescue Plan (ARP): introduced by Joe Biden prior to taking office as president; a $1.9 trillion stimulus package with some tax provisions, directed at providing relief to individual taxpayers

Claim of right doctrine: a doctrine holding that if a taxpayer receives property without restriction as to its use, then the taxpayer has received income that must be included in gross income in the year of receipt

Economic injury disaster loan (EIDL): offered by the Small Business Administration to small businesses, which may request an emergency advance grant against the loan for up to $1,000 per employee up to a maximum of $10,000. The advance does not need to be repaid under any circumstances, but the grant is taxable for state purposes

Employee Retention Credit: a refundable credit against quarterly employment taxes equal to 50% of the qualified wages and compensation paid to each employee by a qualified employer. Wages paid after March 12, 2020, and before January 1, 2021, qualify for the credit. The credit has been modified, expanded, and extended under the TCDTRA and is available for the first two quarters of 2021, with an increased credit rate from 50% of qualified wages to 70%, and an increase of the wage limitation to $10,000 per quarter

Families First Coronavirus Response Act (FFCRA): provides immediate relief for individuals and employers affected by the coronavirus pandemic. Provisions include mandatory paid sick leave; mandatory paid family leave; employer payroll tax credits; and expanded unemployment benefits

Full-time equivalent employees (FTEEs): a combination of employees, each of whom individually is not a full-time employee because they are not employed on average at least 30 hours per week, but who, in combination, are counted as the equivalent of a full-time employee

Lifetime Learning Credit: for qualified tuition and related expenses for eligible students enrolled in an eligible institution. The nonrefundable credit is 20% of the first $10,000 of qualified education expenses, or a maximum of $2,000 per return; available for an unlimited number of years

Pandemic Unemployment Assistance: expanded unemployment benefits under the CARES Act to include individuals who historically are ineligible for benefits, such as long-term unemployed or self-employed individuals and independent contractors who are unemployed, partially unemployed, or unable to work due to COVID-19. Benefits begin on or after January 27, 2020, and end on December 31, 2020. Under the ACRRA, COVID-related unemployment benefits are extended for an additional 11 weeks at $300 per week for 11 weeks of unemployment beginning after December 26, 2020

Paycheck Protection Program (PPP): under the CARES Act, whereby the Small Business Administration will guarantee 100% of loans made under the program between February 15, 2020, and June 30, 2020 (known as the "covered period"). Benefits include: loans may be forgiven for amounts used to cover basic operating expenses, loan payment deferral for six months (interest will run), no personal guarantees required, and waiver of SBA administration fees. Under the PPP

Flexibility Act, the loan forgiveness period has been extended from eight weeks to 24 weeks for the loan origination date, as long as the covered period does not extend beyond December 31, 2020. Changes have also been made with regard to loan forgiveness and the payroll cost threshold, maturity date, deferring payments, and eliminating the full-time equivalent employee reduction provision under certain circumstances. Under the ACRRA, the loan program is extended to March 31, 2021, with an additional $284.45 billion in funding

Residential energy efficient property (REEP) credit: a tax credit under IRC §25D for residential solar energy property. Under the TCDTRA, the 26% credit has been extended for years 2020 and 2021, then drops to 22% in 2022 and expires thereafter

TCDTRA: Taxpayer Certainty and Disaster Tax Relief Act of 2020, part of the Consolidated Appropriations Act of 2021

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