

# Consolidated Appropriations Act, 2021

## Cross References

- H.R. 133, Consolidated Appropriations Act, 2021

On December 27, 2020, the President signed into law the Consolidated Appropriations Act, 2021, which contains \$1.4 trillion to fund the federal government through September of 2021, and \$900 billion in coronavirus relief. The legislation contains a number of tax provisions related to COVID-19, and a number of other provisions that amend the Internal Revenue Code (IRC). The following is our coverage of the tax provisions contained in the new law.

## Economic Impact Payments and Recovery Rebate Credit [IRC §6428 and §6428A]

The CARES Act added IRC section 6428 to the code which provided direct payments to taxpayers based upon the taxpayer's filing status and adjusted gross income. Eligible taxpayers qualified for up to \$1,200 per individual or \$2,400 for married couples. Parents also received an additional \$500 for each qualifying child who is claimed as a dependent and is under the age of 17 at the end of the tax year. The direct payments were called economic impact payments and were paid to taxpayers during 2020. Economic impact payments are treated as an advance of the Recovery Rebate Credit. If the economic impact payment received during 2020 was less than the allowable Recovery Rebate Credit, the difference is treated as a refundable credit on the 2020 Form 1040. If the economic impact payment was greater than the allowable Recovery Rebate Credit, the difference does not have to be paid back to the government.

The new law increases the Recovery Rebate Credit for the first tax year beginning in 2020 by an amount equal to the sum of:

- \$600 (\$1,200 MFJ), plus
- \$600 multiplied by the number of qualifying children within the meaning of IRC section 24(c) of the taxpayer.

IRC section 24(c) is the rule for the Child Tax Credit, which generally means dependent children under the age of 17.

This additional recovery rebate credit phases out when modified adjusted gross income exceeds:

- \$150,000 for MFJ and QW,
- \$112,500 for HOH, and
- \$75,000 for Single and MFS.

The phase-out rate is \$5 per \$100 of additional income that exceeds the above thresholds. Nonresident aliens, individuals who qualify as dependents under IRC section 151, and estates or trusts do not qualify for the Recovery Rebate Credit.

The new law also instructs the IRS to issue advance payments based on the information on 2019 tax returns. Eligible taxpayers that used the non-filer portal on the IRS website in the first round of economic impact payments will also receive these new payments. The IRS will also issue advance payments for Social Security Old-Age, Survivors, and Disability Insurance beneficiaries, Supplemental Security Income recipients, Railroad Retirement Board beneficiaries, and Veterans Administration beneficiaries who did not file 2019 returns based on information provided by the Social Security Administration, the Railroad Retirement Board, and the Veterans Administration.

Treasury Secretary Steven Mnuchin announced that direct deposits would arrive in some accounts as early as December 29, 2020. Paper checks would be mailed as early as December 30, 2020. Taxpayers can click on the “Get My Payment” link at [irs.gov](https://irs.gov) to check on the status of their check.

The new law aligns the eligibility criteria for the new round of economic impact payments and the Recovery Rebate Credit provided by the CARES Act. Taxpayers receiving an advance payment that exceeds the amount of their eligible credit will not be required to repay any amount of the payment, except in the case of fraud. If the amount of the credit determined on the taxpayer’s 2020 tax return exceeds the amount of the advance payment, taxpayers will receive the difference as a refundable tax credit.

Advance payments are generally not subject to administrative offset for past due federal or state debts. In addition, the payments are protected from bank garnishment or levy by private creditors or debt collectors.

The IRS is directed to send a notice by mail to a taxpayer’s last known mailing address that indicates the method by which the economic impact payment was made, including the amount of the payment, and a phone number to contact the IRS in case the taxpayer did not receive such payment. The deadline for the IRS to issue this new payment is January 15, 2021.

#### **Author’s Comment**

Taxpayers should wait to file their 2020 tax return until after they receive this new economic impact payment so that any difference can be reconciled and recovered as a Recovery Rebate Credit on the 2020 tax return. Economic impact payments received during 2021 will factor into the Recovery Rebate Credit calculation that is done on the 2020 tax return.

The new law also modifies the rules under the CARES Act when calculating the amount of any Recovery Rebate Credit. Under the new law, the \$150,000 phase-out threshold for joint returns also applies to a surviving spouse (who files as a qualifying widow or widower). Prior to this modification, the CARES Act had subjected a qualifying widow(er)

to the \$75,000 threshold amount. This change is retroactive, as if it was included in the CARES Act.

The law also contains a valid identification number requirement. A valid identification number is a Social Security Number, or an adoption taxpayer identification number in the case of a qualifying child who is adopted or placed for adoption with the taxpayer. The new law modifies the rules for joint returns. Under the CARES Act, both spouses needed a Social Security Number to qualify for the credit, unless one spouse was a member of the armed forces, in which case only one spouse needed a Social Security Number. Under the new law, if only one spouse has a Social Security Number, the credit is reduced to half the amount allowed for married filing joint (instead of zero). This provision is retroactive as if it was included in the CARES Act for the first round of economic impact payments. Thus, a joint return now qualifies for a combined \$3,600 credit (\$2,400 + \$1,200) if both spouses have a Social Security Number, and a \$1,800 credit (\$1,200 + \$600) if only one spouse has a Social Security Number (unless one spouse is a member of the armed forces). This rule will eliminate the incentive for married taxpayers to file separate returns when only one spouse has a Social Security Number. It also means that if married couples did not receive a first round economic impact payment due to only one spouse having a valid Social Security Number, they can now claim the credit when filing their 2020 tax return.

## **Unemployment Benefits**

The CARES Act expanded unemployment benefits through a number of provisions, including an additional \$600 per week payment for Federal Pandemic Unemployment Assistance for up to four months. Unemployment benefits were also made available for certain individuals who traditionally were not eligible, such as self-employed individuals. These federal unemployment benefits were administered through each state's unemployment benefit program.

The new law extends and modifies the CARES Act unemployment benefits, including the following provisions.

- Pandemic Unemployment Assistance and the Pandemic Emergency Unemployment Compensation programs are extended to March 14, 2021 and allows individuals receiving benefits as of March 14, 2021 to continue through April 5, 2021, as long as the individual has not reached the maximum number of weeks.
- The number of weeks of benefits an individual may claim under the Pandemic Unemployment Assistance program is increased from 39 to 50. The Pandemic Emergency Unemployment Compensation program is increased from 13 to 24 weeks.
- Federal Pandemic Unemployment Assistance that had expired is now restored to all state and federal unemployment benefits at a rate of \$300 per week, starting after December 26, 2020 and ending March 14, 2021.
- The new law restores the federal supplemental benefit for unemployed railroad workers at \$600/registration period for registration periods beginning after December 26, 2020 and on or before March 14, 2021. It also provides an additional 11 weeks of benefits, and the availability of the 13 weeks of additional unemployment benefits provided under the CARES Act for unemployed railroad workers.

- The new law adds new substantiation requirements for unemployed employees and self-employed individuals who apply for Pandemic Unemployment Assistance. States are also required to validate the identity of applicants.
- The new law requires states to have methods in place to address situations when claimants of unemployment compensation refuse to return to work or refuse to accept an offer of suitable work without good cause.

The new law provides for a new federally funded \$100 per week additional benefit to individuals who have at least \$5,000 a year in self-employment income but are disqualified from receiving Pandemic Unemployment Assistance because they are eligible for regular state unemployment benefits.

The appropriations act also provides additional funding to states to help with their unemployment benefit programs.

### **Charitable Contributions [IRC §170(p)]**

The CARES Act permits an eligible individual to claim an above-the-line deduction of up to \$300 for qualified charitable contributions made during the 2020 tax year. This means that for taxpayers who do not itemize, the \$300 deduction is in addition to the standard deduction. The deduction is limited to \$300 for single, HOH, QW, or MFJ filing statuses, and \$150 for MFS.

The new law extends this provision to the 2021 tax year with one modification. The deduction is \$600 for a married filing joint return, with a \$300 deduction for all other tax returns. The AGI limitation does not apply to the above-the-line deduction. The deduction is limited to cash contributions that are made to IRC section 170(b)(1)(A) organizations (public charities such as churches, educational organizations, medical organizations, and similar organizations). The deduction does not apply to private foundations or donor advised funds. It also does not apply to charitable contribution carryovers from prior years.

If a taxpayer overstates an above-the-line charitable contribution deduction, the underpayment of tax penalty is increased from 20% to 50% of the understated tax.

The CARES Act also increased the AGI limitation for taxpayers itemizing their deductions during the 2020 tax year from 60% to 100% of AGI for cash contributions to qualified charities. The new law extends this 100% of AGI limitation to the 2021 tax year. The 50%, 30%, and 20% AGI limitations still apply to non-qualified contributions, such as contributions of non-cash property, capital gain property, and contributions to non-60% AGI limit organizations.

### **Medical Expenses [IRC §213]**

Prior law had raised the threshold for deducting medical expenses as itemized deductions from 7.5% of AGI to 10% of AGI. A temporary suspension of this rule applied for tax years beginning before January 1, 2021. The new law eliminates the 10% of AGI limitation and makes the 7.5% of AGI limitation permanent for all tax years beginning after December 31, 2020.

### **Meal Expense Deduction [IRC §274(n)(2)(D)]**

In general, a deduction for a business meal is limited to 50% of the cost of the expense, provided the taxpayer, or an employee of the taxpayer is present at the furnishing of the meal, and food and beverages are provided to a business contact, such as a current or potential business customer, client, consultant, or similar business contact. An employee is also considered a type of business associate. A taxpayer can also deduct 50% of the cost of a meal when traveling on business away from his or her tax home without the need to have a business contact present. The meal has to be separately stated on the bill from any entertainment expense, which is non-deductible. For example, the cost of tickets to a sporting event is non-deductible entertainment. However, any food purchased separately at such sporting event is deductible as a business meal, subject to the 50% deduction limitation.

The new law temporarily increases the business meal deduction to 100% for amounts paid or incurred after December 31, 2020 and before January 1, 2023. This 100% deduction is allowed if the food or beverages are provided by a restaurant. Thus, food and beverages purchased at a venue other than a restaurant would still be subject to the 50% limitation rule. The new law does not define the term “restaurant” for purposes of this 100% deduction provision.

### **Tuition and Fees Deduction, American Opportunity Credit, and Lifetime Learning Credit [IRC §25A(d)]**

Under prior law, the tuition and fees deduction under IRC section 222 was set to expire at the end of 2020. Although other tax provisions were extended, the new law does not extend this provision. Thus, the tuition and fees deduction no longer applies for expenses paid after 2020.

In its place, the new law increases the modified AGI limitation for the Lifetime Learning Credit to equal the modified AGI limitation for the American Opportunity Credit, effective for tax years beginning after December 31, 2020. Thus, the phase-out range for both credits is \$160,000 to \$180,000 for married filing joint, and \$80,000 to \$90,000 for all other taxpayers. These phase-out ranges are not adjusted annually for inflation.

### **Earned Income for Child Tax Credit and Earned Income Credit Purposes [IRC §24(d) and §32]**

For purposes of determining a taxpayer’s earned income for the portion of the Child Tax Credit that is refundable under IRC section 24(d), and for the Earned Income Credit under IRC section 32, a taxpayer may elect to use his or her earned income for the 2019 tax year rather than earned income for the 2020 tax year. This election only applies for calculating these tax credits on the taxpayer’s 2020 tax return. The election has no effect on determining gross income or any other provision of the Internal Revenue Code. In the case of a married filing joint return, the earned income of the taxpayer for the 2019 tax year is the sum of the earned income of each spouse for that year.

### Example

Marry is single with one qualifying child. She uses the HOH filing status for both 2019 and 2020. Her earned income in 2019 was \$19,000. Due to COVID-19, she lost her job in March 2020 and only has \$4,800 of earned income for the 2020 tax year. Her earned income credit in 2020 equals \$1,641 if she uses \$4,800 as her earned income. Her earned income credit in 2020 equals \$3,584 if she elects to use \$19,000 as her earned income.

## Paycheck Protection Program Extension

The Paycheck Protection Program (PPP) was first enacted under the CARES Act to provide Small Business Administration (SBA) loans to eligible businesses as a result of the economic hardships caused by COVID-19. The loans are designed to provide a direct incentive for small businesses to keep their workers on the payroll. SBA will forgive the loan if employees are kept on the payroll during a “covered period” and the money is used for payroll, rent, mortgage interest, or utilities. If loan proceeds are not used for these expenses, the business is required to repay a portion or all of the loan. Any amount that is forgiven is not taxable.

On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 was signed into law, which provided additional funding for PPP loans, extended the “covered period,” and allowed more money to be spent on non-payroll costs, such as mortgage interest, rent, and utilities. Under the CARES Act, at least 75% of the covered loan had to be used for payroll and no more than 25% for mortgage interest, rent, or utilities. The PPP Flexibility Act changed these percentages to at least 60% for payroll costs and no more than 40% for mortgage interest, rent, or utilities.

The Consolidated Appropriations Act, 2021, extends the PPP to March 31, 2021, and provides an additional \$806.5 billion in funding. The new law also makes several modifications to the PPP provisions under the CARES Act and the PPP Flexibility Act.

**Additional eligible expenses.** The new law expands the list of expenses that are allowable uses of PPP funds for loan forgiveness. These expenses are added to the 40% category for non-payroll costs and include:

- Covered operations expenditures, meaning a payment for business software or cloud computing service that facilitates 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, meaning a cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation.
- Covered supplier costs, meaning an expenditure made to a supplier for goods that are essential to operations at the time the expense was made, made pursuant to a contract, order, or purchase order in effect at any time before the “covered period,” or with respect to perishable goods, in effect before or at any time during the covered period of the loan.

- Covered worker protection expenditures, meaning the cost of personal protective equipment and adaptive operating and capital expenses related to the maintenance of standards for sanitation, social distancing, or other worker or customer safety requirements for the business to comply with requirements established or guidance issued by federal, state or local governments during the period beginning on March 1, 2020 and ending on the date the COVID-19 national emergency expires. Examples may include the cost of drive-through windows, indoor, outdoor, or combined air or air pressure ventilation or filtration systems, physical barriers such as a sneeze guard, expansion of additional indoor, outdoor, or combined business space, an onsite or offsite health screening capability, and other similar expenses. This category does not include residential real property or intangible property.

The above list of additional allowable expenses are retroactive as if they were included in the CARES Act. If a borrower has already received loan forgiveness before December 27, 2020, this list of additional expenses is irrelevant.

**Additional payroll costs.** Loan forgiveness depends on at least 60% of the proceeds to be used for payroll costs. Payroll costs include salaries, wages, commissions, cash tips, vacation pay, family medical or sick leave, group health care benefits including insurance premiums, retirement benefits, state or local taxes assessed on the compensation of employees, and the sum of payments of any compensation of a sole proprietor or independent contractor. Payroll costs are limited for self-employed individuals and certain owner employees.

The new law adds group life, disability, vision, and dental insurance benefits to the definition of payroll costs, retroactive as if they were included in the definition under the CARES Act.

**Covered period.** The covered period begins on the date of the origination of a covered loan. Loan forgiveness depends on whether funds are used during this covered period for payroll and other allowable expenses, and whether the employer maintains or quickly rehires employees and maintains salary levels, or demonstrates an inability to rehire employees at their previous levels due to COVID-19 complications. The CARES Act originally limited the covered period to 8 weeks. The PPP Flexibility Act extended the covered period to end on the earlier of either 24 weeks after the loan's origination date or December 31, 2020. The Consolidated Appropriations Act, 2021, retroactively allows the borrower to choose a covered period ending date that occurs during the period beginning on the date that is 8 weeks after the loan origination date and ending on the date that is 24 weeks after the loan origination date. The provision extends the December 31, 2020 covered period deadline for all existing and new PPP loans to March 31, 2021.

**Second draw PPP loans.** The new law creates a new loan called a "PPP second draw" loan for smaller and harder-hit businesses, with a maximum loan amount of \$2 million.

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

- Employ not more than 300 employees,
- Have used or will use the full amount of their first PPP loan, 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 business was not in operation during 2019 but was in operation on February 15, 2020 and had gross receipts during the second, third, or only with respect to an application submitted on or after January 1, 2021, the fourth quarter of 2020, the applicant must demonstrate at least a 25% reduction from the gross receipts of the entity during the first quarter of 2020.

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

Ineligible businesses include financial businesses primarily engaged in the business of lending, passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds, life insurance companies, businesses located in a foreign country, pyramid sale distribution plans, certain gambling activity businesses, businesses engaged in illegal activities, private clubs and businesses which limit the number of memberships for reasons other than capacity, government-owned entities (other than tribal businesses), loan packagers, businesses with an associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude, businesses in which the lender or CDC or any of its associates owns an equity interest, businesses which present live performances of a prurient sexual nature or sells products or services depicting or displaying a prurient sexual nature, businesses that previously defaulted on a federal loan, businesses primarily engaged in political or lobbying activities, speculative businesses such as oil wildcatting, any business created or organized under the laws of the People's Republic of China or Hong Kong which holds at least a 20% economic interest in the business, any person required to submit a registration statement under the Foreign Agents Registration Act of 1938, or a business that receives a grant under the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act.

**Second draw PPP loan terms.** In general, borrowers may receive a loan amount of up to 2.5 times the average monthly payroll costs in the one year prior to the loan or the calendar year. No loan can be greater than \$2 million.

- Seasonal employers may calculate their maximum loan amount based on a 12-week period beginning February 15, 2019 through February 15, 2020.
- New entities may receive loans of up to 2.5 times the sum of average monthly payroll costs.
- 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.
- Businesses with multiple locations that are eligible entities under the initial PPP requirements may employ not more than 300 employees per physical location.
- Waiver of affiliation rules that applied during initial PPP loans apply to a second loan.
- An eligible entity may only receive one PPP second draw loan.
- Fees are waived for both borrowers and lenders to encourage participation.
- For loans of not more than \$150,000, the entity may submit a certification attesting that the entity meets the revenue loss requirements on or before the date the entity submits their loan forgiveness application. Non-profit and veterans organizations may utilize gross receipts to calculate their revenue loss standard.

A seasonal employer is defined as one which:

- 1) Operates for no more than seven months in a year, or
- 2) Earned no more than one third of its receipts in any six months in the prior calendar year.

**Other second draw PPP loan provisions.** Borrowers of a PPP second draw loan are eligible for loan forgiveness equal to the sum of their payroll costs, as well as covered mortgage, rent, and utility payments, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures incurred during the covered period. The 60/40 cost allocation between payroll and non-payroll costs in order to receive full forgiveness continues to apply.

The new law expresses the intent of Congress clarifying that the eligibility of churches and religious organizations is proper. The law prohibits any regulations that otherwise render ineligible businesses principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs.

The new law also extends existing safe harbors on restoring full time equivalent (FTE) and salaries and wages. Specifically, the new law applies the rule that reduces loan forgiveness if the borrower reduces the number of employees retained and reduces employees' salaries in excess of 25%.

**Hold harmless.** A lender may rely on any certification or documentation submitted by a borrower for an initial or second draw PPP loan. No enforcement action may be taken against the lender, and the lender shall not be subject to any penalties relating to loan origination or forgiveness if:

- 1) The lender acts in good faith relating to loan origination or forgiveness, and
- 2) All relevant federal, state, local and other statutory and regulatory requirements are satisfied.

**Simplified application.** To receive loan forgiveness, the borrower must fill out an application that provides information to the lender about the use of the funds. SBA Form 3508, 3508EZ, and 3508S or lender equivalent forms are used for this purpose, which can be long and complex.

The new law creates a simplified application process for loans under \$150,000. Under this simplified application process:

- A borrower receives forgiveness if a borrower signs and submits to the lender a certification that is not more than one page in length, includes a description of the number of employees the borrower was able to retain because of the covered loan, the estimated total amount of the loan spent on payroll costs, and the total loan amount. The borrower must also attest that the borrower accurately provided the required certification and complied with Paycheck Protection Program loan requirements. The SBA must establish this form by January 20, 2021, and may not require additional materials unless necessary to substantiate revenue loss requirements or satisfy relevant statutory or regulatory requirements. Additionally, borrowers are required to retain relevant records related to employment for four years and other records for three years. The borrower may be subject to a review or audit to ensure against fraud.

- At the discretion of the borrower, the borrower may submit demographic information including the sex, race, ethnicity, and veteran status of the borrower (or the owner of the business that borrowed the funds if the business is an entity).
- The SBA must submit to the Senate and House Small Business Committees a report 45 days after enactment detailing their review and forgiveness audit plan to mitigate risk of fraud and provide monthly reviews and audit updates thereafter.
- This provision applies to loans made before, on, or after December 27, 2020, including the forgiveness of the loan.

**Loan application demographic information.** To receive a PPP loan, the borrower must submit a loan application to the lender. The new law allows, at the discretion of the applicant, to submit demographic information of the borrower (or owner of the borrower in the case where the business is an entity), including the sex, race, ethnicity, and veteran status of the borrower (or owner of borrower).

**Eligibility.** The new law clarifies that a business or organization that was not in operation on February 15, 2020 is not eligible for an initial PPP loan or a second draw PPP loan. The law also clarifies that an entity that receives a grant under the Shuttered Venue Operator Grants program is not eligible for a PPP loan.

The new law also clarifies that a publicly traded company is not eligible for a PPP loan.

**Request for an increase in loan amount.** The new law allows borrowers who have already returned all or part of their PPP loan to reapply for the maximum amount applicable if they have not yet received loan forgiveness. The provision also allows borrowers whose loan calculations have increased due to changes in interim final regulations to work with lenders to modify their loan value regardless of whether the loan has been fully disbursed, or if Form 1502 has already been submitted.

**Farmers and ranchers.** The new law establishes a specific loan calculation for the first round of PPP loans for farmers and ranchers who operate as a sole proprietor, independent contractor, self-employed individual, who report income and expenses on a Schedule F (Form 1040), and were in business as of February 15, 2020. These entities may utilize their gross income in 2019 as reported on a Schedule F. Lenders may recalculate loans that have been previously approved to these entities if they would result in a larger loan. This provision applies to PPP loans before, on, or after December 27, 2020, except for loans that have already been forgiven.

**Other recipients of PPP loans.** The new law expands those eligible for PPP loans to seasonal employers, housing cooperatives, FCC licensed newspapers, TV and radio broadcasters, and 501(c)(6) organizations.

**Prohibition on use of loan proceeds for lobbying.** The new law clarifies that any eligible entity is prohibited from using loan proceeds for lobbying activities.

**Conflicts of interest.** The new law requires the President, Vice President, the head of an Executive department, or a member of Congress, as well as their spouses, that receives a PPP loan to disclose this status at forgiveness, or 30 days after the date of forgiveness. The provision also prohibits such individual from receiving a loan in the future.

## **Paycheck Protection Program—Tax Treatment of Expenses**

PPP loans that are forgiven are excluded from the taxpayer's income. On May 2, 2020, the IRS issued Notice 2020-32 which stated that to the extent that a PPP loan is forgiven and that amount is excluded from gross income, the excluded income is considered a class of tax-exempt income under IRC section 265. As a result, any otherwise allowable deduction is disallowed to the extent it is allocable to tax-exempt income. The IRS stated this rule prevents a double tax benefit. Later in the year, the IRS issued Revenue Procedure 2020-51 and Revenue Ruling 2020-27 which restated the guidance in Notice 2020-32, but provided a safe harbor that allowed taxpayers to deduct expenses if the taxpayer's request for forgiveness is denied, or the taxpayer decides never to request forgiveness of the covered loan. Members of Congress objected to this guidance claiming it was their intent that taxpayers should be able to deduct expenses that are paid for with PPP loan proceeds, even if those proceeds are later forgiven and excluded from gross income.

The new law clarifies that gross income does not include any amount that would otherwise arise from the forgiveness of a PPP loan. The new law also reverses the IRS interpretation of related expenses. The new law clarifies that no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied by reason of the exclusion from gross income under the PPP loan program.

In the case of a partnership or S corporation, a PPP loan that is forgiven is treated as tax-exempt income and will thus increase a partner's or S corporation shareholder's basis in the partnership or S corporation.

## **Payroll Tax Credits for Paid Sick and Family Leave**

The Families First Coronavirus Response Act (FFCRA), signed into law on March 18, 2020, requires employers to provide their employees with up to 80 hours of paid sick leave if an employee is unable to work or telework due to any of the following:

- 1) The employee is under a federal, state, or local quarantine or isolation order related to COVID-19,
- 2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19,
- 3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis,
- 4) The employee is caring for an individual who is subject to a federal, state, or local quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19,
- 5) The employee is caring for the child of such employee if the school or place of care of the child has been closed, or the child care provider of such child is unavailable, due to COVID-19 precautions, or
- 6) The employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

An employee unable to work due to (1), (2), or (3) above is entitled to up to \$511 per day with a \$5,110 per employee maximum. An employee unable to work due to (4), (5), or (6) above is entitled to up to \$200 per day with a \$2,000 per employee maximum.

The law also requires employers to provide their employees who are unable to work or telework with up to 10 weeks of additional paid family leave for reason number (5) above, limited to \$200 per day, or \$10,000 per employee maximum. Thus, employees described under this provision qualify for a combined 12 weeks of paid sick and family leave (\$12,000 per employee maximum).

To reimburse employers for the cost of providing paid sick and family leave, the employer is entitled to a 100% payroll tax credit, dollar for dollar equal to the amount of paid sick and paid family leave that is required under this provision. The employer takes this credit on Form 941, *Employer's Quarterly Federal Tax Return*, or similar federal employment tax return such as Form 944 or Form CT-1.

Self-employed individuals are also entitled to an equivalent tax credit using Form 7202, *Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals*, based on similar circumstances in which the self-employed individual is unable to work. The self-employed individual qualifies if the individual would have been entitled to receive paid sick leave or paid family leave under one of the above circumstances as an employee of an employer, other than himself or herself.

Under Notice 2020-21, these refundable credits apply to wages paid for the period beginning April 1, 2020, and ending December 31, 2020. The same period is used to determine the equivalent amounts for self-employed individuals.

The Consolidated Appropriations Act, 2021, extends the December 31, 2020 deadline to March 31, 2021 for both the payroll tax credit for paid sick and family leave, and the equivalent tax credit for self-employed individuals.

#### **Author's Comment**

The new law did not increase or extend the per employee maximums. The credit limitations are not a per year limitation. The law says per employee in the aggregate.

### **Prior Year Earnings Election for Self-Employed Taxpayers**

Self-employed individuals are entitled to equivalent tax credits as employers based on similar circumstance listed in the Families First Coronavirus Response Act (FFCRA) for paid sick leave and paid family leave (see *Payroll Tax Credits for Paid Sick and Family Leave* above). The credit is claimed on Form 7202, *Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals*.

There is a limitation that applies to self-employed individuals. For purposes of the \$511 per day credit, the credit is limited to self-employed income divided by 260. For purposes of the \$200 per day credit, the credit is limited to 67% of the above limit.

### Example #1

Mark is a self-employed musician. For tax year 2020, because he was unable to work for most of the year due to music venues being shut down because of the pandemic, his total self-employment income reported on line 31 of Schedule C (Form 1040) is only \$5,000. His \$511 per day limit is limited to \$19 per day ( $\$5,000 \div 260$ ), and his \$200 per day limit is limited to \$13 per day ( $\$19 \times 67\%$ ).

The new law allows a self-employed individual to elect to use prior year net earnings from self-employment for purposes of this calculation.

### Example #2

Assume in Example #1 that Mark's self-employment income for 2019 was \$75,000, which represents a normal year of earnings. Mark elects to use his 2019 net self-employment earnings instead of 2020 for purposes of this calculation. As a result, his \$511 per day limit is limited to \$288 per day ( $\$75,000 \div 260$ ), and his \$200 per day limit is limited to \$193 per day ( $\$288 \times 67\%$ ).

This election is effective as if it was included in the provisions of the Families First Coronavirus Response Act.

## Employee Retention Credit

The Employee Retention Credit has been used for various disaster relief over the years to provide an incentive for employers to retain and pay employees, even though their businesses were shut down due to damage from the disaster. The CARES Act extended and increased this credit for purposes of the COVID-19 pandemic, which was declared by the President to be a national emergency on March 13, 2020.

Under the CARES Act, employers receive a fully refundable tax credit equal to 50% of qualified wages, including allocable qualified health plan expenses, that eligible employers pay their employees. The maximum amount of qualified wages taken into account with respect to each employee for all calendar quarters is \$10,000 ( $\$10,000 \times 50\% = \$5,000$  maximum credit per employee). Eligible employers are those that either fully or partially suspend operations due to orders from an appropriate government authority limiting commerce, travel, or group meetings for commercial, social, religious, or other purposes, due to COVID-19, or experience a significant decline in gross receipts during a calendar quarter, when compared to the same calendar quarter in the previous year. The CARES Act version of the Employee Retention Credit applied to qualified wages paid after March 12, 2020, and before January 1, 2021.

**Extended expiration date.** The Consolidated Appropriations Act, 2021, extends the January 1, 2021 expiration date to July 1, 2021 and eliminates the reference "during calendar year 2020" by changing it to say: "During the calendar quarter for which the credit is determined..."

**Credit rate increase.** The new law increases the 50% credit limit to 70%, effective for calendar quarters beginning after December 31, 2020.

**Maximum credit.** The new law changes the \$10,000 limit to apply on a per calendar quarter per employee basis rather than a limit for all calendar quarters, effective for calendar quarters beginning after December 31, 2020.

**Significant decline in gross receipts.** Under the CARES Act, a significant decline in gross receipts during any calendar quarter in 2020 meant an employer's gross receipts were less than 50% of gross receipts for the same calendar quarter in 2019. Effective for calendar quarters after December 31, 2020, a significant decline in gross receipts means less than 80% of gross receipts for the same calendar quarter in 2019. If the employer was not in existence as of the beginning of the same calendar quarter in 2019, the employer can use the same calendar quarter in 2020 to determine whether a 2021 calendar quarter experienced a significant decline in gross receipts.

**Election to use gross receipts from preceding calendar quarter.** The employer is allowed to elect to use the immediately preceding calendar quarter instead of the corresponding calendar quarter in calendar year 2019 for purposes of determining a significant decline in gross receipts, effective for calendar quarters beginning after December 31, 2020.

**100 Employee rule increased to 500.** Under the CARES Act, if the eligible employer averaged more than 100 full-time employees in 2019, qualified wages were the wages paid to an employee for time that the employee could not provide services due to a full or partial suspension of operations by order of a governmental authority or due to a significant decline in gross receipts. Qualified wages for this purpose were limited to what the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship.

If the employer averaged 100 or fewer full-time employees in 2019, qualified wages were the wages paid to any employee during the period of economic hardship, including wages paid to those who were still working, and including any increase in employee pay during the time of economic hardship (for example, employers who increased front line worker pay for having to work under hazardous conditions).

Effective for calendar quarters beginning after December 31, 2020, the 100 employee threshold is increased to 500 employees. The provision also eliminates the qualified wage limitation on larger employers that limited qualified wages to what the employee would have received working an equivalent duration during the 30 days immediately preceding the period of economic hardship.

**Governmental employers.** Under the CARES Act, governmental employers were not allowed to claim the Employee Retention Credit (except for tribes or tribal entities that operate a business). Effective for calendar quarters beginning after December 31, 2020, 501(c)(1) organizations and certain colleges, universities, and medical or hospital care providers are eligible for the credit.

**Denial of double benefit.** Under the CARES Act, the credit was not allowed for the same wages claimed under the work opportunity credit (IRC §51) or the employer credit for paid family and medical leave (IRC §45S).

The new law expands the denial of a double benefit to include the credit for increasing research activities (IRC §41), the Indian Employment Credit (IRC §45A), the employer wage credit for employees who are active duty members of the uniformed services (IRC §45P), and the empowerment zone employment credit (IRC §1396).

**Advance payments.** Under the CARES Act, the Employee Retention Credit was a credit reported on the employer's federal employment tax return (for example, Form 941). Employers could reduce payroll deposits that would otherwise be due by the amount of the anticipated credit. Employers also had the option to request an advance of the credit from the IRS by filing Form 7200, *Advance Payment of Employer Credits Due to COVID-19*.

For calendar quarters beginning after December 31, 2020, the ability to request an advanced payment no longer applies, with the exception of certain small employers. For employers with not more than 500 employees, the employer may elect to receive an advance payment of the credit for such quarter in an amount not to exceed 70% of the average quarterly wages paid by the employer in calendar year 2019. In the case of an employer who hires seasonal workers, the employer may elect to substitute "the wages for the calendar quarter in 2019 which corresponds to the calendar quarter to which the election relates" for "the average quarterly wages paid by the employer in calendar year 2019." If the employer was not in existence in 2019, the employer uses 2020 quarters to figure the 500 employee limit and average quarterly wages paid. Any advanced payment must be reconciled and reduces the credit claimed on the employer's federal payroll tax return. If the advance exceeds the credit allowed, the payroll tax liability is increased by the amount of such excess.

## Deferred Payroll Taxes

On August 8, 2020, the President issued a memorandum directing the IRS to use its authority under IRC section 7508A to defer the withholding, deposit, and payment of certain payroll tax obligations. In response, the IRS issued Notice 2020-65 on August 28, 2020. The notice allowed employers the option to defer the employee portion of Social Security tax from September 1, 2020 through December 31, 2020, for eligible employees who earned less than \$4,000 per biweekly pay period (or the equivalent threshold amount with respect to other pay periods) on a pay-period-by-pay-period basis.

### Author's Comment

Employers were generally not required to defer the withholding of employee Social Security taxes. However, an IRS employee told attendees at a recent tax webinar that federal government employers were required to follow the President's memorandum and defer tax withholding for all federal government employees.

The notice stated that any deferred amount should be ratably withheld from the employees' pay during the period of January 1, 2021 through April 30, 2021.

The new law extends the repayment period through December 31, 2021. Penalties and interest on deferred unpaid tax liability will not begin to accrue until January 1, 2022.

### **Residential Rental Property Depreciation [IRC §168(g)]**

Residential rental property is 27.5-year property under the general depreciation system (GDS) and 30-year property under the alternative depreciation system (ADS). In general, a business with more than \$26 million in gross receipts (2020 inflation adjusted amount) is subject to the business interest expense deduction limitation [IRC §163(j)]. Taxpayers who elect under IRC section 163(j)(7) to be an electing real property trade or business or an electing farming business are not subject to the business interest deduction limitations. An example of an electing real property trade or business is a qualified residential living facility that consists of multiple rental dwelling units and provides assisted living, nursing, or other routine medical services, and the rental period is expected to be longer than 90 days. If the taxpayer makes this election, the taxpayer must depreciate the real property under the ADS rules (30-year straight line depreciation). These rules were first enacted under the Tax Cuts and Jobs Act (TCJA) and were generally effective starting in 2018.

The new law amends the TCJA and says residential rental property placed in service before January 1, 2018 by an electing real property trade or business is 30-year property under ADS for tax years beginning after December 31, 2017.

### **Educator Expense Deduction [IRC §62(a)(2)(D)(ii)]**

Elementary and secondary school teachers are allowed to deduct up to \$250 of unreimbursed classroom expenses as an above-the-line deduction (a deduction in arriving at AGI). Eligible expenses include the cost of books, supplies, computer equipment including related software, other equipment, and supplementary materials used by the eligible educator in the classroom.

The new law adds personal protective equipment, disinfectant, and other supplies used for the prevention of the spread of COVID-19 as eligible expenses, effective for expenses paid or incurred after March 12, 2020.

### **Emergency Financial Aid Grants**

The CARES Act provided for emergency financial aid grants to college and university students. Effective for qualified emergency financial aid grants made after March 26, 2020, such grants are not included in the gross income of a student receiving such grant. The grant also does not reduce the amount of qualified tuition and related expenses for purposes of the American Opportunity and Lifetime Learning credits under IRC section 25A. This provision does not apply to any portion of a payment for teaching, research, or other services required as a condition for receiving the grant.

### **Tax Treatment of Loan Forgiveness under CARES Act**

The new law clarifies that gross income does not include forgiveness of certain loans, emergency EIDL grants, and certain loan repayment assistance, as provided by the CARES Act. The provision also clarifies that deductions are allowed for otherwise deductible expenses paid with the amounts not included in income, and that tax basis and other attributes will not be reduced as a result of those amounts being excluded from gross income. This provision is effective for tax years ending after March 27, 2020. A similar treatment applies for Targeted EIDL advances and Grants for Shuttered Venue Operators, effective for tax years ending after December 27, 2020.

### **Information Reporting Requirements**

The new law gives the IRS authority to waive information filing requirements for any amount excluded from income by reason of the exclusion of covered loan amount forgiveness from taxable income, the exclusion of emergency financial aid grants from taxable income or the exclusion of certain loan forgiveness and other business financial assistance under the CARES Act from income.

### **Health and Dependent Care Flexible Spending arrangements [IRC §125 and §129]**

Health flexible spending arrangements (FSAs) are employer plans that reimburse employees for medical expenses. FSAs are usually funded through voluntary salary reduction agreements where the employee contributes part of his or her wage to the plan on a pre-tax basis. Employers may also contribute to the plan on behalf of employees on a pre-tax basis. Withdrawals that are used to reimburse qualified medical expenses are tax free to the employee.

A drawback to this type of plan is that amounts in the account at the end of the plan year are generally forfeited. Plans are allowed to provide for a grace period of up to 2½ months after the end of the plan year in which expenses incurred during the grace period can be paid from the previous year's balance. The carryover amount is generally limited to \$500 of any unused year-end balance. Employers are not required to allow their plan to carryover unused year-end balances.

A similar rule allows taxpayers to exclude from income dependent care benefits received under an employer plan that are used to pay for child and dependent care expenses.

The new law allows employers to amend their health flexible spending arrangement or dependent care flexible spending arrangement so that any unused amounts remaining in the account at the end of the year for the plan year ending in 2020 may be carried over to the plan year ending in 2021. For plan years ending in 2021, any unused amounts remaining in the account at the end of the year may be carried over to the plan year ending in 2022. Thus, the carryover under this new law is not limited to \$500.

The new law also extends the grace period for using carryover amounts from 2½ months to up to 12 months after the end of plan year.

The new law also allows an employee who ceases to be a participant in the plan during calendar year 2020 or 2021 to continue to receive reimbursements from unused benefits or contributions through the end of the plan year in which the participant ceases to be a participant, including any carry overs during the grace period.

**Age limitation for child and dependent care expenses.** In general, the exclusion for dependent care benefits under an employer plan are limited to care of a qualifying child who is under age 13 and can be claimed as a dependent by the taxpayer.

The new law provides a special rule for dependent care flexible spending arrangements where the dependent aged out during the COVID-19 pandemic. If the employee was enrolled in the plan year in which the end of the regular enrollment period for such plan year was on or before January 31, 2020, and had one or more dependents who attained the age of 13 during such plan year, then any unused balance in the account that is carried over can be used to reimburse child and dependent care expenses for a qualifying child who is under age 14.

**Change in election amount.** The new law also allows employees to modify prospectively their election amount for plan years ending in 2021 without regard to any change in status, provided the amount does not exceed the applicable dollar limitation for the plan.

### **Money Purchase Pension Plans**

The CARES Act temporarily allows individuals to make penalty-free withdrawals from certain retirement plans for coronavirus-related expenses, permits taxpayers to pay the associated tax over three years, allows taxpayers to recontribute withdrawn funds, and increases the allowed limits on retirement plan loans. The Consolidated Appropriations Act, 2021, clarifies that money purchase pension plans are included in the retirement plans qualifying for these temporary rules. The provision applies retroactively as if included in the CARES Act.

### **In Service Retirement Plan Distributions [IRC §401(a)(36)]**

In general, an employee who participates in an employer sponsored retirement plan cannot withdraw funds from the plan until the employee separates from service. An exception applies for certain in-service retirement plan distributions, if the plan allows for such distributions. If an employee attains the age of 59½ and the plan permits in-service distributions, the employee may take a distribution from his or her qualified retirement plan even though the employee has not yet separated from service.

Under the new law, for certain employees in the building and construction industry, the age 59½ requirement is reduced to age 55 in the case of a multiemployer plan for individuals who were participants in such plan on or before April 30, 2013, if:

- 1) The plan was in existence before January 1, 1970, and
- 2) Before December 31, 2011, at a time when the plan provided that distributions may be made to an employee who had attained age 55 and who was not separated from employment at the time of such distribution, the plan received at least one written determination from the IRS that the plan constituted a qualified trust under IRC section 401.

The amendment made under this provision applies to distributions made before, on, or after December 27, 2020.

## **Farming NOLs**

The Tax Cuts and Jobs Act (TCJA) eliminated the carryback rules for NOLs, with an exception for farming losses. Under the TCJA, an NOL is carried forward indefinitely until used up, subject to an 80%-of-taxable-income limitation in each carry forward year. Farmers were still allowed to carry back a farming loss 2 years, and then forward, until used up, subject to the 80%-of-taxable-income limitation. These rules were effective for losses arising in tax years ending after December 31, 2017.

Due to the COVID-19 pandemic and the need to help affected struggling businesses, the CARES Act eliminated the 80%-of-taxable-income limitation and required a 5-year carryback for NOLs occurring in any tax year beginning after December 31, 2017, and before January 1, 2021. Thus, taxpayers who had carried forward their NOLs under the TCJA were required to amend their tax returns to carry back their NOL, or follow certain procedures issued by the IRS to elect out of the 5-year carry back period and continue to carry their losses forward.

The Consolidated Appropriations Act, 2021, provides an exception for farming losses. Under the new law, farmers who elected a 2-year NOL carryback under the TCJA rules may elect to retain that 2-year carryback rather than claim the 5-year carryback provided in the CARES Act. The new law also allows farmers who previously waived an election to carry back a net operating loss to revoke the waiver. The new law eliminates unnecessary compliance burdens for farmers. This provision applies retroactively as if included in the CARES Act.

## **Disaster Tax Relief**

The new law extends disaster tax relief provisions applicable to disasters from prior years to all federally-declared disasters that occurred during the period that began on December 28, 2019 and ended on December 27, 2020. The disaster declaration by the President for such disasters must have been declared sometime during the period beginning on January 1, 2020, and ending February 25, 2021. This new disaster tax relief does not apply to the federally-declared disaster by reason of COVID-19.

### **Author's Comment**

The CARES Act contains similar tax provisions for coronavirus-related distributions from retirement plans. The disaster tax relief in this new law is for other federally-declared disasters that fall outside of the COVID-19 disaster relief provisions.

**Qualified disaster distributions.** A qualified disaster distribution for any tax year is limited to \$100,000, reduced by the aggregate amounts treated as qualified disaster distributions for all prior tax years. This \$100,000 limitation applies separately to each qualified disaster in cases where the individual is affected by more than one qualified disaster.

A qualified disaster distribution is a distribution:

- Made on or after the date the qualified disaster first occurred and before June 25, 2021, and
- Made to an individual whose principal residence at the time of the qualified disaster was located in the qualified disaster area, and
- Made to an individual who sustained an economic loss by reason of such qualified disaster.

**10% early withdrawal penalty.** The 10% early withdrawal penalty under IRC section 72(t) does not apply to any qualified disaster distribution.

**Distributions may be repaid over 3 years.** A qualified disaster distribution may be repaid during the 3-year period beginning on the day after the date on which such distribution was received. An individual can make 1 or more contributions in an aggregate amount not to exceed the amount of the qualified disaster distribution. The repayment must be to an eligible retirement plan to which a rollover contribution of such distribution could be made. Qualified disaster distributions that are repaid under this provision are treated as if they were transferred within 60 days as a direct trustee to trustee transfer.

**Income inclusion spread over 3 years.** A qualified disaster distribution that is required to be included in gross income can be included in income ratably over the 3-taxable-year period beginning with the year of distribution. A taxpayer can elect to not apply this 3-year rule and instead include the full amount in the year of distribution.

**20% withholding rule.** The rule that requires mandatory 20% federal income tax withholding on eligible rollover distributions does not apply to qualified disaster distributions.

**Recontributions of withdrawals for home purchases.** Taxpayers are generally allowed to withdraw money from their retirement plans, subject to certain limitations, for the purchase or construction of a principal residence. If the taxpayer was going to use the money to purchase or construct a home in a qualified disaster area, but did not construct or purchase the home because of the disaster, the money can be recontributed back into a qualified retirement plan.

**Qualified plan loans.** Certain qualified plans may allow participants to take out a loan from the plan. If the plan loan rules are not followed, the outstanding loan amount is treated as a taxable distribution. Loans are generally limited to the lesser of \$50,000 or 50% of the present value (but not less than \$10,000) of the taxpayer's vested benefit under the plan. For loans to qualified individuals affected by a disaster, the \$50,000 limit is increased to \$100,000, and the 50% present value is increased to 100% of the present value. There is also a provision to delay repayments for outstanding loans on or after the first day of the qualified disaster.

**Employee Retention Credit for employers affected by qualified disasters.** The Employee Retention Credit under IRC section 38 is extended to eligible employers affected by 2020 qualified disasters. The credit is 40% of qualified wages paid to eligible employees. Eligible wages are limited to \$6,000, reduced by the amount of qualified wages taken into account for any prior tax year. An eligible employer is an employer which conducted an active trade or business in a qualified disaster zone at any time during the disaster, and

the business became inoperable because of the qualified disaster. Eligible wages include wages paid without regard to whether the employee performs no services, performs services at a different location, or performs services before significant operations resume. Wages for purposes of this provision do not include any wages taken into account under the Employee Retention Credit provisions of the CARES Act (no double benefit).

**C corporation charitable contributions.** C corporation charitable contributions are generally limited to 10% of taxable income. The CARES Act increased this limitation to 25% of taxable income for qualified contributions. The new law increase this limitation to 100% for qualified disaster relief contributions. For purposes of qualified disaster relief contributions, the 25% CARES Act limit applies first to qualified contributions without regard to any qualified disaster relief contributions, and then separately to such qualified disaster relief contribution. A qualified disaster relief contribution is a contribution paid between January 1, 2020 and February 25, 2021 for relief efforts in one or more qualified disaster areas.

**Qualified disaster-related personal casualty losses.** If the taxpayer does not itemize deductions, the standard deduction is increased by the net disaster loss. A net disaster loss means the excess of qualified disaster-related personal casualty losses over personal casualty gains. Qualified disaster-related personal casualty losses are casualty losses which arise in a qualified disaster area.

### **Emergency Rental Assistance**

The new law appropriates \$25 billion to state and local governments to provide emergency rental assistance to eligible households. The law also extends the CDC eviction moratorium until January 31, 2021.

### **Low-Income Housing Tax Credit [IRC §42]**

The low-income housing tax credit subsidizes the acquisition, construction, and rehabilitation of affordable rental housing for low and moderate income tenants. The federal government issues tax credits to state housing agencies who then award the credits to private developers of affordable rental housing projects. Congress sets a limit on the amount of low-income housing tax credits that can be allocated in any year.

The new law increases the state housing credit ceiling for 2021 and 2022 for buildings located in a qualified disaster zone. Certain limitations apply. The new law also extends the placed in service deadline for buildings located in a qualified disaster zone.

The new law also adds a new minimum credit rate under IRC section 42(b) for new or existing buildings placed in service after December 31, 2020.

### **Tax Provisions Extended**

The new law also extends a number of provisions that were set to expire at the end of 2020. The following provisions are extended through the end of 2025.

- New Markets Tax Credit [IRC §45D],
- Work Opportunity Credit [IRC §51],

- Cancellation of qualified principal residence indebtedness exclusion from gross income [IRC §108],
- Empowerment zone tax incentives [IRC §1391(d)],
- Employer credit for paid family and medical leave [IRC §45S], and
- Educational assistance program to include student loan interest paid [IRC §127]

The new law extends the following provisions through the end of 2021.

- The treatment of mortgage insurance premiums as qualified residence interests [IRC §163(h)(3)(E)(iv)(I)],
- Health coverage tax credit [IRC §35],
- Indian employment credit [IRC §45A],
- Race horse two years old or younger treated as 3-year property instead of 7-year property [IRC §168(e)(3)(A)(i)],
- Indian reservation property accelerated depreciation recovery periods [IRC §168(j)],
- Nonbusiness energy property credit [IRC §25C],
- Alternative motor vehicle credit for qualified fuel cell motor vehicles [IRC §30B(k)(1)],
- Alternative fuel vehicle refueling property credit [IRC §30C],
- Electric vehicle credit for highway-capable 2-wheeled vehicles [IRC §30D],
- Energy efficient home credit [IRC §45L], and
- Alternative fuel excise tax credit [IRC §6426(d)]

The new law also extends the residential energy efficient property credit under IRC section 25D through the end of 2023.

The new law also extends the phase-out of certain energy credits under IRC section 48, such as the credit for solar energy property.

The new law also makes the following provisions permanent.

- The 7.5% AGI limitation for medical expenses [IRC §213],
- The energy efficient commercial building property deduction [IRC §179D], and
- Benefits provided to volunteer firefighters and emergency medical responders [IRC §139B].

### **EIDL Advance Program**

The CARES Act introduced the Economic Injury Disaster Loan Emergency Advance (EIDL), administered by the SBA, which provided up to \$10,000 to small businesses to help recover from the temporary loss of revenue as a result of COVID-19. These advances did not have to be repaid. The new law provides additional funding for this program for eligible entities located in low-income communities. The covered period for EIDL grants is also extended through December 31, 2021.

The new law also repeals the CARES Act requirement to deduct the amount of their EIDL advance from their PPP forgiveness amount, and allows EIDL borrowers to also apply for a PPP loan.

### **No Surprises Act**

The new law also includes a provision which prohibits a surprise medical bill where a patient receives a separate, sizable medical bill from an out-of-network health provider while receiving treatment at an in-network facility. Many of these changes are made in the Internal Revenue Code, although not applicable to individual tax preparation.