2021 NATIONAL INCOME TAX WORKBOOK

CHAPTER 15: 2021 NEW AND EXPIRING LEGISLATION

Land Grant University Tax Education Foundation

LEARNING OBJECTIVES AND INTRODUCTION

P. 565

Learning Objectives
- Advise clients about new legislation: late 2020 and in 2021
- Identify individual and business income tax exclusions, deductions, and credits that expire in 2021 and future years

Introduction
- The Consolidated Appropriations Act, 2021 (CAA)
- COVID-Related Tax Relief Act of 2020 (COVIDTRA)
- Taxpayer Certainty and Disaster Tax Relief Act of 2020 (TCDTRA)
- American Rescue Plan Act of 2021 (ARPA)
- Other notices and procedures providing guidance

NEW LEGISLATION

P. 566

DISCLAIMER:

EDITED AND CONDENSED

READ THE ENTIRE TEXT BEFORE RELYING ON IT

AGRICULTURAL AND NATURAL RESOURCE ISSUES P. 566

COVIDTRA § 281 I.R.C. § 172

- For any tax year beginning in 2018, 2019, or 2020 can elect to retain the 2-year NOL carryback instead of the 5-year carryback in the CARES Act. Farmers may also revoke an election to waive the NOL carryback.

Rev. Proc. 2021-14 I.R.C. § 172

- Provides guidance regarding elections and revocations of carrybacks for 2018, 2019, and 2020 farming losses.

AGRICULTURAL AND NATURAL RESOURCE ISSUES P. 566

Notice 2020-74 I.R.C. § 1033

- Notice 2020-74 explains the circumstances under which the 4-year replacement period is extended for livestock sold because of drought.
- The extension will continue until the end of the taxpayer's first tax year ending after a drought-free year for the applicable region.
- The application region includes any county on the list.

BUSINESS ENTITIES - PARTNERSHIPS P. 567

Notice 2020-75 I.R.C. § 164 - SALT DEDUCTION LIMITATION

The Department of the Treasury and the IRS intend to issue proposed regulations to clarify that -

state and local income taxes imposed on and paid by a partnership or an S corporation on its income are allowed as a deduction by the partnership or S corporation in computing its non–separately stated taxable income or loss for the tax year of the payment.

Thus, the specified income tax payments are not included when applying the SALT deduction limitation to an individual who is a partner in the partnership or a shareholder of the S corporation.

BUSINESS ENTITIES – TERMINATED S CORP P. 567

T.D. 9914 I.R.C. §§ 1371, 1377

- The final regulations affect C corporations that were formerly S corporations and the shareholders of those corporations.
- Final regulations provide guidance on the definition of an eligible terminated S corporation and rules relating to distributions of money by such a corporation after the post-termination transition period.
- The final regulations also amend current regulations to extend the treatment of distributions of money during the post-termination transition period to all shareholders of the corporation and clarify the allocation of current earnings and profits to distributions of money and other property.

BUSINESS ENTITIES - S CORPORATIONS P. 567

Comment Request for Form 7203, S Corp Shareholder Stock and Debt Basis Limitations

- I.R.C. § 1366 determines the shareholder's tax liability from an S corporation.
- I.R.C. § 1367 details the adjustments to basis, including the increase and decrease in basis, income items included in basis, the basis of indebtedness, and the basis of inherited stock
- Shareholders will use Form 7203 to calculate their stock and debt basis, and substantiate that losses and deductions are accurately claimed.

TAX EXEMPT ORGANIZATIONS P. 568

Form 1024-A I.R.C. § 501

- The IRS has revised Form 1024-A, Application for Recognition of Exemption Under Section 501(c)(4), and its instructions for electronic filing.
- Applications for recognition of exemption on Form 1024-A must be submitted electronically online at www.pay.gov.

TAX EXEMPT ORGANIZATIONS

P. 568

Memorandum for Exempt Organizations Rulings and Agreements Employees I.R.C. § 501

- Consider relief requests consistent with Rev. Proc. 2021-5, 2021-1 I.R.B. 250 (updated annually).
- Do not grant relief if it would result in the organization's exemption being automatically revoked effective before the date of application.
- Do not grant relief if the period of limitations on assessment under I.R.C. § 6501(a) for any tax year for which the organization claims exemption has expired before the date of the application.
- Do not consider relief for an organization that is not required to apply for recognition of exempt status to be tax exempt.

TAX EXEMPT ORGANIZATIONS

P. 568

C.C.M. 20205201F I.R.C. § 501

- The IRS concludes that section 501(c)(3) organizations that are eligible to self-declare are not eligible to request relief from the 27-month filing requirement because they did not fail to make a required regulatory election.
- In addition, applicants who have not filed required information returns for years before their application for exemption are not eligible for the late-filing relief.

TAX EXEMPT ORGANIZATIONS

P. 568

T.D. 9933 I.R.C. § 512

- Final regulations provide guidance on UBTI if more than one trade or business.
- Final regulations clarify that the definition of an *unrelated trade or business* applies to individual retirement accounts.
- Additionally, the final regulations provide that inclusions of subpart F income and global intangible low-taxed income are treated in the same manner as dividends for purposes of determining UBTI.

BUSINESS ISSUES - CREDITS

PP. 569-570

ARPA § 9641 I.R.C. §§ 3131, 3132

- There is a refundable **employer credit** against the employer's share of Medicare tax for each calendar quarter in an amount equal to 100% of the **qualified sick leave wages and qualified family leave wages** paid by the employer for that quarter. The credit applies to wages paid for the period beginning on April 1, 2021 and ending on September 30, 2021.
  - Eligible Employers
  - Qualified Leave
  - Amount of the Credit
  - Claiming the Credit
  - No Double Credit

BUSINESS ISSUES - CREDITS

P. 570

Employee Retention Credit TCDTRA § 206, 207; CARES Act § 2301

- Beginning on January 1, 2021, the following changes apply to the **employee retention credit**:
  - The credit rate increases from 50% to 70% of qualified wages.
  - Eligibility for the credit expands by reducing the required year-over-year gross receipts decline from 50% to 20%.
  - The limit on per-employee creditable wages increases from $10,000 for the year to $10,000 for each quarter.
  - The 100-employee threshold for determining the relevant qualified wage base increases to employers with 500 or fewer employees.
  - Eligible employers include an organization that is described in section 501(c)(1) and exempt from tax under section 501(a), a college or university, or a government entity that provides medical or hospital care.

BUSINESS ISSUES - CREDITS

P. 570

ARPA § 9651 I.R.C. § 3134

- ARPA adds I.R.C. § 3134, which extends and modifies **the employee retention credit** for calendar quarters beginning after June 30, 2021. The employee retention credit under ARPA is a refundable credit against Medicare taxes for each calendar quarter in an amount equal to 70% of the employee's qualified wages. The qualified wages that may be considered cannot exceed $10,000 per quarter. The credit rate increases from 50% to 70% of qualified wages.
- Two new categories
  - Severely distressed employers
  - Recovery startup businesses

BUSINESS ISSUES - DEDUCTIONS

PP. 570-571

T.D. 9946 I.R.C. § 162

- In general, **certain fine, penalties and other amounts paid** or incurred for routine investigations or inquiries, such as audits or inspections, required to ensure compliance with rules and regulations applicable to the business or industry, which are not related to any evidence of wrongdoing or suspected wrongdoing, are not disallowed.
- The final regulations also revise the definition of *restitution, remediation of property,* and *amounts paid to come into compliance with a law.*
- The final regulations do not treat disgorgement of net profits or a forfeiture as, per se, nondeductible.

BUSINESS ISSUES - DEDUCTIONS

P. 570

T.D. 9916 I.R.C. § 168 - **Bonus depreciation**

- The final regulations provide the following:
  - Rules relevant to the definition of *qualified property* (discussed later)
  - Rules for consolidated groups
  - Rules regarding components acquired or self-constructed <u>after</u> 9/27/17 for larger self-constructed property for which manufacture, construction, or production began <u>before</u> 9/28/17
  - Rules regarding the application of the mid-quarter convention, as determined under section 168(d)
  - Changes to the definitions in the 2019 final regulations for the terms *qualified improvement property, predecessor*, and *class of property* (discussed later)

BUSINESS ISSUES - DEDUCTIONS

P. 571

T.D. 9916 I.R.C. § 168, Cont.

- The final regulations provide the following:
  - Qualified Property
    - 5 calendar years prior to year property is placed into service, was there a depreciable interest
  - Qualified Improvement Property
    - Must be made by the taxpayer
  - Predecessor
    - Defines predecessor to include transferor to a transferee w/ carryover basis
  - Class of Interest
    - Defines class of property as partner specific

BUSINESS ISSUES - DEDUCTIONS

P. 572

Rev. Proc. 2020-50 I.R.C. § 168

- This revenue procedure provides guidance for taxpayers wishing to apply Treas. Reg. §§ 1.168(k)-2 and 1.1502-68 (the 2020 final regulations for bonus depreciation, discussed earlier), or to rely on the 2019 proposed regulations or the 2019 final regulations under I.R.C. § 168(k).

BUSINESS ISSUES - DEDUCTIONS

P. 572

TCDTRA § 202 I.R.C. § 168

- The recovery period for residential rental property placed in service before January 1, 2018, and held by an electing real property trade or business [as defined in I.R.C. § 163(j)(7)(B)] is 30 years.
- This provision applies only if the alternative depreciation system did not apply to such property prior to January 1, 2018.

BUSINESS ISSUES - DEDUCTIONS

P. 572

Rev. Proc. 2021-28 I.R.C. § 168

- The TCDTRA, enacted in December 2020 (described above), retroactively allows a 30-year recovery period under the alternative depreciation system (ADS) for certain residential rental property placed in service before January 1, 2018; held by an electing real property trade or business as defined in I.R.C. § 163(j)(7)(B); and not previously subject to the ADS.
- This revenue procedure explains how a taxpayer changes its method of computing depreciation to comply with the retroactive 30-year recovery period.

BUSINESS ISSUES - DEDUCTIONS

P. 573

Rev. Proc. 2021-29

- This draft revenue procedure allows an eligible partnership to file an amended Form 1065, U.S. Return of Partnership Income, and furnish a corresponding Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc., to each of its partners for tax years beginning in 2018, 2019, and 2020 to change its recovery period to the 30-year period for residential rental property (discussed previously). The amended return is an alternative option to filing an administrative adjustment request (AAR).

BUSINESS ISSUES - DEDUCTIONS

P. 573

I.R. 2021-27; TCDTRA § 304 I.R.C. § 170

- The TCDTRA temporarily increased the limit for **corporate charitable contributions**. The limit is up to 100% of a corporation's taxable income (formerly 25% for 2020). The increased limit applies to cash contributions that were paid during the period beginning on January 1, 2020, and ending on February 25, 2021 for relief efforts in qualified disaster areas.
  - Qualified disaster areas are those in which a major disaster has been declared under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.
  - A corporation elects the increased limit by computing its deductible amount of qualified contributions using the increased limit and by claiming the amount on its return for the tax year in which the contribution was made.
  - Must have contemporaneous written acknowledgement which includes a disaster relief statement (IRS won't challenge a deduction for a contribution made before relief before 2/1/2021 because of no relief statement).

BUSINESS ISSUES - DEDUCTIONS

P. 573

Notice 2021-42 I.R.C. § 170

- Under **leave-based donation programs**, employees can elect to forgo vacation, sick, or personal leave in exchange for cash payments made by their employers to section 170(c) organizations.
- Cash payments an employer makes to section 170(c) organizations in exchange for vacation, sick, or personal leave that its employees elect to forgo will not be treated as wages (or compensation, as applicable) to the employees or otherwise be included in the employee's gross income if the payments are made for the relief of victims of the COVID-19 pandemic in the affected geographic areas.
- Electing employees may not claim a charitable contribution deduction for the value of the leave.
- An employer can deduct the cash payments under the rules of I.R.C. § 162 or 170.

BUSINESS ISSUES - DEDUCTIONS

PP. 574-575

T.D. 9925 I.R.C. § 274

- Final regulations provide guidance under I.R.C. § 274 regarding the elimination of the deduction for **expenditures related to entertainment**, amusement, or recreation activities. The final regulations also address the limitation on the **deduction of food and beverage expenses** under I.R.C. § 274(k).
  - Business Meals Provided at or during an Entertainment Activity
  - Business Meal Expenses
  - Travel Meal Expenses
  - Exceptions to the Limitations
    - See list of 5
  - Definitions

BUSINESS ISSUES - DEDUCTIONS

P. 575

Notice 2021-25; TCDTRA § 210 I.R.C. § 274

- **100% deduction for business meal food and beverage expenses**, including any carryout or delivery meals, provided by a restaurant that are paid or incurred in 2021 and 2022
  - The term *restaurant* means a business that prepares and sells food or beverages to retail customers for immediate consumption, regardless of whether the food or beverages are consumed on the business's premises.
  - A restaurant does not include a business that primarily sells prepackaged food or beverages not for immediate consumption, such as a grocery store; specialty food store; beer, wine, or liquor store; drug store; convenience store; newsstand; or a vending machine or kiosk

BUSINESS ISSUES - DEDUCTIONS

P. 575

T.D. 9939 I.R.C. § 274

- Final regulations address the elimination of the deduction under section 274 for **expenses related to certain transportation and commuting benefits provided by employers to their employees**.
  - The final regulations also state that the disallowance under section 274(l) does not apply to business expenses under section 162(a)(2) paid or incurred while traveling away from home.
  - The final regulations clarify that a transportation or commuting expense is necessary (and deductible) for ensuring the safety of the employee if unsafe conditions, as described in Treas. Reg. § 1.61-21(k) (5), exist for the employee.
  - One of the factors indicating whether it is unsafe is the history of crime in the geographic area surrounding the employee's workplace or residence at the time of day the employee must commute.

BUSINESS ISSUES - INCOME P. 576

ARPA § 9672

- Targeted economic injury disaster loan **(EIDL) advances** received under section 331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Title III of Division N of Pub. L. No. 116-260) are not included in gross income and no deduction is denied, no tax attribute is reduced, and no basis increase is denied, because of that exclusion from gross income.
- For a partnership or S corporation, the excluded amount is treated as tax-exempt income for purposes of I.R.C. §§ 705 and 1366.

BUSINESS ISSUES - INCOME P. 576

COVIDTRA § 278

- Gross income does not include **forgiveness of indebtedness described in section 1109(d)(2)(D) of the CARES Act**, and the exclusion from gross income will not preclude any deduction or basis increase or reduce other tax attributes.
- For a partnership or S corporation, the excluded amount is treated as tax-exempt income for purposes of I.R.C. §§ 705 and 1366.
- Also, gross income does not include any **EIDL or the EIDL advance**, and the exclusion from gross income will not preclude any deduction or basis increase or reduce other tax attributes.
- Similar rules apply to loan assistance payments described in section 1112(c) of the CARES Act.

BUSINESS ISSUES - INCOME P. 576

ARPA § 9673

- **SBA restaurant revitalization grants** are excluded from gross income.
- No deduction is denied, no tax attribute is reduced, and no basis increase is denied, because of that exclusion from gross income.
- For a partnership or S corporation, the excluded amount is treated as tax-exempt income.

BUSINESS ISSUES - INCOME

P. 576

COVIDTRA § 276; Rev. Rul. 2021-2

- COVIDTRA § 276 states that taxpayers whose **PPP loans** are forgiven do not have to include the forgiven amount in income.
- The taxpayer can deduct otherwise deductible expenses paid with the proceeds of a PPP loan, and the forgiveness will not preclude a basis increase or reduce other tax attributes.

BUSINESS ISSUES - INCOME

P. 576

Rev. Proc. 2021-20 Expenses paid with PPP proceeds not deducted

- Rev. Proc. 2021-20 provides a safe harbor for certain taxpayers that received a PPP loan and based on guidance issued by the Treasury Department and the IRS prior to the enactment of COVIDTRA, did not deduct certain otherwise deductible expenses paid or incurred during the taxpayer's tax year(s) ending after March 26, 2020, and on or before December 31, 2020.
- Under the safe harbor, these taxpayers may deduct the expenses in the immediately subsequent tax year instead of filing an amended return or AAR for the taxpayer's 2020 tax year.

BUSINESS ISSUES - INCOME

PP. 576 - 577

T.D. 9935 I.R.C. § 1031

- Final regulations under I.R.C. § 1031 add a definition of *real property*.
  - Property is classified as real property for section 1031 purposes if, on the date it is transferred in an exchange, the property is real property under the law of the state or local jurisdiction in which that property is located.
- The final regulations also provide a rule addressing a taxpayer's receipt of personal property that is incidental to real property the taxpayer receives in an otherwise qualifying like-kind exchange of real property.
  - Incidental (15% or less) personal is disregarded.

BUSINESS ISSUES - LOSSES

P. 577

ARPA § 9041 I.R.C. § 461

- The limitation on excess business losses of noncorporate taxpayers (and the suspension of the limitation on excess farming losses) is extended from January 1, 2026, to January 1, 2027.

BUSINESS ISSUES – MARIJUANA BUSINESSES

P. 578

IRS Marijuana Industry Frequently Asked Questions

The IRS has issued frequently asked questions (FAQs) for marijuana businesses. The questions address income and employment tax filing obligations, payment plans, penalties, deductions, and reporting cash payments over $10,000.

IRS Marijuana Industry Frequently Asked Questions

www.irs.gov/businesses/small-businesses-self-employed/ marijuana-industry-frequently-asked-questions

INDIVIDUAL TAX ISSUES – CREDITS

P. 578

ARPA §§ 9631, 9632 I.R.C. §§ 21, 129

- **Credit** against income tax liability for employment-related expenses for **child and dependent care**.
- Generally, a qualifying individual is
  - a dependent of the taxpayer who is under the age of 13, or
  - a dependent or spouse of the taxpayer if the dependent or spouse is physically or mentally incapable of caring for himself or herself and shares the same principal place of abode with the taxpayer for over one-half the year.
- ARPA § 9631 enhances the I.R.C. § 21 child and dependent care tax credit and makes it refundable for 2021.
- the maximum credit is $4,000 for one qualifying individual and $8,000 for two or more qualifying individuals.
- The credit is subject to a two-part phaseout.

INDIVIDUAL TAX ISSUES – CREDITS

PP. 578-579

ARPA § 9611 I.R.C. § 24

- For 2021 the **child tax credit** (CTC) is increased from $2,000 to $3,000 per child ($3,600 for a child who is under age 6).
- The existing phaseout limits for the $2,000 credit remain the same (beginning at $400,000 MFJ and $200,000 for all other filers).
- The expanded credit ($1,000 per child or $1,600 per child under age 6) begins to phase out for taxpayers with MAGI above $150,000 for MFJ and QW, $112,500 for HoH, and $75,000 for other taxpayers.
- For 2021 the credit is fully refundable. In previous years it was only partially refundable.

INDIVIDUAL TAX ISSUES – CREDITS

PP. 578-579

ARPA § 9611 I.R.C. § 24

- Advance payments of **CTC** began in July 2021
  - 50% of the allowed credit, calculated with reference to prior year return
  - Online portal allows taxpayers to elect not to receive advance payments
  - Will reconcile advance payments to credit on 2021 return. Any advance payment will reduce the credit on the return. Any advance credit in excess of the allowable credit will increase tax due.
- Safe harbor (repayment protection) for excess advance payments that have to be repaid
  - Phaseouts begin MAGI $60,000 MFJ, $50,000 HOH, $40,000 other and are fully phased out at twice these amounts.
  - **Example 15.1**
  - **Example 15.2**

INDIVIDUAL TAX ISSUES – CREDITS

P. 580

Rev. Proc. 2021-24

- Rev. Proc. 2021-24 provides two procedures for individuals who are not otherwise required to file 2020 federal income tax returns to file returns to receive:
  - advance child tax credit payments
  - 2020 recovery rebate credit payments
  - additional 2020 recovery rebate credit payments and
  - third-round economic impact payments

1) These individuals can file simplified returns or
2) They can also file 2020 returns electronically even if they have zero adjusted gross income.

INDIVIDUAL TAX ISSUES – CREDITS P. 580

T.D. 9913 I.R.C. § 24, 152

- Final regulations clarify the **definition of a *qualifying relative*** for purposes of various provisions of the Internal Revenue Code for tax years 2018 through 2025.
- The provisions of the proposed regulations are adopted without substantive change to provide that the exemption amount, for purposes other than a deduction for a personal or dependency exemption under section 151, is $4,150 for tax year 2018, and for tax years 2019 through 2025, the exemption amount, as adjusted for inflation
- The regulations also provide that a payment to a spouse of alimony or separate maintenance is not treated as a payment by the payer spouse for the support of any dependent.

INDIVIDUAL TAX ISSUES – CREDITS PP. 580 - 581

ARPA §§ 9621, 9622, 9623, 9624 I.R.C. § 32

- ARPA expands eligibility for the **earned income tax credit** (EIC).
- No Qualifying Children
- Taxpayers with Qualifying Children
- Modification of Disqualified Investment Income Test $10,000 up from $2,000
- U.S. Possessions
- Temporary Special Rule for Determining Earned Income for Purposes of EIC (using 2019 income instead of 2021)

INDIVIDUAL TAX ISSUES – CREDITS P. 581

Notice 2020-66 I.R.C. § 36B

Medicaid coverage limited to COVID testing and diagnostics is not minimum essential coverage, so doesn't prevent those months for qualifying as coverage months for premium tax credit.

T.D. 9912 I.R.C. § 36B

- Final regulations clarify that the reduction of the personal exemption deduction to zero for tax years beginning after 12/31/17, and before 1/1/26, does not affect an individual taxpayer's ability to claim the PTC.

INDIVIDUAL TAX ISSUES – CREDITS

P. 582

ARPA §§ 9661, 9662, 9663 I.R.C. § 36B

- ARPA § 9661 expands the PTC for tax years beginning in 2021 and 2022. Taxpayers with household income above 400% of the federal poverty level may be eligible for the credit.
- ARPA § 9662 suspends the requirement to repay the excess advance PTC for tax year 2020.
  - A taxpayer's excess advance PTC is the amount by which the taxpayer's advance payments of the PTC exceed his or her PTC. Taxpayers with excess APTC for 2020 are not required to file Form 8962, Premium Tax Credit, or report an excess advance premium tax credit repayment on their 2020 Form 1040 or Form 1040-SR, Schedule 2, line 2.
- ARPA § 9663 adds a special rule to increase eligibility for, and the amount of, the PTC for taxpayers who receive unemployment compensation in 2021.

INDIVIDUAL TAX ISSUES – DEDUCTIONS

P. 582

COVIDTRA § 275; Rev. Proc. 2021-15 I.R.C. § 62

- Eligible educators can deduct $250 ($500 MFJ if both spouses are eligible educators, but not more than $250 each) of unreimbursed expenses paid or incurred after March 12, 2020, for COVID-19 protective items to stop the spread of COVID-19 in the classroom.
- See list of protective items.

INDIVIDUAL TAX ISSUES – DEDUCTIONS

PP. 582-583

T.D. 9907 I.R.C. §§ 162, 164, 170

- Final regulations update the regulations under I.R.C. § 162 to reflect current law regarding the application of section 162 to taxpayers that make payments or transfers for business purposes to entities described in I.R.C. § 170(c).
- The final regulations provide safe harbors under section 162 to provide certainty with respect to the treatment of payments made by business entities to entities described in section 170(c) and provide a safe harbor under section 164 for payments made to an entity described in section 170(c) by individuals who itemize deductions and receive or expect to receive a state or local tax credit in return.
- Section 162 Safe Harbor
- Section 164 Safe Harbor
- Quid Pro Quo Provided by Third Party

INDIVIDUAL TAX ISSUES – DEDUCTIONS

P. 583

Information Letter 2020-0010 I.R.C. §§ 164, 216

- The IRS Office of Chief Counsel states that the limitation for an individual's deduction of state and local taxes under I.R.C. § 164 (the SALT limitation) applies to the deduction under I.R.C. § 216 for a tenant-stockholder's proportionate share of real estate taxes paid or incurred by a cooperative housing corporation.

INDIVIDUAL TAX ISSUES – DEDUCTIONS

P. 583

C.C.A. 2020042015 I.R.C. § 165

- The IRS Chief Counsel advised that the amount paid by a daily fantasy sports player to participate in a daily fantasy sports contest constitutes an amount paid for a wagering transaction under I.R.C. § 165(d).
- Section 165(d) allows a deduction for losses from wagering transactions only to the extent of wagering gains.

INDIVIDUAL TAX ISSUES – DEDUCTIONS

P. 583

TCDTRA §§ 212, 213; CARES Act § 2205 I.R.C. § 170

- In 2021, taxpayers who do not itemize deductions can take a $300 ($600 MFJ) above-the-line deduction for cash contributions to qualified charities (not a supporting organization or a donor advised fund).
- The CARES Act increased charitable contribution limits are extended through 2021.

INDIVIDUAL TAX ISSUES – INCOME

P. 584

COVIDTRA § 277

- Students who receive a qualified emergency financial aid grant after March 26, 2020, do not have to include the grant in gross income, and the grant does not reduce the amount of qualified tuition and related expenses for purposes of the American opportunity tax credit and the lifetime learning credit.

INDIVIDUAL TAX ISSUES – INCOME

P. 584

IRS Higher Education Emergency Grants FAQs

- Emergency financial aid grants made by a federal agency, state, Indian tribe, higher education institution, or scholarship-granting organization (including a tribal organization) to a student because of an event related to the COVID-19 pandemic are not included in the student's gross income.
- The IRS issued FAQs on how students and higher-education institutions should report pandemic-related emergency financial aid grants.

INDIVIDUAL TAX ISSUES – INCOME

P. 584

IRS Emergency Rental Assistance FAQs

- The CAA allows states and political subdivisions, US territories, Indian tribes, and the Department of Hawaiian Home Lands to use certain funds allocated by the Department of the Treasury to provide financial assistance to households to pay rent, utilities, home energy expenses, and other related expenses.
- ARPA appropriates additional funds to provide emergency rental assistance.
- The IRS issued FAQs on the exclusion of these payments from gross income.

INDIVIDUAL TAX ISSUES – INCOME

P. 584

ARPA § 9042 I.R.C. § 85

- For any tax year beginning in 2020, if the taxpayer's AGI was less than $150,000, the taxpayer can exclude up to $10,200 unemployment compensation from gross income (up to $10,200 for each spouse filing MFJ).
- See list of seven adjustments to AGI
- For taxpayers who filed their 2020 tax return before the enactment of ARPA (March 11, 2020), the IRS announced that it would automatically adjust returns, without the need for filing an amended return.

INDIVIDUAL TAX ISSUES – INCOME

P. 585

ARPA § 9675 I.R.C. § 108

- ARPA modifies the treatment of student loan discharges after December 31, 2020, and before January 1, 2026. Discharge of the following are not included in income:

1. A loan that provided expressly for postsecondary educational expenses, and was made, insured, or guaranteed by a state, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof, or an eligible educational institution

2. Private education loans

3. Certain loans that are discharged pursuant to a program that is designed to encourage students to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a government unit or a section 501(c)(3) organization

4. Certain loans made by an educational organization or a tax-exempt organization to refinance a loan to an individual to assist the individual in attending the educational organization

INDIVIDUAL TAX ISSUES – INCOME

P. 585

Notice 2021-26 I.R.C. § 129

- I.R.C. § 129 provides an exclusion from gross income of an employee for amounts paid or incurred by the employer for dependent care assistance benefits provided to the employee if the assistance is furnished pursuant to a dependent care assistance program.
- For 2020, the exclusion could not exceed $5,000, or $2,500 MFS. TCDA § 214(a) and (b) allow dependent care assistance plans (DCAPs) to carry over unused benefits from a plan year ending in 2020 to a plan year ending in 2021 and from a plan year ending in 2021 to a plan year ending in 2022.
- This notice addresses the taxation of dependent care benefits, provided through a dependent care assistance program, available in tax years ending in 2021 and 2022 due to the application of either the carryover or the extension of a claims period under TCDRA § 214.

INDIVIDUAL TAX ISSUES – INCOME

P. 585

ARPA § 9632 I.R.C. § 129

- ARPA increases the I.R.C. § 129 exclusion for employer provided dependent care assistance. For any tax year beginning after December 31, 2020, and before January 1, 2022, the $2,500 limit ($5,250 MFJ) is increased to $5,000 ($10,500 MFJ).

INDIVIDUAL TAX ISSUES – INCOME

P. 586

ARPA § 9601 I.R.C. § 6428B

- ARPA authorized a third round of economic impact payments and inserts new I.R.C. § 6428B. Under ARPA, an eligible individual is allowed a credit for the first tax year beginning in 2021. The credit is $1,400 ($2,800 for MFJ) and $1,400 for each dependent (as defined by I.R.C. § 152) of the taxpayer for that tax year.
- Must have valid identification number (i.e., SSN)
- Credit is refundable
- Refund is not subject to reduction of offset of other certain debts or federal taxes

IRS ISSUES – CYBERSECURITY

P. 586

I.R. 2020-178

- A text scam tricks people into disclosing bank account information under the guise of receiving the $1,200 economic impact payment.
- The scam text message states, “You have received a direct deposit of $1,200 from COVID-19 TREAS FUND. Further action is required to accept this payment into your account.”
- This fake text message directs recipients to a fraudulent website that impersonates the IRS.gov Get My Payment website. The website then requests personal and financial account information.

IRS ISSUES – VIRTUAL CURRENCY

PP. 586-587

C.C.A. 202003501 I.R.C. § 61

- The IRS chief counsel advises that a taxpayer who receives convertible virtual currency in exchange for performing a microtask through a crowdsourcing platform has received consideration in exchange for performing a service, and the convertible virtual currency received is taxable as ordinary income.
- A taxpayer who performs a task through a crowdsourcing platform, including a microtask, has performed a service for the party that requested the task with the expectation that he or she will receive compensation.
- The convertible virtual currency received must be reported on the taxpayer's income tax return as ordinary income and may be subject to self-employment tax.

PAYROLL TAXES

P. 587

COVIDTRA § 274; Notice 2020-65; Notice 2021-11 I.R.C. § 3102

- Notice 2020-65 provides guidance implementing the presidential memorandum issued on August 8, 2020, allowing employers to defer withholding and payment of the employee's portion of the social security tax if the employee's wages are below a certain amount until 4/30/21.
- COVIDTRA § 274 extends this date to December 31, 2021. IRS guidance directs employers to report only the social security tax actually withheld from 2020 wages on Form W-2. Employers must file a Form W-2c when the 2020 social security tax is withheld in 2021.
- Notice 2021-11 states that employers must withhold and pay the total deferred employee share of social security tax ratably from wages paid to the employee between January 1, 2021, and December 31, 2021.

PAYROLL TAXES

P. 587

COVID Tax Tip 2021-96

- Section 2302 of the CARES Act allowed employers to defer the deposit and payment of the employer's portion of social security and RRTA payroll taxes (6.2%).
- Self-employed individuals could defer payment of the equivalent of the employer's social security portion of Self-Employed Contributions Act (SECA) taxes.
- The deferral was available from March 27, 2020, through December 31, 2020.
- Taxpayers must deposit 50% of the deferred tax by December 31, 2021, and the remaining 50% is due December 31, 2022.
- In COVID Tax Tip 2021-96, the IRS explains that self-employed individuals and household employers should make payments of deferred social security taxes through the Electronic Federal Tax Payment System or by credit or debit card, money order, or a check and designate as "deferred Social Security tax".

PAYROLL TAXES P. 587

T.D. 9924 I.R.C. § 3402

- Final regulations provide guidance for employers concerning income tax withholding from employees' wages.
- These final regulations concern the amount of federal income tax employers withhold from employees' wages, implement changes made by the TCJA, and reflect the redesigned Form W-4.

RETIREMENT, SAVINGS, AND INVESTING – ABLE ACCT P. 588

T.D. 9923 I.R.C. § 529A

- Guidance on the requirements for a qualified ABLE program under section 529A
- Rules regarding changes in the designated beneficiary of an ABLE account, and rollovers and program-to-program transfers from one ABLE account to another
- Guidance on the gift and GST tax consequences of contributions to an ABLE account, as well as on the federal income, gift, and estate tax consequences of distributions from, and changes in the designated beneficiary of, an ABLE account
- Guidance on the recordkeeping and reporting requirements

RETIREMENT, SAVINGS, AND INVESTING – ABLE ACCT P. 588

T.D. 9923 I.R.C. § 529A, Cont.

- Gift and GST Taxes
  - The final regulations provide that the designated beneficiary is the owner of the entire account, and the gift and GST tax properly applies to the entire account when there is a change of designated beneficiary.
  - The final regulations allow a qualified ABLE program to permit a successor designated beneficiary to be named during the lifetime of the designated beneficiary that will take effect upon the death of the designated beneficiary.
  - If no successor designated beneficiary is named, the assets in the ABLE account are payable to the estate of the deceased designated beneficiary.

RETIREMENT, SAVINGS, AND INVESTING – IRAS

P. 588

IRS Retirement Plans FAQs regarding Loans I.R.C. §§ 72, 408

- In a series of frequently asked questions (FAQs) regarding IRA loans, the IRS reminds taxpayers that loans are not permitted from IRAs or from IRA-based plans such as SEPs, SARSEPs, and SIMPLE IRA plans.
- Loans are only allowed from qualified plans that satisfy the requirements of I.R.C. § 401(a), from annuity plans that satisfy the requirements of I.R.C. § 403(a) or 403(b), and from governmental plans [I.R.C. § 72(p)(4)].
- If the owner of an IRA borrows from the IRA, the IRA is no longer an IRA, and the value of the entire IRA is included in the owner's income [I.R.C. § 408(e)(2) and (3)].
- If the owner of an IRA pledges part of the IRA as collateral, the part of the IRA that is pledged is treated as distributed [I.R.C. § 408(e)(4)].

RETIREMENT, SAVINGS, AND INVESTING – IRAS

PP. 588-589

Notice 2020-68 SECURE Act

- Addresses issues under the SECURE Act:
  - section 105 (small employer automatic enrollment credit),
  - section 107 (repeal of maximum age for traditional IRA contributions),
  - section 112 [participation of long-term, part-time employees in section 401(k) plans],
  - section 113 (qualified birth or adoption distributions), and
  - section 116 (allowing excluded difficulty of care payments to be taken into account as compensation for purposes of determining certain retirement contribution limitations)
- Repeal of Maximum age for IRA contributions
  - The excludable amount of qualified charitable distributions for a tax year is reduced by the aggregate amount of IRA contributions deducted for the tax year and any earlier tax years in which the individual was age 70½ or older by the last day of the year (post-age 70½ contributions)
  - **Example 15.3**

RETIREMENT, SAVINGS, AND INVESTING – QOFS

P. 589

IR-2020-274 I.R.C. §§ 1400Z-1, 1400Z-2

- The IRS started sending letters to taxpayers that may need to take additional actions related to qualified opportunity funds (QOFs).
- Taxpayers who attached or indicated they filed a Form 8996, Qualified Opportunity Fund, may receive Letter 6250, Self-certifying as Qualified Opportunity Fund (QOF). This letter lets them know that if they intended to self-certify as a QOF, they may need to take additional action to meet the annual self-certification requirement.
- Additionally, taxpayers may receive Letter 6251, Reporting Qualified Opportunity Fund (QOF) Investments, notifying them they may not have properly followed the instructions for Form 8949, Sales and other Dispositions of Capital Assets, or do not appear to have an eligible gain that would enable them to make a valid deferral election for gains invested in a QOF.

RETIREMENT, SAVINGS, AND INVESTING – ROLLOVERS P. 590

Rev. Proc. 2020-46 I.R.C. §§ 402, 408

- This revenue procedure modifies and updates Rev. Proc. 2016-47, 2016-37 I.R.B. 346, which provides a list of reasons for a taxpayer to self-certify eligibility for a waiver of the 60-day rollover requirement under certain eligible retirement plans.
- This revenue procedure adds a distribution to a state unclaimed property fund to the list of reasons.

RETIREMENT, SAVINGS, AND INVESTING – MS & RP P. 590

TCDTRA § 214 I.R.C. §§ 105, 106

- **Allows** plans to permit health and dependent care flexible spending arrangements (FSAs) to carry over unused benefits up to the full annual amount from 2020 to 2021 and 2021 to 2022
- **Allows** plans to permit a 12-month grace period for unused benefits or contributions in health and dependent care FSAs for plan years ending in 2020 or 2021
- **Allows** plans to extend the maximum age of eligible dependents from 12 to 13 for dependent care FSAs for the 2020 plan year and unused amounts from the 2020 plan year carried over into the 2021 plan year
- **Allows** plans to permit a prospective change in election amounts for health and dependent care FSAs for plan years ending in 2021

RETIREMENT, SAVINGS, AND INVESTING – MS & RP P. 590

Notice 2021-15 I.R.C. §§ 105, 106

- Notice 2021-15 provides guidance on the application of TCDTRA § 214.
- Notice provides that a section 125 cafeteria plan **may** permit employees who are eligible to make salary reduction contributions under the plan to, with respect to employer-sponsored health coverage
  - make a new election on a prospective basis, if the employee initially declined to elect employer-sponsored health coverage;
  - revoke an existing election and make a new election to enroll in different health coverage sponsored by the same employer on a prospective basis; and
  - revoke an existing election on a prospective basis, provided that the employee attests in writing that the employee is enrolled, or immediately will enroll, in other health coverage not sponsored by the employer.

RETIREMENT, SAVINGS, AND INVESTING – MS & RP P. 590

T.D. 9949 I.R.C. §§ 105, 4980H

- Final regulations clarify the application of the employer shared responsibility provisions and certain nondiscrimination rules to health reimbursement arrangements (HRAs) and other account-based group health plans integrated with individual health insurance coverage or Medicare (individual coverage HRAs).
- The regulations also provide safe harbors for the application of those provisions to individual coverage HRAs.

TAX ACCOUNTING P. 591

T.D. 9942 I.R.C. §§ 263A, 448, 460, 471

- The TCJA increased the gross receipts test amount under I.R.C. § 448(c) to $25,000,000, adjusted for inflation
- Final regulations implement these simplified tax accounting provisions for certain businesses having average annual gross receipts that do not exceed $26,000,000 (in 2021).

TAX PRACTICE P. 591

T.D. 9950 I.R.C. §§ 165, 7508A

- The IRS and Treasury issued final regulations relating to the new mandatory 60-day postponement of certain time-sensitive tax-related deadlines because of a federally declared disaster.
- The final regulations also clarify the definition of *federally declared disaster*.
- These final regulations apply to individuals who reside in or were killed or injured in a disaster area, businesses that have a principal place of business in a disaster area, relief workers who provide assistance in a disaster area, or any taxpayer whose tax records necessary to meet a tax deadline are in a disaster area.

TRUSTS AND ESTATES - DEDUCTIONS

P. 592

T.D. 9918 I.R.C. §§ 67, 142

- Final regulations clarify that the following deductions allowed to an estate or nongrantor trust are not miscellaneous itemized deductions:
  - Costs paid or incurred in connection with the administration of an estate or nongrantor trust that would not have been incurred if the property were not held in the estate or trust
  - The personal exemption of an estate or nongrantor trust
  - The distribution deduction for trusts distributing current income
  - The distribution deduction for estates and trusts accumulating income

Therefore, these deductions are not affected by the suspension of the deductibility of miscellaneous itemized deductions for tax years beginning after December 31, 2017, and before January 1, 2026.

TABLE OF EXPIRATION DATES

PP. 593 - 596

- This section lists tax provisions that expired in 2021, will expire in 2022 to 2029, or have recently been made permanent. Figure 15.1 is based on a list prepared by the staff of the Joint Committee on Taxation.
- Certain provisions terminate on dates that refer to a taxpayer's tax year and not a calendar year.
- For these provisions, the expiration dates listed in this document apply with respect to calendar-year taxpayers.
- The expiration dates of such provisions may differ, however, with respect to fiscal-year taxpayers or taxpayers with short tax years.

QUESTIONS ??