


MEMORANDUM

TO: OUR CLIENTS AND PROFESSIONAL COLLEAGUES
FROM: EUGENE GORRIN, ESQ. 
RE: CONSOLIDATED APPROPRIATIONS ACT, 2021 – BUSINESSES
DATE: DECEMBER 29, 2020

On December 27, President Trump signed the Consolidated Appropriations Act, 2021, (“CAA 2021”) narrowly averting a government shutdown. CAA 2021 not only contains funding for ongoing government operations, it also contains a \$900 billion COVID-relief package which includes a number of measures affecting businesses. In addition, the Act extends and amends certain tax provisions contained in the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which became law last March, and it funds another round of Paycheck Protection Program (“PPP”) loans, which may be forgiven if certain requirements are met. Under the changes to the employee retention tax credit, eligible businesses may reap immediate cash payments from the government.

The provisions in CAA 2021 Act are quite extensive. If you have any questions or comments, please contact us.

The following is a recap of the provisions affecting businesses.

Significant Changes to the Employee Retention Credit

One of the most important provisions for businesses in CAA 2021 is the expansion of the employee retention credit (“ERTC”). Specifically, CAA 2021:

- (1) expands the number of businesses eligible for the ERTC by allowing businesses with a PPP loan to also claim the ERTC;
- (2) eliminates the recapture provision for taxpayers who claimed the ERTC and then applied for, and received, a PPP loan;
- (3) extends the period during which the ERTC is available;
- (4) increases the percentage of wages that qualify for the credit;
- (5) increases the total amount of wages upon which the credit is calculated;
- (6) provides an alternative testing period in which to determine if an employer had a significant decline in gross receipts for purposes of calculating the credit;
- (7) provides that the ERTC is available to any nonprofit organization exempt from tax under Section 501(c)(1) of the Internal Revenue Code of 1986, as amended, as well as to colleges and universities or an entity the principal purpose or function of which is providing medical or hospital care;

(8) modifies the threshold number of employees before which an employer is treated as a large employer and eliminates the cap on qualified wages that an employee would've been paid for working an equivalent duration during the 30 days immediately preceding such period; and

(9) allows employers to receive the ERTC in advance rather than reducing employment tax payments.

Expansion of PPP

CAA 2021 created a PPP Second Draw loan program. A maximum loan amount of \$2 million is being made available for businesses that employ 300 or less employees and have used, or will use, the full amount of their first PPP loan. In addition, CAA 2021 provides that business expenses paid with the proceeds of a forgiven PPP loan are deductible, which effectively overrides prior law and IRS guidance issued last year.

Temporary Allowance of Full Deduction for Business Meals

CAA 2021 provides that, effective for amounts paid or incurred after December 31, 2020, the 50% limitation on the deduction for food or beverage expenses does not apply to expenses for food or beverages provided by a restaurant and paid or incurred before January 1, 2023.

Changes to Health and Dependent Care Flexible Spending Accounts

CAA 2021 expands the carryover and grace period policies relating to employees with unused amounts in their health and dependent care flexible spending accounts.

Extension of Payroll Tax Deferral

CAA 2021 provides additional time for employees and employers to pay back payroll tax amounts deferred under President Trump's August 2020 memorandum.

Election to Waive Application of Certain Modifications to Farming Losses

CAA 2021 allows farmers who elected a two-year net operating loss carryback prior to the CARES Act to elect to retain that two-year carryback rather than claim the five-year carryback provided in the CARES Act. This provision also allows farmers who previously waived an election to carry back a net operating loss to revoke the waiver.

Changes to Business Credits and Deductions

The Act make the following changes to business deductions and credits:

- effective for wages paid in tax years beginning after December 31, 2020, the employer credit for paid family and medical leave scheduled to expire at the end of 2020 has been extended through 2025;
- the 7-year recovery period for motorsports entertainment complexes scheduled to expire at the end of 2020 has been extended through December 31, 2025;

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- for productions beginning after December 31, 2020, the deduction available for certain qualified film and television and live theatrical productions scheduled to expire at the end of 2020 is extended through 2025;
- effective for property placed in service after December 31, 2020, the commercial buildings energy efficiency tax deduction is made permanent and the standards that the property must meet in order to be eligible for the deduction are modified;
- the work opportunity credit scheduled to expire at the end of 2020 is extended through December 31, 2025;
- the nonbusiness energy property credit, previously set to expire for any property placed in service after December 31, 2020, is extended one year and expires on December 31, 2021;
- the railroad track maintenance credit is now permanent and the credit rate is modified from 50 percent to 40 percent (50 percent in the case of any tax year beginning before January 1, 2023);
- the credit for energy efficient homes, which applies to contractors who construct or manufacture qualifying energy efficient homes in the year such homes are sold or leased for use as a residence, is extended through 2021;
- for tax years of foreign corporations beginning after December 31, 2020, and tax years of U.S. shareholders with or within which such tax years of foreign corporations end, the look-thru rule scheduled to expire at the end of 2020 is extended to apply to years before January 1, 2026;

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- numerous empowerment zone tax incentives for businesses operating in empowerment zones have been extended through 2025;
- the exclusion from income available with respect to an employer's payments of student loans, which was scheduled to expire at the end of 2020, is extended through 2025;
- the credit for electricity produced from certain renewable resources is extended through 2021 and the election to treat qualified facilities as energy property is extended through 2021;
- the energy tax credit is extended through 2023 and the phaseouts of the credit relating to solar energy property are extended through 2022; and
- the mine rescue training credit, scheduled to expire at the end of 2020, is extended through December 31, 2021.