

From the desk of

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Business provisions of the Consolidated Appropriations Act 2021

The COVID-related Tax Relief Act of 2020 (COVIDTRA), and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (TCDTR), both part of the Consolidated Appropriations Act, 2021 (CAA, 2021), contains numerous provisions related to businesses.

Below is a summary of those provisions.

Clarification of tax treatment of covered loan forgiveness

CARES Act Section 1102 provides that a recipient of a PPP loan may use the loan proceeds to pay payroll costs, certain employee benefits relating to healthcare, interest on mortgage obligations, rent, utilities, and interest on any other existing debt obligations.

If a PPP loan recipient uses their PPP loan to pay those costs, the loan can be forgiven in an amount equal to those costs.

Congress specifically exempted the PPP loan forgiveness as taxable income, in an unanticipated error by Congress in passing the legislation they forgot to check that the Internal Revenue Code does not allow a taxpayer to deduct expenses that are paid with tax exempt income. A minor error on their part which they leisurely took over 10 months to rectify despite the fact that their intransience threw most of business America into a problematic situation that costs business not only consternation, but millions in unnecessary accounting and legal expenses in attempting to appropriately plan, which could not be done.

One must not condemn Congress as to this costly omission in that it is obvious that they do not know what they do.

New law

COVIDTRA (sounds like a social disease) clarifies taxpayers whose PPP loans are forgiven will be allowed the deductions for otherwise deductible expenses paid with the proceeds of a PPP loan, and that the tax basis and other attributes of the borrower's assets will not be reduced as a result of the loan forgiveness. (CARES Act section 1102 as clarified by COVIDTRA Sec. 276) with an effective date as of the enactment of the CARES Act earlier in the year.

Clarification of tax treatment of certain loan forgiveness and other business financial assistance under the CARES Act

The CARES Act expanded access to Economic Injury Disaster Loans (EIDL) and established an emergency grant to allow an EIDL applicant to request a \$10,000 advance on that loan.

The CARES Act also provided loan repayment assistance for certain recipients of CARES Act loans.

New law

COVIDTRA (still sounds like some sort of social disease) clarifies that gross income does not include forgiveness of EIDL loans, emergency EIDL grants, and certain loan repayment assistance.

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. (CARES Act sections 1110(e) and 1112(c) as clarified by COVIDTRA Sec. 278)

The provision is effective for tax years ending after March 26, 2020, date of enactment of the CARES Act. (COVIDTRA Sec. 278(e))

Authority to waive certain information reporting requirements

Code Sec. 6050P and Reg §1.6050P-1 and Reg §1.6050P-2 requires a lender (as defined in Code Sec. 6050P(c)(1)) that discharges at least \$600 of a borrower's

indebtedness to file a Form 1099-C, Cancellation of Debt, with IRS, and to furnish a payee statement to the borrower.

New law

The COVIDTRA provision allows the Treasury Department to waive information reporting requirements for any amount excluded from income by 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. (COVIDTRA Sec. 279)

Farmers' net operating loss changes

Before the enactment of the CARES Act, farmers were allowed to carry back net operating losses (NOLs) to each of the two preceding years.

They were also allowed to waive the carryback and carry forward the NOL. (Code Sec. 172(b)(1)(B))

The CARES Act provides that NOLs arising in a tax year beginning after December 31, 2017 and before January 1, 2021 can be carried back to each of the five tax years preceding the tax year of such loss. (Code Sec. 172(b)(1)(D) as amended by the CARES Act Sec. 2303)

New law

The COVIDTRA (maybe this actually sounds like some sort of new drug?) 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.

The new law (or social disease, or possibly a new drug) also allows farmers who previously waived an election to carry back a net operating loss to revoke the waiver.

The effective date of these provisions apply retroactively as if included in Section 2303 of the CARES Act. (CARES Act Sec. 2303, as amended by COVIDTRA Sec. 281)

Minimum low-income housing tax credit rate

The amount of the annual Code Section 42 low-income housing credit is generally a percentage prescribed by IRS intended to result in a credit, in the aggregate over the

10-year credit period, of a present value of 70% of the qualified basis for certain new buildings and 30% of the qualified basis for certain other buildings. There is a 9% per year floor on the credit for new buildings that are not federally subsidized.

New law

The Act provides a 4% per year credit floor for buildings that aren't eligible for the 9% credit floor. (Code Sec. 42(b), as amended by TCDTR Sec. 201(a))

The effective date of this provision applies to buildings placed in service after December 31, 2020 that:

1. Receive an allocation of housing credit dollar amount after Dec. 31, 2010 and
2. If any portion of the building is financed with certain tax exempt obligations described in Code Sec. 42(h)(4)(A), the obligation is issued after Dec. 31, 2020. (TCDTR Sec. 201(b))

Depreciation of certain residential rental property over 30-year period

The Tax Cuts and Jobs Act (TCJA, P.L. 115-97) allowed real property trade or businesses to elect out of the business interest deduction limitations of Internal Code Section 168(j) imposed by the TCJA.

In return however, the electing taxpayer had to for tax years beginning after December 31, 2017 treat the elected-for nonresidential real property, qualified improvement property and residential rental property, as subject to the alternative depreciation system (the ADS).

Additionally the TCJA changed the ADS recovery period for residential rental property from 40 years to 30 years for property placed in service after December 31, 2017.

New law

For tax years beginning after December 31, 2017, the Act assigns a 30-year ADS depreciation period to residential rental property even though it was placed in service before January 1, 2018 if the property is held by an electing real property trade or business and, before January 1, 2018, was not subject to the ADS. (TCDTR Sec. 202 amending TCJA Sec. 13204(b))

Minimum rate of interest for certain determinations related to life insurance contracts

To qualify as life insurance contracts for tax purposes, permanent life insurance policies must meet several requirements under Internal Revenue Code Section 7702.

These requirements include two interest rate assumptions for determining the premiums that can be used to fund the contracts.

The interest rate assumptions were set by statute at 4% and 6% when the requirements were put in place in 1984.

New law

TCDTR updates Internal Revenue Code Section 7702 to reflect the interest rate environment that has been exacerbated by the current crisis, and ensures that the rates will continue to appropriately reflect economic conditions, by tying the rates to either a floating rate prescribed in the National Association of Insurance Commissioners' Standard Valuation Law or a floating rate based on the average applicable Federal mid-term rates over a 60- month period. (Code Sec. 7702 as amended by TCDTR Sec. 205)

The effective date of these amendments apply to contracts issued after December 31, 2020. (TCDTR Sec. 205(e))

50% limit on business meal deduction is suspended for meals provided by restaurants in 2021 and 2022

Taxpayers may generally deduct the ordinary and necessary food and beverage expenses associated with operating a trade or business, including meals consumed by employees on work travel.

The deduction is generally limited to 50% of the otherwise allowable amount. (Code Sec. 274(n)(1))

Internal Revenue Code Sec. 274(n)(2) provides certain exceptions to this 50% limit, however, under pre-Act law, there was no exception for meals provided by a restaurant.

New law

Under the Act the 50% limit will not apply to expenses for food or beverages provided by a restaurant that are paid or incurred after December 31, 2020, and before January 1, 2023. (Code Sec. 274(n)(2)(D) as amended by TCDTR Sec. 210)

Low-Income Housing Tax Credit—Increased Ceiling

A low-income housing tax credit (LIHTC) is allowed annually over a 10-year credit period beginning with the tax year a qualified building is placed in service, or, under an irrevocable election, the next tax year. There is a limit on the total amount of credits available for buildings not financed with tax-exempt bonds subject to certain state volume limitations.

Under pre-Act law, each state is permitted to annually allocate low-income housing credits with a ceiling amount (the state housing credit ceiling, under Code Sec. 42(h)(3)(C)(ii)), for calendar year 2020, equal to the greater of:

1. \$2.8125 multiplied by the state population or
2. \$3,217,500. Subject to certain exceptions, a housing credit allocation is taken into account only if it's made no later than the close of the calendar year in which the building is placed in service.

Under the carryover allocation exception, a credit allocation is taken into account if it is made with respect to a “qualified building” placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.

Code Sec. 42(h)(1)(E)(ii), in turn, provided that a “qualified building” for which a carryover allocation under the carryover allocation exception can be made is any building which is part of a project if the taxpayer's basis in the project, as of the date which is one year after the date the allocation was made, is more than 10% of the taxpayer's reasonably expected basis in the project at the close of the second calendar year after the calendar year of the allocation.

New law

For purposes of the LIHTC, the state housing credit ceiling for any state for each of calendar years 2021 and 2022 will be increased by the aggregate housing credit dollar amount allocated by the state housing credit agencies of that state for that calendar year to buildings located in any qualified disaster zone in that state. (TCDTR Sec. 305(a))

To determine the unused state housing credit ceiling for any calendar year, any increase in the state housing credit ceiling under this rule will be treated as an amount described in Code Sec. 42(h)(3)(C)(ii) (effectively, an increase in the overall state housing credit ceiling for that state). (TCDTR Sec. 305(a)(4))

The increase determined under the above rule for any state will not exceed:

1. In the case of any such increase determined for calendar year 2021, the applicable dollar limitation (defined below) for that state, and
2. In the case of any such increase determined for calendar year 2022, the applicable dollar limitation for that state reduced by the amount of any increase determined under the above rule for that state for calendar year 2021. TCDTR Sec. 305(a)(2)(A))

For these purposes, the applicable dollar limitation for any state is the lesser of:

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