From the desk of
Peter S. Muffoletto, C.P.A.

Congress Passes Tax Extender Legislation

Taxpayer Certainty and Disaster Tax Relief Act of 2019

On December 19, the Senate passed the "Taxpayer Certainty and Disaster Tax Relief Act of 2019" (the "Disaster Act") as part of an omnibus spending package, the "Further Consolidated Appropriations Act, 2020" (H.R. 1865).

The measure was previously passed by the House on December 17, and the President is expected to sign it.

The Disaster Act extends over 30 Code provisions, generally through 2020.

Exclusion from gross income of discharge of qualified principal residence indebtedness

Under pre-Disaster Act law, discharge of indebtedness income from qualified principal residence debt, up to a $2 million limit ($1 million for married individuals filing separately), was, in tax years beginning before January. 1, 2018, excluded from gross income.

Under pre-Disaster Act law, this exclusion didn't apply to any debt discharged after December 31, 2017.

New law. The Disaster Act extends this exclusion for two years, i.e., for discharges of indebtedness before Jan. 1, 2021. (Code Sec. 108(a)(1)(E), as amended by Disaster Act Sec. 101(a))

The Disaster Act also modifies the exclusion to apply to qualified principal residence indebtedness that is discharged pursuant to a binding written agreement entered into before January 1, 2021. This applies to discharges of indebtedness after December 31, 2017. (Code Sec. 108(h)(2), as amended by Disaster Act Sec. 101(b))

Treatment of mortgage insurance premiums as qualified residence interest

Under pre-Disaster Act law, mortgage insurance premiums paid or accrued before January 1, 2018 by a taxpayer in connection with acquisition indebtedness with respect to the taxpayer's qualified residence were treated as deductible qualified residence interest, subject to a phase-out based on the taxpayer's adjusted gross income (AGI). The amount allowable as a deduction was phased out ratably by 10% for each $1,000 by which the taxpayer's adjusted gross income exceeded $100,000 ($500 and $50,000, respectively, in the case of a married individual filing a separate return). Thus, the deduction wasn't allowed if the taxpayer's AGI exceeded $110,000 ($55,000 in the case of married individual filing a separate return).

New law. The Disaster Act extends this treatment through 2020 for amounts paid or incurred after Dec. 31, 2017. (Code Sec. 163(h)(3)(E)(iv)(I), as amended by Disaster Act Sec. 102)

Reduction in medical expense deduction floor

The Code provides that, individuals, for 2017 and 2018, could claim an itemized deduction for unreimbursed medical expenses to the extent that such expenses exceeded 7.5% of AGI.

New law. The Disaster Act extends this threshold of 7.5% for tax years beginning after December 31, 2018 and before January 1, 2021. (Code Sec. 213(f), as amended by Disaster Act Sec. 103)

Deduction of qualified tuition and related expenses

The Code provides an above-the-line deduction for qualified tuition and related expenses for higher education. The deduction is capped at $4,000 for an individual whose AGI does not exceed $65,000 ($130,000 for joint filers) or $2,000 for an individual whose AGI does not exceed $80,000 ($160,000 for joint filers).

New law. The Disaster Act extends this deduction through 2020. (Code Sec. 222(e), as amended by Disaster Act Sec. 104)

Black lung liability trust fund excise tax

The Code imposes an excise tax of $1.10 per ton for coal from underground mines and $0.55 per ton for coal from surface mines, each up to 4.4% the sale price effective beginning on the first day of the first calendar month after date of enactment.

New law. The Disaster Act extends these excise taxes through 2020, and the extension shall apply on and after the first day of the first calendar month beginning after the date of the enactment of the Disaster Act. (Code Sec. 4121(c)(2)(A), as amended by Disaster Act Sec. 105)

Indian employment credit

The Code provides a credit on the first $20,000 of qualified wages and qualified employee health insurance costs paid to or incurred by the employer with respect to each qualified employee who works on an Indian reservation. Generally, a qualified employee is someone who is an enrolled member of an Indian tribe or the spouse of an enrolled member; who performs substantially all of the services for the employer within an Indian reservation; and whose principal place of abode is on or near the reservation in which the services are performed. The credit is equal to 20% of the excess of eligible employee qualified wages and health insurance costs incurred during the current year over the amount of such wages and costs incurred by the employer during 1993.

Under pre-Disaster Act law, the credit didn't apply for any tax year beginning after December 31, 2017.

New law. The Disaster Act extends this credit to tax years beginning before January 1, 2021. (Code Sec. 45A(f), as amended by Disaster Act Sec. 111)

Railroad track maintenance credit

The Code provides a credit for 50% of qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer. Qualified railroad track maintenance expenditures are gross expenditures for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of Jan. 1, 2015, by a Class II or Class III railroad. Determined by the Surface Transportation Board, a Class II railroad has annual operating revenues of less than $447,621,226 but in excess of $35,809,698, and a Class III railroad has annual operating revenues of $35,809,698 or less. The credit cannot exceed the product of $3,500 times the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the tax year. The Code includes a safe harbor to provide that assignments of the credit for tax years in 2018 shall be effective as of the close such tax years if made pursuant to a written agreement entered into no later than 90 days following date of enactment.

New law. The Disaster Act extends this credit through 2022. (Code Sec. 45G(f), as amended by Disaster Act Sec. 112)

The Disaster Act also provides a safe harbor. Any assignment, including related expenditures paid or incurred, under Code Sec. 45G(b)(2) for a tax year beginning on or after January 1, 2018, and ending before January 1, 2020, is treated as effective as of the close of such tax year if made pursuant to a written agreement entered into no later than 90 days following the date of the enactment of the Disaster Act. This applies to expenditures paid or incurred during tax years beginning after December 31, 2017. (Disaster Act Sec. 112(b))

Mine rescue team training credit

The Code provides employers a credit equal to the lesser of 20% of the training program costs incurred, or $10,000, with respect to the training program costs of each qualified mine rescue team employee.

New law. The Disaster Act extends this credit through 2020. (Code Sec. 45N(e), as amended by Disaster Act Sec. 113)

Classification of certain race horses as 3-year property

The Code assigns a 3-year recovery period for race horses two years old or younger.

New law. The Disaster Act extends the 3-year recovery period to race horses two years old or younger placed in service before 2021. (Code Sec. 168(e)(3)(A)(i), as amended by Disaster Act Sec. 114)

7-year recovery period for motorsports entertainment complexes

The Code provides a 7-year recovery period for motorsports entertainment complexes. A motorsports entertainment complex is defined as a racing track facility that is permanently situated on land and that hosts one or more racing events within 36 months of the month it is placed in service.

New law. The Disaster Act extends the 7-year recovery period through 2020, applicable to property placed into service after December 31, 2017. (Code Sec. 168(i)(15)(D), as amended by Disaster Act Sec. 115)

Accelerated depreciation for business property on Indian reservation

The Code provides accelerated depreciation for qualified Indian reservation property. To qualify, property must be predominantly used for business purposes within a reservation, owned by someone unrelated to previous owner, and unrelated to gaming practices. The depreciation deduction allowed also extends to the alternative minimum tax.

New law. The Disaster Act extends the use of this accelerated depreciation through 2020, applicable to property placed into service after December 31, 2017. (Code Sec. 168(j)(9), as amended by Disaster Act Sec. 116)

Extension of expensing rules for certain productions

The Code provides a deduction for qualified film, television, and theatrical productions of up to $15 million of the aggregate cost ($20 million for certain areas) of a qualifying film, television, or theatrical production in the year the expenditure was incurred.

New law. The Disaster Act extends this deduction through 2020, for productions commencing after December 31, 2017. (Code Sec. 181(g), as amended by Disaster Act Sec. 117)

Empowerment zone tax incentives

The designation of an economically depressed census tract as an "Empowerment Zone" renders businesses and individual residents within such a Zone eligible for special empowerment zone tax incentives, including: the 20% wage credit under Code Sec. 1396; liberalized Code Sec. 179 expensing rules ($35,000 extra expensing and the break allowing only 50% of expensing eligible property to be counted for purposes of the investment-based phaseout of expensing); tax-exempt bond financing under Code Sec. 1394; and deferral under Code Sec. 1397B of capital gains tax on sale of qualified assets sold and replaced.

Under pre-Disaster Act law, Empowerment Zone designations expired on December 31, 2017.

New law. The Disaster Act extends through December 31, 2020, the period for which the designation of an empowerment zone is in effect. (Code Sec. 1391(d)(1)(A)(i), as amended by Disaster Act Sec. 118(a))

The Disaster Act also provides that where a nomination of an empowerment zone included a termination date of December 31, 2017, termination will not apply with respect to the designation if, after the date of the enactment of the Disaster Act, the entity that made such nomination amends the nomination, in such manner as the IRS may provide, to provide for a new termination date. This applies to tax years beginning after December 31, 2017. (Disaster Act Sec. 118(b)

American Samoa economic development credit

There is provided a credit to certain corporations in American Samoa that may be claimed against U.S. corporate income tax in an amount equal to the sum of certain percentages of a domestic corporation’s employee wages, employee fringe benefit expenses, and tangible property depreciation allowances for the taxable year in respect of the active conduct of a trade or business in American Samoa.

New law. The Disaster Act extends this credit through 2020. (Sec. 119 of Div A of the Tax Relief and Health Care Act of 2006, as amended by Disaster Act Sec. 119)

Biodiesel and renewable diesel

The Code provides a $1.00-per-gallon tax credit for biodiesel and biodiesel mixtures, and the small agri-biodiesel producer credit of 10 cents per gallon.

New law. The Disaster Act extends the biodiesel fuels income tax credit (Code Sec. 40A(g), as amended by Disaster Act Sec. 121(a)) and the excise tax credits (Code Sec. 6426(c)(6), as amended by Disaster Act Sec. 121(b), Code Sec. 6427(e)(6)(B), as amended by Disaster Act Sec. 121(b)) through 2020.

Special excise tax credit. Notwithstanding any other provision of law, in the case of any biodiesel mixture credit properly determined under Code Sec. 6426(c) for the period beginning on Jan. 1, 2018, and ending on with the close of the last calendar quarter beginning before the date of the enactment of the Disaster Act, the credit will be allowed, and any refund or payment attributable to the credit (including any payment under Code Sec. 6427(e)) will be made, only in such manner as IRS provides.

IRS will issue guidance within 30 days of the enactment of the Disaster Act providing for a one-time submission of claims covering periods described in the preceding sentence. The guidance will provide for a 180-day period for the submission of the claims (in such manner as prescribed by IRS) to begin not later than 30 days after the guidance is issued. The claims will be paid by IRS not later than 60 days after receipt. If IRS has not paid pursuant to a claim filed under this subsection within 60 days after the date of the filing of the claim, the claim will be paid with interest from that date determined by using the overpayment rate and method under Code Sec. 6621. (Disaster Act Sec. 121(b)(3))

Additionally, the Disaster Act amends the Code to treat renewable diesel the same as biodiesel, except there is no small producer credit.

Second generation biofuel producer credit

Under pre-Disaster Act law, a producer of qualified biofuel produced after December 31, 2008, could claim a credit, as part of the alcohol fuel credit, for each gallon of "qualified second generation biofuel production." The credit was equal to the "applicable amount" ($1.01) for each gallon of qualified second generation biofuel production.

Under pre-Disaster Act law, this credit didn't apply to second generation biofuel produced after December 31, 2018.

New law. The Disaster Act extends the credit for two years, i.e., for production before January 1, 2021. (Code Sec. 40(b)(6)(J)(i), as amended by Disaster Act Sec. 122)

Nonbusiness energy property

The Code provides a credit for purchases of nonbusiness energy property. The Code allows a credit of 10% of the amounts paid or incurred by the taxpayer for qualified energy improvements to the building envelope (windows, doors, skylights, and roofs) of principal residences. The Code allows credits of fixed dollar amounts ranging from $50 to $300 for energy-efficient property including furnaces, boilers, biomass stoves, heat pumps, water heaters, central air conditioners, and circulating fans, and is subject to a lifetime cap of $500.

New law. The Disaster Act extends this credit through 2020. (Code Sec. 25C(g)(2), as amended by Disaster Act Sec. 123)

Qualified fuel cell motor vehicles

The Code provides a credit for purchases of new qualified fuel cell motor vehicles. The Code allows a credit of between $4,000 and $40,000, depending on the weight of the vehicle, for the purchase of such vehicles. Other vehicles, depending on their fuel efficiency, may qualify for an additional $1,000 to $4,000 credit.

New law. The Disaster Act extends this credit through 2020. (Code Sec. 30B(k)(1), as amended by Disaster Act Sec. 124)

Alternative fuel refueling property credit

Under pre-Disaster Act law, a taxpayer could claim a 30% credit for the cost of installing non-hydrogen alternative vehicle refueling property for use in the taxpayer's trade or business (up to $30,000 maximum per year per location) or installed at the taxpayer's principal residence (up to $1,000 per year per location).

Under pre-Disaster Act law, this provision didn't apply to property placed in service after December 31, 2017.

New law. The Disaster Act extends this credit so that it applies to property placed in service before January 1, 2021. (Code Sec. 30C(g), as amended by Disaster Act Sec. 125)

2-wheeled plug-in electric vehicle credit

The Code provides a 10% credit for highway-capable, two-wheeled plug-in electric vehicles (capped at $2,500). Battery capacity within the vehicles must be greater than or equal to 2.5 kilowatt-hours.

New law. The Disaster Act extends this credit so that it applies to vehicles acquired before January 1, 2021. (Code Sec. 30D(g)(3)(E)(ii), as amended by Disaster Act Sec. 126)

Credit for electricity produced from certain renewable resources

An income tax credit is allowed for the production of electricity from qualified energy resources at qualified facilities (the "renewable electricity production credit"). Qualified energy resources means wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy. Qualified facilities are, generally, facilities that generate electricity using qualified energy resources.

Under pre-Disaster Act law, qualifying facilities generating electricity using closed-loop biomass, open-loop biomass, geothermal energy, land fill gas and trash (both of which used municipal solid waste), qualified hydropower, and marine and hydrokinetic renewable energy facilities had to have begun constructions before January 1, 2018, to claim the credit.

In addition, under pre-Disaster Act law, taxpayers could elect to have qualified property which is part of a Code Sec. 45 qualified facility, which were placed in service after 2008 and the construction of which begins before January 1, 2018, treated as property eligible for an energy credit under Code Sec. 48.

New law. The Disaster Act extends the date by which construction of a qualifying facility must begin, to before January 1, 2021, for the following facilities: qualifying closed-loop biomass, open-loop biomass, geothermal energy, land fill gas and trash, qualified hydropower, and marine and hydrokinetic renewable energy facilities. (Code Sec. 45(d)(2)(A), Code Sec. 45(d)(3)(A), Code Sec. 45(d)(4)(B), Code Sec. 45(d)(6), Code Sec. 45(d)(7), Code Sec. 45(d)(9), and Code Sec. 45(d)(11)(B), as amended by Disaster Act Sec. 127(a))

In addition, the Disaster Act extends the above qualified facilities eligible to be treated as property for an energy credit under Code Sec. 48, to facilities which were placed in service after 2008 and the construction of which begins before January 1, 2021. (Code Sec. 48(a)(5), as amended by Disaster Act Sec. 127(c)(2)(B))

For wind facilities the construction of which begins in calendar year 2020, the Disaster Act reduces the credit by 40%. (Code Sec. 45(b)(5), as amended by Disaster Act Sec. 127(c)(2)(A))

Production credit for Indian coal facilities

Under pre-Disaster Act law, a credit based on the production of Indian coal was available to producers of Indian coal at Indian coal facilities during the 12-year period beginning on January 1, 2006 (i.e., before 2018). For 2018, the credit had expired.

New law. The Disaster Act extends the credit for three years, i.e., it provides a credit for producers of Indian coal at Indian coal facilities during the 15-year period beginning on January 1, 2006 (i.e., before Jan. 1, 2021). (Code Sec. 45(e)(10)(A), as amended by Disaster Act Sec. 128)

Energy efficient homes credit

The Code provides a credit for manufacturers of energy-efficient residential homes. An eligible contractor may claim a tax credit of $1,000 or $2,000 for the construction or manufacture of a new energy efficient home that meets qualifying criteria.

New law. The Disaster Act extends the credit for energy-efficient new homes to homes acquired before January 1, 2021. (Code Sec. 45L(g), as amended by Disaster Act Sec. 129)

Special allowance for second generation biofuel plant property

The Code provides an additional first-year 50% bonus depreciation for cellulosic biofuel facilities.

New law. The Disaster Act extends this additional first-year 50% bonus depreciation to property placed into service before January 1, 2021. (Code Sec. 168(l)(2)(D), as amended by Disaster Act Sec. 130)

Energy efficient commercial buildings deduction

The Code provides a deduction for energy efficiency improvements to lighting, heating, cooling, ventilation, and hot water systems of commercial buildings. This includes a $1.80 deduction per square foot for construction on qualified property. A partial $0.60 deduction per square foot is allowed if certain subsystems meet energy standards but the entire building does not, including the interior lighting systems, the heating, cooling, ventilation, and hot water systems, and the building envelope.

New law. The Disaster Act extends these deductions to property placed into service before January 1, 2021. (Code Sec. 179D(h), as amended by Disaster Act Sec. 131)

Special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities

Under Code Sec. 451(k), a vertically integrated electric utility could elect to defer over eight years gain on sales of:

i. Property used in the trade or business of providing electric transmission services; or
ii. Any stock or partnership interest in an entity whose principal trade or business consists of providing electric transmission services to Federal Energy Regulatory Commission (FERC)-approved independent transmission companies.

Under pre-Disaster Act law, this deferral didn't apply to sales that took place after December 31, 2017.

New law. The Disaster Act extends this gain deferral provision for dispositions made before January 1, 2021. (Code Sec. 451(k)(3), as amended by Disaster Act Sec. 132)

Extension and clarification of excise tax credits relating to alternative fuels

A 50¢-per-gallon (or gasoline gallon equivalent for non-liquid fuel) excise tax credit was allowed against the Code Sec. 4041 retail fuel excise tax liability for alternative fuel sold for use or used by a taxpayer. A credit was also allowed against the Code Sec. 4081 removal at terminal excise tax liability for alternative fuel used to produce an alternative fuel mixture for sale or use in the taxpayer's trade or business. A taxpayer could claim an excise tax refund (or, in some cases, a credit against income tax) to the extent the taxpayer's alternative fuel or mixture excise tax credit exceeded the taxpayer's Code Sec. 4041 or Code Sec. 4081 liability.

New law. The Disaster Act extends these incentives through 2020. (Code Sec. 6426(d)(5), as amended by Disaster Act Sec. 133(a)(1); Code Sec. 6427(e), as amended by Disaster Act Sec. 133(a)(2))

Special rule. Notwithstanding any other provision of law, in the case of any alternative fuel credit properly determined under Code Sec. 6426(d) for the period beginning on Jan. 1, 2018, and ending with the close of the last calendar quarter beginning before the date of the enactment of the Disaster Act, the credit will be allowed, and any refund or payment attributable to such credit (including any payment under Code Sec. 6427(e)) will be made, only in such manner as IRS provides. IRS is directed to issue guidance within 30 days after the date of the enactment of the Disaster Act providing for a one-time submission of claims covering periods described in the preceding sentence. Such guidance will provide for a 180-day period for the submission of such claims (in such manner as prescribed by IRS) to begin not later than 30 days after such guidance is issued. Such claims will be paid by IRS not later than 60 days after receipt. If IRS has not paid pursuant to a claim filed under this subsection within 60 days after the date of the filing of the claim, the claim will be paid with interest from that date determined by using the overpayment rate and method under Code Sec. 6621. (Disaster Act Sec. 133(a)(3))

Additionally, the Disaster Act modifies the mixture component of the credit by specifying that liquefied petroleum gas, compressed or liquefied natural gas, and compressed or liquefied gas derived from biomass, are not eligible to be included in an alternative fuel mixture. (Code Sec. 6426(e)(2), as amended by Disaster Act Sec. 133(b)(1)) This applies to

A. Fuel sold or used on or after the date of the enactment of the Disaster Act, and
B. Fuel sold or used before the date of the enactment of the Disaster Act, but only to the extent that claims for the credit under Code Sec. 6426(e) with respect to such sale or use
    i. Have not been paid or allowed as of the date of enactment of the Disaster Act, and
    ii. Were made on or after January 8, 2018. (Disaster Act Sec. 133(b))

Oil spill liability trust fund rate

The Code imposes an excise tax of $0.09 per barrel on crude oil received at a refinery and petroleum products entered into the United States and deposited into the Oil Spill Liability Trust Fund. effective beginning on the first day of the first calendar month beginning after the date of enactment.

New law. The Disaster Act extends this excise tax through 2020, effective beginning on the first day of the first calendar month beginning after the date of the enactment of the Disaster Act. (Code Sec. 4611(f)(2), as amended by Disaster Act Sec. 134)

New Markets Tax Credit

The Code provides a New Markets Tax Credit which is available to both individual and corporate taxpayers and is equal to 39% of the capital invested in a qualified community development entity, a for profit or nonprofit entity that commits to the rules of the program, which in turn must loan to or invest substantially all of such capital in qualified businesses operating in low-income communities.

New law. The Disaster Act provides a $5 billion New Markets Tax Credit allocation for 2020. (Code Sec. 45D(f)(1)(H), as amended by Disaster Act Sec. 141(a))

The Disaster Act also extends for one year, through 2025, the carryover period for unused New Markets Tax Credits. (Code Sec. 45D(f)(3), as amended by Disaster Act Sec. 141(b))

Employer tax credit for paid family and medical leave

The Code provides an employer credit for paid family and medical leave, which permits eligible employers to claim an elective general business credit based on eligible wages paid to qualifying employees with respect to family and medical leave. The credit is equal to 12.5% of eligible wages if the rate of payment is 50% of such wages and is increased by 0.25 percentage points (but not above 25%) for each percentage point that the rate of payment exceeds 50%. The maximum amount of family and medical leave that may be taken into account with respect to any qualifying employee is 12 weeks per tax year.

New law. The Disaster Act extends this credit through 2020. (Code Sec. 45S(i), as amended by Disaster Act Sec. 142)

Work Opportunity Tax Credit

The Code provides an elective general business credit to employers hiring individuals who are members of one or more of ten targeted groups under the Work Opportunity Tax Credit program.

New law. The Disaster Act extends this credit through 2020. (Code Sec. 51(c)(4), as amended by Disaster Act Sec. 143)

Certain rules related to beer, wine, and distilled spirits

New law. The Disaster Act extends the reduction of these excise taxes through 2020. (Code Sec. 263A(f)(4)(B), as amended by Disaster Act Sec. 144(a)(1); Code Sec. 5051(a)(1)(C), as amended by Disaster Act Sec. 144(b)(1); Code Sec. 5051(a)(2)(A), as amended by Disaster Act Sec. 144(b)(1); Code Sec. 5414(b)(3), as amended by Disaster Act Sec. 141(c)(1); Code Sec. 5041(c)(8)(A) , as amended by Disaster Act Sec. 144(d)(1); Code Sec. 5041(b)(1), as amended by Disaster Act Sec. 144(e)(1); Code Sec. 5041(b)(2), as amended by Disaster Act Sec. 144(e)(1); Code Sec. 5041(h)(13), as amended by Disaster Act Sec. 144(f)(1); Code Sec. 5001(c)(4), as amended by Disaster Act Sec. 144(g)(1); Code Sec. 5212, as amended by Disaster Act Sec. 144(h)(1); Code Sec. 5555(a), as amended by Disaster Act Sec. 144(i)(1))

Look-through rule for related controlled foreign corporations

The Code provides look-through treatment for payments of dividends, interest, rents, and royalties between related controlled foreign corporations.

New law. The Disaster Act extends this look-through treatment through 2020. (Code Sec. 954(c)(6)(C), as amended by Disaster Act Sec. 145)

Credit for health insurance costs of eligible individuals

The Code provides a refundable credit (commonly referred to as the health coverage tax credit or "HCTC") equal to 72.5% of the premiums paid by certain individuals for coverage of the individual and qualifying family members under qualified health insurance.

New law. The Disaster Act extends the HCTC through 2020. (Code Sec. 35(b)(1)(B), as amended by Disaster Act Sec. 146)

Further Consolidated Appropriations Act, 2020 (H.R. 1865)

Also, yesterday on December 19, the Senate passed the "Taxpayer Certainty and Disaster Tax Relief Act of 2019" (the "Disaster Act") as part of an omnibus spending package, the " Further Consolidated Appropriations Act, 2020" (H.R. 1865).

This measure was previously passed by the House on December 17, and the President is expected to sign it.

The Disaster Act provides relief for taxpayers affected by disasters in 2018 through 30 days following the date of the enactment of the Disaster Act.

The spending package also repeals several ACA excise taxes and contains other tax provisions.

Special disaster-related rules for use of retirement funds

New law. The Disaster Act provides an exception to the 10% early retirement plan withdrawal penalty for qualified disaster relief distributions (not to exceed $100,000 in qualified hurricane distributions cumulatively). It allows for the re-contribution of retirement plan withdrawals for home purchases canceled due to eligible disasters, and provides flexibility for loans from retirement plans for qualified hurricane relief. (Disaster Act Sec. 202)

Employee retention credit for employers affected by qualified disasters

New law. The Disaster Act creates a "2018 through 2019 qualified disaster employee retention credit." The tax credit is for 40% percent of wages (up to $6,000 per employee) paid by a disaster-affected employer to an employee from a core disaster area. The credit applies to wages paid without regard to whether services associated with those wages were performed. The credit is treated as a current year business credit under Code Sec. 38(b). (Disaster Act Sec. 203)

Other disaster-related tax relief Codes

New law. Sec. 204 of the Disaster Act, also provides for:

- Temporary suspension of limitations on charitable contributions. The Disaster Act temporarily suspends limitations on the deduction for charitable contributions associated with qualified disaster relief.
- Special rules for qualified disaster-related personal casualty losses. With respect to uncompensated losses arising in a disaster area, the Disaster Act eliminates the current law requirements that personal casualty losses must exceed 10% of adjusted gross income to qualify for deduction. The Disaster Act also eliminates the current law requirement that taxpayers must itemize deductions to access this tax relief.
- Special Rule for Determining Earned Income. The Disaster Act allows taxpayers in designated disaster areas to refer to earned income from the immediately preceding year for purposes of determining the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC) in tax year 2018.

Automatic extension of filing deadline

New law. The Disaster Act provides any individual with a principal place of abode or any taxpayer with a principal place of business in a disaster area an automatic 60-day extension with regard to any tax filing. This applies to federally declared disasters declared after the date of the enactment of the Disaster Act. (Code Sec. 7508A, as amended by Disaster Act Sec. 205)

Modification of excise tax on private foundations

New law. The Disaster Act modifies the private foundation excise tax rules. This modification is intended to encourage private foundations to make larger one-time donations, such as is needed the case of disaster relief.This applies to tax years beginning after the date of the enactment of the Disaster Act. (Code Sec. 4940(a), as amended by Disaster Act Sec. 206)

Additional low-income housing tax credit allocations

New law. The Disaster Act provides additional low-income housing credit allocations relating to qualified 2017 and 2018 California disasters. (Disaster Act Sec. 207)

Treatment of Certain Possessions

New law. The Disaster Act provides the Secretary of the Treasury the authority to make payments to Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa equal to the losses the territories would incur by reason of the application of the disaster relief Codes. (Disaster Act Sec. 208)

OTHER DISASTER ACT PROVISIONS

Determining tax-exempt status of certain mutual or cooperative telephone or electric companies

The Code defines what income is used to determine the tax-exempt status of a mutual or cooperative telephone or electric company.

New law. The Disaster Act modifies the definition of income used to determine the tax-exempt status of a mutual or cooperative telephone or electric company to exclude certain government grants, contributions, and assistance. Specifically, the Disaster Act excludes from income

1. Grants, contributions, and assistance provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act or by local, state, or regional governmental entities for disasters or emergencies; and
2. Certain grants or contributions provided by a government entity for electric, communications, broadband, internet, or other utility facilities or services.

This applies to tax years beginning after December 31, 2017. (Code Sec. 501(c)(12)(J), as amended by Disaster Act Sec. 301)

Repeal of increase in unrelated business taxable income for certain fringe benefit expenses

The Code required the unrelated business taxation income (UBTI) of tax-exempt organizations to be increased by expenses related to qualified transportation fringe benefits (the so-called "church parking tax").

New law. The Disaster Act repeals this requirement. This repeal applies to amounts paid or incurred after December 31, 2017. (Code Sec. 512(a)(7), as amended by Disaster Act Section 302)

IRS TAXPAYER SERVICE PROVISIONS

Training of IRS employees

New law. The Act requires the IRS to maintain an employee training program that includes training on taxpayers' rights, dealing courteously with taxpayers, cross-cultural relations, ethics, and the impartial application of tax law. (Div. C, Act Sec. 102)

Confidentiality of taxpayer information

New law. The Act requires the IRS to institute and enforce policies and procedures that will safeguard the confidentiality of taxpayer information and protect taxpayers against identity theft. (Div. C, Act Sec. 103)

Improved customer service

New law. The Act requires the IRS to continue to make improvements to its 1-800 taxpayer help line a priority and to allocate resources necessary to decrease the time the IRS takes to respond to taxpayer communications and particularly to victims of tax-related crimes. (Div. C, Act Sec. 104)

Targeted audits and regulations

New law. The Act prohibits the IRS from targeting any U.S. citizen for exercising any First Amendment right. (Div. C, Act Sec. 106) The Act also prohibits the IRS from targeting groups for regulatory scrutiny based on their ideological beliefs. (Div. C, Act Sec. 107)

ACA REPEAL PROVISIONS

Repeal of medical device excise tax

Code Sec. 4191(a), which was added by the ACA, provides that the sale of a taxable medical device by the manufacturer, producer, or importer is subject to a tax equal to 2.3% of the price for which it is sold (medical device excise tax). The medical device excise tax originally applied to sales of taxable medical devices after December 31, 2012.

New law. The Act repeals the medical device excise tax for sales occurring after December 31, 2019. (Subtitle E, Act Sec. 501)

Repeal of health insurance provider's fee

Beginning January 1, 2014, Sec. 9010 of the ACA imposes an annual flat fee on covered entities engaged in the business of providing health insurance with respect to U.S. health risks.

New law. The Act repeals Sec. 9010 of the ACA for years beginning after December 31, 2020. (Subtitle E, Act Sec. 502)

Repeal of high-cost employer-sponsored health coverage tax

Code Sec. 4980I, which was added by the ACA, imposed a nondeductible excise tax on insurers when the aggregate value of employer-sponsored health insurance coverage for an employee, former employee, surviving spouse or other primary insured individual exceeds a threshold amount. This tax is commonly referred to as the tax on "Cadillac" plans.

New law. The Act repeals Code Sec. 4980I for tax years beginning after December 31, 2019. (Subtitle E, Act Sec. 503)

And there you have it, assuming you read this far.

We here at Muffoletto & Company believe that the more informed you are in regards to the rules and regulations that affect you the more we can be of service.
Should you have questions relating to any tax or financial matters call at
(818) 346-2160,
or you can visit us on the web at
www.petemcpa.com!

Providing individuals, small businesses, corporations, partnerships, professionals, and other business entities with the necessary guidance and answers for a complex world.

You may do so by emailing us at

pete@petemcpa.com