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Balance sheet

# CONSOLIDATED APPROPRIATIONS ACT, 2021 THAT AFFECT BUSINESSES

BY Brian J. Sampsel

The Consolidated Appropriations Act, 2021 (the CAA, 2021), signed into law on December 27, 2020, is a further legislative response to the coronavirus pandemic. The CAA, 2021 include—along with spending and other non-tax provisions and tax provisions primarily affecting individuals—the numerous business tax provisions briefly summarized below. The provisions are found in two of the several acts included in the CAA, 2021, specifically, the Taxpayer Certainty and Disaster Tax Relief Act (the TCDTR) of 2020 and the COVID-related Tax Relief Act of 2020 (the COVIDTRA).

**Tax provisions extended.** The TCDTR extends the following tax credits without other changes: the new markets tax credit; the work opportunity credit; the employer credit for paid family and medical leave that was provided by the 2017 Tax Cuts and Jobs Act (2017 TCJA); the carbon sequestration credit; the business energy credit both as regards termination dates and phase-downs of credit amounts; the credit for electricity produced from renewable resources and the election to claim the Code Sec. 48 credit instead for certain facilities; the Indian employment credit; the mine rescue team training credit; the American Samoa development credit; the second generation biofuel producer credit; the qualified fuel cell motor vehicle credit as applied to businesses; the alternative fuel refueling property credit as applied to businesses; the two-wheeled plug-in electric vehicle credit as applied to businesses; the credit for production from Indian coal facilities; and the energy efficient homes credit.

Additional provisions extended by the TCDTR without other changes are the following: the exclusion from employee income of certain employer payments of student loans; the 3-year recovery period for certain racehorses; favorable cost recovery rules for business property on Indian reservations; the 7-year recovery period for motor sports entertainment complexes; expensing for film, television and live theatrical productions; empowerment zone tax incentives except for the increased section 179 expensing for qualifying property and the deferral of capital gain for dispositions of qualifying assets; and the exclusion from being personal holding company income for certain payments or accruals of dividends, interest, rents, and royalties from a related person that is a controlled foreign corporation.

**Clarifications of tax consequences of PPP loan forgiveness.** The COVIDTRA clarifies that the non-taxable treatment of Payroll Protection Program (PPP) loan forgiveness that was provided by the 2020 CARES Act also applies to certain other forgiven obligations. Also, the COVIDTRA clarifies that taxpayers whose PPP loans or other obligations are forgiven as described above, are allowed deductions for otherwise deductible expenses paid with the proceeds and that the tax basis and other attributes of the borrower’s assets will not be reduced as a result of the forgiveness.

**Waiver of information reporting for PPP loan forgiveness.** The COVIDTRA allows the IRS to waive information reporting requirements for any amount excluded from income under the exclusion-from-income rule for forgiveness of PPP loans or other specified obligations. Note: the IRS had already waived information returns and payee statements for loans that, before enactment of the COVIDTRA, were guaranteed by the Small Business Administration under section 7(a)(36) of the Small Business Act.

**Extensions and modifications of earlier payroll tax relief.** The TCDTR extends the CARES Act credit, allowed against the employer portion of the Social Security (OASDI) payroll tax or of the Railroad Retirement tax, for qualified wages paid to employees during the COVID-19 crisis. Under the extension, qualified wages must be paid before July 1, 2021. Additionally, beginning on January 1, 2021, the credit rate is increased from 50% to 70% of qualified wages and qualified wages are increased from $10,000 for the year to $10,000 per quarter. Many other rules are also relaxed and the TCDTR makes some retroactive clarifications and technical improvements to the credit as initially enacted.

The COVIDTRA extends the credits provided by the Families First Coronavirus Response Act (FFCRA) against the employer portion of OASDI and Railroad Retirement taxes for qualifying sick and family paid leave and the equivalent FFCRA-provided credits for the self-employed against the self-employment tax. Under the extension of the employer credits, wages considered are those paid before April 1, 2021. Under the extension of the credits for the self-employed, the days considered are those dated before April 1, 2021.

**Employee benefits and deferred compensation.** The TCDTR provides that expenses for business-related food and beverages provided by a restaurant are fully deductible if they are paid or incurred in calendar years 2021 or 2022, instead of being subject to the 50% limit that generally applies to business meals. The TCDTR temporarily allows carryovers and relaxed grace period rules for unused flexible spending arrangement (FSA) amounts, whether in a health FSA or a dependent care FSA; the raising of the maximum eligibility age of a dependent under a dependent care FSA from 12 to 13; and prospective changes in election limits set forth by a plan.

With a view to layoffs in the current economic climate, the TCDTR relaxes rules that would otherwise cause a partial qualified retirement plan termination if the number of active participants decreases. Because of market volatility during the COVID-19 pandemic, the COVIDTRA relaxes, if certain conditions are met, the funding standards that, if met, allow a defined benefit pension plan to transfer funds to a retiree health benefits account or retiree life insurance account within the plan. The CARES Act's relaxed rules for "coronavirus-related distributions" are retroactively amended by the COVIDTRA to additionally provide that a coronavirus-related distribution that is a during-employment withdrawal from a money purchase pension plan meets the distribution requirements of Code Sec. 401(a).

**Residential real estate depreciation.** For tax years beginning after December 31, 2017, the TCDTR 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 a real property trade or business electing out of the limitation on business interest deductions and before January 1, 2018 was not subject to the ADS.

**Farmers' net operating losses.** The COVIDTRA allows farmers who had in place a two-year net operating loss carryback before the CARES Act to elect to retain that two-year carryback rather than claim the five-year carryback provided in the CARES Act. It also allows farmers who before the CARES Act waived the carryback of net operating loss, to revoke the waiver.

**Low-income housing credit.** The TCDTR provides a 4% per year credit floor for buildings that are not eligible for the 9% per-year credit floor.

Please contact us with questions about the above information or any other matters.