

## Several Tax Changes Highlight New Federal Stimulus Package

After months of negotiation, the Consolidated Appropriations Act, 2021, was signed by President Trump on December 27, 2020 (the "Act"). While direct checks to Americans and significant additional funding for the Paycheck Protection Program ("PPP") grabbed many of the headlines (and which we wrote about [here](#)), the Act also includes several significant tax changes that are likely to impact small business:

- ◆ **Deductibility of PPP-related expenses:** Since the initial CARES Act was enacted in March 2020, it was unclear whether expenses paid for with proceeds received from a PPP loan would be deductible. In November 2020, the IRS released guidance stating that expenses paid for with PPP loan proceeds that were ultimately forgiven would not be deductible. In a total reversal of this policy, the Act provides that all such expenses are deductible, regardless of whether the PPP loan is ultimately forgiven. The IRS released guidance on January 6, 2021, effectively reversing its prior position and aligning with the Act.
- ◆ **Deductibility of business meals:** In an attempt to boost the restaurant industry hit hard by the pandemic, the Act allows for 100% deductibility of business meals expenses for "food or beverages provided by a restaurant." This full deductibility is in effect for tax years 2021 and 2022. Prior to the Act, such expenses were limited to a 50% deduction.
- ◆ **Expansion of Employee Retention Tax Credit:** The CARES Act established the Employee Retention Tax Credit, which provided a refundable credit for up to \$5,000 per employee that was retained. The credit was available to businesses with operations that were fully or partially suspended due to the pandemic, and whose 2020 gross receipts were less than 50% for the same quarter in the prior year. Companies with more than 100 employees could not take the credit for wages paid to an employee who was still working.  
  
The Act greatly expands the reach of this Credit:
  - ◆ The amount is increased to \$7,000 per employee for each of the first

two quarters of 2021, for a total maximum credit of \$14,000 per employee.

- ✧ To qualify, the business' operations must have been fully or partially suspended due to a COVID-19 governmental order, and 2021 gross receipts must be less than 80% of the gross receipts from the same quarter in 2019 (so only a 20% revenue decline is required, versus 50% in the original law).
- ✧ Companies with fewer than 500 employees can now take the credit even if their employees continue to provide services to the company.
- ✧ Under the CARES Act, companies that received a PPP loan were ineligible to claim the Credit. This has been repealed under the Act. The Credit, however, cannot be claimed for wages paid with a PPP loan that was forgiven.

- ✧ The Act allows for advance payments of the Credit to struggling businesses with 500 or fewer employees (based on 70% of the average quarter payroll for the same quarter in 2019).

- ◆ Extension of payroll tax credits: The payroll tax credits included in the Families First Coronavirus Response Act, signed in March 2020, are extended through March 31, 2021.
- ◆ Increased charitable deduction allowance: The Act allows for taxpayers to take a \$300 "above the line" charitable deduction (\$600 for married couples filing jointly) even if they itemize their deductions on their federal tax return.

The Department of the Treasury will issue guidance on many of these provisions in the weeks and months ahead. We will continue to provide new alerts to provide important updates.

*This advisory is for information purposes only, and does not constitute legal advice. If you would like to discuss the impact of COVID-related laws on your business, please contact Joe LaFerrera, Aaron Kriss, or Sean Gilligan at (617) 350-6800, or email them at [joe.laferrera@gesmer.com](mailto:joe.laferrera@gesmer.com), [aaron.kriss@gesmer.com](mailto:aaron.kriss@gesmer.com), or [sean.gilligan@gesmer.com](mailto:sean.gilligan@gesmer.com).*



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