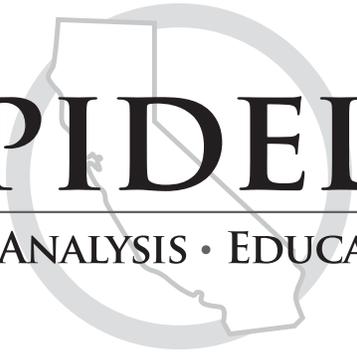


Consolidated Appropriations Act of 2021



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CONSOLIDATED APPROPRIATIONS ACT OF 2021

Course objectives: This course is a comprehensive review and analysis of the Consolidated Appropriations Act of 2021, which provides expanded and additional benefits to individuals and businesses affected by the COVID-19 pandemic. Topics discussed include: Taxpayer Certainty and Disaster Tax Relief Act (TCDTRA); Additional Coronavirus Response and Relief Act (ACRRA); PPP second draw loans; supplemental funding requests; deductibility of expenses; Employee Retention Credit; Economic Impact Payments; unemployment benefits; charitable contributions; payroll deferrals; paid sick and family leave credits; extenders; disaster tax relief; disaster-related Employee Retention Credit; and much more.

After completing this course, you will be able to:

- Determine if an entity qualifies for a second draw PPP loan based on their gross receipts
- Identify how unemployment benefits have been expanded under the ACRRA
- Recall how to calculate the Employee Retention Credit based on amendments in the TCDTRA
- Recall how the TCDTRA and the ACRRA have affected taxpayers that are electing trades or businesses under the business interest limitation rules
- Identify differences between the Employee Retention Credit under the CARES Act and the disaster-related Employee Retention Credit under the TCDTRA

Category: Taxes

Recommended CPE Hours: CPAs – 1 Tax
EAs – 1 Federal Tax Update
CRTPs – 1 Federal Tax Update

Level: Basic

Prerequisite: None

Advance Preparation: None

Expiration Date: January 2022

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ANALYSIS OF THE CONSOLIDATED APPROPRIATIONS ACT OF 2021

The President has signed the Consolidated Appropriations Act of 2021 (H.R. 133), which includes significant benefits for taxpayers. Those benefits are included in the following acts, which are part of Consolidated Appropriations Act:

- The Additional Coronavirus Response and Relief Act (ACRRA); and
- The Taxpayer Certainty and Disaster Tax Relief Act of 2020 (TCDTRA).

PPP PROVISIONS

The ACRRA reopens the Paycheck Protection Program (PPP) loan program, which had stopped taking applications in August 2020. The program is now extended to March 31, 2021, with an additional \$284.45 billion in funding for PPP loans, with set-asides for certain businesses.

The bill also clarifies the deductibility of expenses paid with forgiven PPP loan amounts, and revises the eligibility requirements for the loans. (ACRRA §323)

This new round of PPP funding makes the following new PPP funds available to borrowers:

- New “second draw loans” for smaller businesses whose gross receipts have dropped; and
- Supplemental funding for original PPP loans where the loan amount would have changed due to new rules that have been released.

The bill also makes changes to the existing PPP loan provisions adopted under the CARES Act, including allowing a simplified loan forgiveness application process and expanding the expenses that are qualified and eligible for loan forgiveness.

 **Practice Pointer**

The TCDTRA also retroactively allows borrowers to claim the Employee Retention Credit. However, wages paid with forgiven PPP debt are not included in payroll costs taken into account in computing the Employee Retention Credit. See page 9 for more information.

SECOND DRAW LOANS

The ACRRA creates a second loan from the Paycheck Protection Program, called a “PPP second draw” loan for smaller and harder-hit businesses, with a maximum loan amount of \$2 million per eligible entity. These are loans for businesses that can show significant losses in 2020 over 2019.

In order to receive a second draw PPP loan, eligible entities must:

- Employ not more than 300 employees (including part-time and seasonal employees); and
- Demonstrate at least a 25% reduction in gross receipts in the first, second, or third quarter of 2020 relative to the same 2019 quarter. (If the entity was not in business during all of 2019, then the business must show a 25% reduction in gross receipts during any quarter in 2020 from the 2019 calendar quarters it was in operation. If the application is submitted on or after January 1, 2021, then the fourth quarter of 2020 may be used as well.) (ACRRA §311)

Comment

Borrowers must have used, or will use, the first loan prior to the disbursement of a second draw loan.

There is nothing in the law addressing forgiveness or use of original PPP loans before a second draw loan may be taken. So it appears borrowers may take these loans regardless of the status of their original loans as long as the loans were used prior to disbursement.

The same waiver of affiliation rules that applied to the initial PPP loans will apply to the second draw PPP loans. Similarly, the rule covering hotels and restaurants with more than one physical location that applied for the first PPP loans applies to the second draw loans, except the employee limit per location is 300 employees.

Comment

The CARES Act provided loans to businesses with fewer than 500 employees that were “impacted by the COVID-19 pandemic,” but did not require that the borrower demonstrate a specified decline in revenues in order to qualify.

 **Practice Pointer**

Practitioners should notify clients that qualify for these new loans to contact their bank about applying as soon as possible.

Eligible businesses

Eligible entities include businesses, certain nonprofit organizations, housing cooperatives, veterans’ organizations, tribal businesses, self-employed individuals, sole proprietors, independent contractors, and small agricultural co-operatives.

Ineligible businesses

The following businesses are ineligible for the second round of PPP loans:

- Businesses that weren’t in operation on February 15, 2020 (this also applied to the first round of loans);
- Businesses listed in §120.110 of Title 13 of the Code of Federal Regulations, which includes businesses located in a foreign country, businesses involving gambling or activities of a “prurient sexual nature,” and private clubs;
- Persons or entities that receive a shuttered venue operator grant under the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (see page 8 for details);
- Entities involved in political and lobbying activities;
- Entities affiliated with entities in the People’s Republic of China; and
- Registrants under the Foreign Agents Registration Act.
(ACRRA §§310, 311)

Loan terms

The loans will again be based on 2.5 times the borrower’s average monthly payroll costs for the one-year period prior to the loan, or calendar-year 2019, with a maximum of \$2 million. (ACRRA §311)

Comment

Entities in industries assigned to NAICS code 72 (Accommodation and Food Services) may receive loans of up to 3.5 times average monthly payroll costs. This is welcome relief to hotels and restaurants.

Seasonal employers may calculate their maximum loan amount based on a 12-week period beginning February 15, 2019, through February 15, 2020, and new entities may receive loans of up to 2.5 times the sum of average monthly payroll costs for the months they existed if the entity was not in existence for less than 12 months.

Comment

The ACRRA defines seasonal employers as eligible borrowers that do not operate for more than seven months in any calendar year, or during the preceding calendar year had gross receipts for any six months of that year that were not more than 33.33% of the other six months of that year. (ACRRA §315) This definition applies for all PPP purposes, as if it were originally included in the CARES Act.

The rules regarding allowable expenses (including new allowable expenses discussed on page 5), loan forgiveness, and COD exclusions for existing PPP loans, apply to these loans as well.

SUPPLEMENTAL FUNDING REQUESTS

Borrowers can also submit supplemental PPP loan requests in all cases where their original PPP loan amount would have changed due to new rules that have been released. This applies to partnerships where the original loan did not include the self-employment earning of the partners. But it also applies to borrowers that returned their original loans or took reduced loans to qualify for other benefits that are no longer limited for PPP recipients, such as the Employee Retention Credit. (ACRRA §312)

Comment

Businesses that never applied for a PPP loan may not now apply under the original PPP program. However, as stated above, it is possible that they qualify for a second draw loan.

An interim final rule was issued in May 2020, allowing a borrower to request a supplemental loan if, subsequent to the time of application, regulations were issued that would have increased the loan amount it could have received. However, this only applied if the lender had not yet submitted what's known as SBA Form 1502 for the original loan. This meant that many borrowers were out of luck and did not receive the additional PPP funds they were entitled to. The ACRRA removes this restriction and allows supplemental requests in all cases where the loan amount would have changed due to the new rules.

 **Practice Pointer**

Borrowers must request this additional funding before forgiveness is granted on their original PPP loan. (ACRRA §312(a)(2)) So borrowers that may want to borrow additional funds should wait to apply for forgiveness and attempt to withdraw forgiveness applications that have already been submitted.

The SBA has until January 13, 2021 (17 days from the date of enactment), to release guidance on this additional funding.

The loan amount for certain farmers and ranchers is now based on gross income, not net profit shown on the 2019 Schedule F, but is still limited to 2.5 months with a \$100,000 annual gross income cap. The ACRRRA specifically allows a supplemental application for these borrowers as long as they have not received any loan forgiveness on the original loan. (ACRRRA §313)

Comment

These amounts would be considered supplemental funding for original PPP loans, so these borrowers will not be required to meet the requirements for second draw loans.

 **Practice Pointer**

Taxpayers applying for bankruptcy must receive approval from the bankruptcy court to receive additional PPP funds or a new PPP loan. (ACRRRA §320)

EXPANDED ELIGIBILITY

Most §501(c)(6) organizations, i.e., trade groups, chamber of commerce groups, and certain destination marketing companies, are eligible to apply for PPP loans, provided:

- The organization doesn't receive more than 10% of receipts from lobbying activities;
- The lobbying activities of the organization do not comprise more than 10% of its total activities; and
- The organization has 150 employees or fewer.

In addition, housing cooperatives, newspapers, broadcasters, and radio stations now potentially qualify. (ACRRRA §§311, 316, 317, 318, 319)

Comment

The ACRRRA also provides further clarification that churches and religious organizations are eligible PPP loan recipients and prohibits the application of regulations otherwise rendering ineligible businesses principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs. It also codifies that the prohibition on eligibility for nonprofit and certain other businesses for SBA loans shall not apply for PPP loans.

DEDUCTIBILITY OF EXPENSES

The ACRRRA makes it clear that no deduction may be denied, no tax attribute reduced, and no basis increase denied by reason of any PPP loan forgiveness under the CARES Act or the ACRRRA. (ACRRRA §276) This reverses the IRS's position taken in IRS Notice 2020-32 that taxpayers could not deduct expenses that were paid with forgiven PPP loans.



California nonconformity

For taxable years beginning on or after January 1, 2020, California does not treat the forgiveness as COD income but disallows deductions for any of the amounts paid with forgiven PPP debt. (AB 1577 (Ch. 20-39); R&TC §§17131.8, 24308.6) Because California passed a law that specifically disallows deductions for expenses paid with PPP loan amounts that were forgiven, absent subsequent legislation enacted in 2021, these expenses will not be deductible on the California return. See page 8-1 of the manual for additional information.

Basis issues

The ACRRRA also clarifies that tax basis and other attributes of the borrower's assets will not be affected as a result of the loan forgiveness. (ACRRRA §276) This means that for PPP loan forgiveness excluded on a partnership or S corporation return, the amount excluded is treated as tax-exempt income for purposes of IRC §§705 and 1366. Unless otherwise provided by the IRS, any increase in a partner's adjusted basis in the partner's partnership interest is equal to the partner's distributive share of deductions resulting from costs giving rise to the loan forgiveness.

These provisions are applicable to taxable years ending after March 27, 2020 (the date of the enactment of the CARES Act).

LOAN FORGIVENESS

Eligible expenses

Nonpayroll costs

The following expenses are now considered allowable **and forgivable** uses for PPP loan funds:

- **Covered operations expenditures:** Payment for any business software or cloud computing service that facilitates any of the following:
 - Business operations;
 - Product or service delivery;
 - The processing, payment, or tracking of payroll expenses;
 - Human resources;
 - Sales and billing functions; or
 - Accounting or tracking of supplies, inventory, records, and expenses;
- **Covered property damage costs:** Costs related to property damage due to public disturbances that occurred during 2020 that are not covered by insurance or other compensation;
- **Covered supplier costs:** Amounts paid to a supplier for goods essential to operations of the entity that are made pursuant to a contract, purchase order, or order for goods in effect prior to taking out the loan (before or during the loan covered period for perishable goods); and

- **Covered worker protection expenditures:** Expenses to help a loan recipient comply with federal health and safety guidelines or any equivalent state and local guidance related to COVID-19 during the period between March 1, 2020, and the end of the national emergency declaration. These include, but are not limited to, the purchase, maintenance, or renovation of assets that create or expand:
 - A drive-through window facility;
 - An indoor, outdoor, or combined air or air pressure ventilation or filtration system;
 - A physical barrier such as a sneeze guard;
 - An expansion of additional indoor, outdoor, or combined business space;
 - An onsite or offsite health screening capability; or
 - Other assets necessary to comply with various regulatory agency requirements.

Costs related to residential real property or intangible property are not eligible costs. (ACRRA §304(a))

These provisions are effective as if they were originally included in the CARES Act. As a result, they apply to all PPP loans, except for loans where borrowers have already received forgiveness.

Payroll costs

The ACRRA expands the types of group insurance benefits that are included in payroll costs for purposes of both loan eligibility and forgiveness. In addition to group health insurance provided under the CARES Act, as originally passed, eligible group insurance benefits now also include group:

- Life;
- Disability;
- Vision; and
- Dental.

(ACRRA §308)

This provision applies retroactively to loans made before, on, or after December 27, 2020, (the date of the ACRRA's enactment) including loan forgiveness.

EIDL grants

PPP forgiveness amounts will no longer be reduced by Economic Injury Disaster Loan (EIDL) advances the borrowers received. (ACRRA §333) The SBA is also directed to issue rules ensuring that borrowers that received forgiveness reduced by their EIDL advance be "made whole."

Simplified forgiveness for loans of \$150,000 or less

The ACRRA provides simplified loan forgiveness provisions for borrowers with PPP loans of \$150,000 or less and expands the types of expenses that may be forgiven.

A simplified loan forgiveness procedure will be available to borrowers with loans of up to \$150,000. (ACRRA §307) The simplified forgiveness application for these borrowers applies to both original PPP loans under the CARES Act and second draw PPP loans under the ACRRA. These borrowers will submit a one-page application that only requires them to provide:

- A description of the number of employees the borrower was able to retain because of the covered loan;
- An estimated amount of the loan amount spent on payroll costs;
- The total loan amount; and
- An attestation that the borrower accurately provided the required certification for the loan and complied with the PPP loan requirements.

The borrower must retain records to support the application in case of an audit but will not be required to submit them with the application. Employment records related to the loan must be retained for four years from the date of the loan forgiveness application submission. All other records must be retained for three years.

Comment

A new application will be required for this simplified forgiveness process. The ACRRA states the application form must be made available by January 20, 2021, (24 days after the December 27, 2020, date of enactment).

Covered period

The ACRRA allows a borrower to choose a covered period for purposes of the loan forgiveness provisions that begins on the loan origination date and ends on any date selected by the borrower that is between eight weeks and 24 weeks after the loan origination date. (ACRRA §306) This provision applies to all PPP loans and basically codifies what banks and the SBA had been allowing. However, the flexibility to choose a covered period can benefit borrowers that have forgiveness reductions based on reductions in full-time equivalent employees (FTEEs), or reductions in salaries or wages.

Example of reduction in employees

The Johnson Engineering firm received a PPP loan on June 15, 2020. Prior to the pandemic, the firm had a total of 20 employees. As a result of the pandemic, most of their government contracts were cancelled. On September 1 the firm had to lay off 10 employees.

The firm has always operated remotely, and government restrictions do not prevent them from consulting with their clients, so they do not qualify for the business activity exemption to the FTEE reduction rules.

If Johnson uses an eight-week covered period, they will not qualify for full forgiveness of their PPP loan because they hadn't spent all their loan proceeds yet. If they chose a 24-week forgiveness period, they will have a significant forgiveness reduction because of the September layoffs.

Instead, Johnson may now choose an 11-week forgiveness period. This allows them to qualify for full forgiveness of their loan. They have enough time to use all of the loan proceeds, and they end their forgiveness period before their reduction in FTEEs.

Safe harbors extended

For new PPP loan distributions, the ACRRA extends the safe harbors for restoring FTEEs and salaries and wages to the end of the borrower's covered period. (ACRRA §311)

Comment

With the additional PPP funding and changes to the forgiveness provisions, it is unclear whether borrowers with additional loan funding will submit multiple forgiveness applications. What is clear is that additional guidance is needed.

The ACRRA states that regulations to carry out the new PPP provisions just outlined must be issued no later than January 6, 2021, (10 days after the December 27, 2020, date of enactment) so that guidance should come swiftly. (ACRRA §303)

GRANTS FOR SHUTTERED VENUE OPERATORS

\$15 billion was provided for grants to eligible live venue operators or promoters, theatrical producers, live performing arts organization operators, museum operators, motion picture theatre operators, or talent representatives that demonstrate a 25% reduction in revenues. (ACRRA §324) Specifically:

- There is a set-aside of \$2 billion for eligible entities that employ 50 full-time employees or fewer, and any amounts from this set-aside remaining after 60 days from the date of implementation of this program shall become available to all eligible applicants;
- The SBA may make an initial grant of up to \$10 million to an eligible person or entity and a supplemental grant that is equal to 50% of the initial grant;
- In the initial 14-day period of implementation of the program, grants shall only be awarded to eligible entities that have faced 90% or greater revenue loss. In the 14-day period following the initial 14-day period, grants shall only be awarded to eligible entities that have faced 70% or greater revenue loss. After these two periods, grants shall be awarded to all other eligible entities; and
- Grants must be used for specified expenses such as payroll costs, rent, utilities, and personal protective equipment.

COD AND DEDUCTIONS FOR NON-PPP PROGRAMS

ACRRA §278 clarifies that amounts that are granted or forgiven through the programs listed below are not taxable income, and expenses paid with those amounts are deductible:

- Loans forgiven under the U.S. Treasury Program's Management Authority under §1109(d)(2) of the CARES Act;
- EIDL emergency grant program under CARES Act §1110(e);
- Subsidies for certain loan payments under CARES Act §1112(c);
- Funding under §331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act; and
- Grants for shuttered venue operations under §324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act.

Example of SBA COD

DaleCo borrowed \$200,000 under the SBA's 7(a) loan program in 2018. Under §1112 of the CARES Act, the SBA made DaleCo's loan payments for six months.

Pursuant to §276 of the ACRRA, none of the loan payments made on DaleCo's behalf are taxable income to DaleCo. In addition, DaleCo is not required to adjust its deductible expenses nor make any basis adjustments as a result of the SBA making its loan payments.

ADDITIONAL PROGRAMS FUNDED

The ACRRA also appropriates funding for the following new programs:

- \$25 million for the Minority Business Development Centers program under the Minority Business Development Agency (MBDA);
- \$50 million for PPP auditing and fraud mitigation purposes; and
- \$20 billion for the Targeted EIDL Advance program, of which \$20 million is for the Inspector General.

Differences Between CARES Act and ACRRRA PPP Provisions		
Issue	CARES Act	ACRRRA second draw loans
Eligibility	Businesses in existence on February 15, 2020, with fewer than 500 employees (with specified exceptions) that were "impacted by COVID-19." No specific loss threshold	Businesses with 300 or fewer employees that have sustained a 25% loss in any quarter of 2020 compared to 2019
Loan amount	2.5 × average monthly payroll expenses for 2019 or one year prior to loan amount	2.5 (3.5 for restaurants and hotels) times average monthly payroll expenses for 2019 or one year prior to loan
Forgivable expenses	<ul style="list-style-type: none"> • Payroll costs (must be at least 60% of forgivable amount); • Mortgage interest on a mortgage taken out by the borrower for real or personal property that was in place prior to February 15, 2020 (not including prepayments); • Rent on a real or personal property lease taken out before February 15, 2020; and • Utilities for service established before February 15, 2020 (CARES Act §1106) 	Same as CARES Act, plus: <ul style="list-style-type: none"> • Supplier costs; • Investments in facility modifications; and • Personal protective equipment to operate safely Note: These expanded expenses apply retroactively to first-round loans under the CARES Act
Simplified loan forgiveness application process	One-page simplified application for those taxpayers with loans of \$150,000 or less	One-page simplified application for those taxpayers with loans of \$150,000 or less

EMPLOYEE RETENTION CREDIT

The TCDTRA modifies, expands, and extends the Employee Retention Credit. (TCDTRA §207)

COORDINATION WITH PPP LOANS

Under the CARES Act, PPP loan recipients were ineligible to claim the Employee Retention Credit. The TCDTRA retroactively repeals this rule. Under the TCDTRA, PPP loan recipients may now claim the Employee Retention Credit.

No double benefit where PPP loans forgiven

Wages paid with forgiven PPP debt are not included in payroll costs taken into account in computing the Employee Retention Credit. (TCDTRA §206(c)) However, if the PPP loan is not forgiven, the wages may be used for purposes of computing the credit. The SBA and the IRS are directed to issue additional guidance in this area. (TCDTRA §206(c))

These amendments are effective retroactively as if included in the CARES Act.

 **Practice Pointer**

A PPP borrower that filed their employment tax returns prior to the enactment of the TCDTRA, when they were ineligible to claim the Employee Retention Credit, may treat any applicable amount for which they are now going to claim the credit as an amount paid in the calendar quarter that includes the date of the TCDTRA enactment (therefore, fourth quarter, 2020).

“Applicable amount” is the wages or qualified wages paid in a calendar quarter beginning after December 31, 2019, and before October 1, 2020, and not taken into account by the taxpayer in calculating the Employee Retention Credit for such calendar quarter.

Example of claiming credit after PPP loan

XYZ, Inc. received a PPP loan in April 2020. If not for the PPP loan, XYZ, Inc. would have been eligible to claim the Employee Retention Credit on its second- and third-quarter payroll tax returns.

The TCDTRA amendments to the CARES Act permits XYZ, Inc. to retroactively calculate its eligible wages and claim the Employee Retention Credit on all eligible wages paid after March 12, 2020, through December 31, 2020, on its fourth-quarter payroll tax return for 2020, excluding those wages that were paid with PPP debt that qualifies for forgiveness.

NO DOUBLE BENEFIT FOR OTHER CREDITS

Taxpayers may not claim the following credits for the wages used to determine the amount of the Employee Retention Credit:

- IRC §41 Credit for Increasing Research Activities;
- IRC §45A Indian Employment Credit;
- IRC §45P Employer Wage Credit for Employees Who are Active Duty Members of the Uniformed Services;
- IRC §45S Employer Credit for Paid Family and Medical Leave;
- IRC §51 Work Opportunity Credit; and
- IRC §1396 Empowerment Zone Employment Credit.
(TCDTRA §207(f))

Comment

The CARES Act only precluded double benefits for the Employer Retention Credit for paid family and medical leave and the Work Opportunity Credit.

CREDIT EXTENSION AND EXPANSION

Under the CARES Act, employers may claim this refundable credit against quarterly employment taxes equal to 50% of the qualified wages and compensation paid to each employee. Only wages paid after March 12, 2020, and before January 1, 2021, qualify for the credit. The maximum qualified wages per employee is \$10,000 *annually*, which equates to a maximum Employee Retention Credit of \$5,000 per employee.

For calendar quarters beginning after December 31, 2020, the TCDTRA amends the CARES Act and:

- Extends the credit to apply to qualified wages paid prior to July 1, 2021, (so the credit now applies to wages paid after March 12, 2020, through July 1, 2021);
- Increases the credit rate from 50% of qualified wages to 70%; and
- Increases the \$10,000 qualified wage limitation to apply per quarter, rather than on an annual basis.

(TCDTRA §207(a)-(c))

Example of credit limit differences

ABC, Inc. has 10 employees. Assuming ABC, Inc. did not receive a PPP loan, then under the CARES Act, as originally passed on March 27, 2020, ABC, Inc. would be eligible for an Employee Retention Credit in 2020 of \$50,000 calculated as follows:

Qualifying wages per employee (capped at \$10,000 annually)	\$ 10,000
× Number of employees	<u>10</u>
= Maximum qualifying wages	\$100,000
× Credit percentage	<u>50%</u>
= Maximum credit for 2020	\$ 50,000

After the TCDTRA’s amendments to the CARES Act, ABC’s maximum Employee Retention Credit in 2021 is calculated as follows:

Qualifying wages per employee (capped at \$10,000 per quarter)	\$20,000*
× Number of employees	<u>10</u>
= Maximum qualifying wages	\$200,000
× Credit percentage	<u>70%</u>
= Maximum credit for 2021	\$140,000

*Remember, the TCDTRA is expanded through June 30, 2021, so the credit is only available for the first two quarters of 2021.

ELIGIBLE EMPLOYERS EXPANDED

In addition, under the CARES Act, an “eligible employer” was one that carried on a trade or business during the 2020 calendar year and with respect to any calendar quarter:

- Fully or partially suspended their operations due to governmental orders; or
- Experienced a significant decline in gross receipts for the calendar quarter.

A significant decline in gross receipts was defined as:

- A more than 50% decline in gross receipts for the calendar quarter compared to the comparable 2019 calendar quarter; and
- Continuing until the calendar quarter following a quarter in which its gross receipts are greater than 80% when compared to the corresponding 2019 calendar quarter.

For calendar quarters beginning after December 31, 2020, the TCDTRA amends the CARES Act, and a significant decline in gross receipts is revised to apply to any employer if the gross receipts:

- For such calendar quarter are less than 80% of the gross receipts of such employer for the same calendar quarter in 2019 (in other words, only a 20% decline in gross receipts); or
- At the election of the employer, for the immediately preceding calendar quarter, are less than 80% of the gross receipts for the corresponding calendar quarter in calendar year 2019. (TCDTRA §207(d))

At the election of the taxpayer, if the business wasn't in operation at the beginning of a calendar quarter in 2019, the taxpayer may use the 2020 comparable quarter.

Comment

Even though the TCDTRA eased the definition of "significant decline in gross receipts," it left intact the Employee Retention Credit eligibility for employers whose operations were fully or partially suspended due to governmental orders.

So, an employer that didn't experience a significant decline in gross receipts but was subject to shutdown orders can still claim the Employee Retention Credit for any quarter during which it was subject to governmental shutdown orders.

Government employers

The following governmental agencies or instrumentalities are now eligible for the credit:

- Government agencies or instrumentalities that are tax-exempt under IRC §501(a); or
- Colleges or universities whose primary purpose or function is providing medical or hospital care. (TCDTRA §207(d)(3))

Definition of small employer expanded

Under the CARES Act, employers with an average of more than 100 full-time employees may only count wages paid to employees who are not actually working in the calculation of the credit. In contrast, employers with an average of 100 or fewer full-time employees count all wages paid, including those paid to employees who are still working.

The TCDTRA allows employers with 500 or fewer full-time employees to count all wages paid to employees in calculating the credit, not just wages paid to those employees who are not working. (TCDTRA §207(e)) This is a huge boost in the credit amounts that medium- to large-size employers may now claim.

ADVANCE PAYMENTS

Under the TCDTRA, only employers with an average number of full-time employees (30 hours) of 500 or less during 2019 may elect to receive an advance payment of the credit in any calendar quarter. The amount of advance payment cannot exceed 70% of the average quarterly wages paid by the employer in calendar-year 2019. Seasonal employers can elect to pay 70% of the wages for the calendar quarter in 2019 which corresponds to the calendar quarter to which the election relates. Employers not in existence in 2019 may use the wages for 2020 rather than 2019. (TCDTRA §207(j))

Example of advance payment limit

XYZ Corp. averaged \$200,000 in wages per quarter in 2019. As a result, their advance credit is limited to \$140,000 ($\$200,000 \times 70\%$).

The employer's FICA or railroad retirement tax liabilities will be increased by any excess advance payments received.

 **Practice Pointer**

Advance payments are claimed on IRS Form 7200, Advance Payment of Employer Credits Due to COVID-19.

ECONOMIC IMPACT PAYMENTS

The ACRRA also provides another round of economic stimulus payments to qualified individuals in addition to those provided under the CARES Act. (ACRRA §272; IRC §6428A) However, there are some differences between payments authorized under the ACRRA and those authorized under the CARES Act as outlined in the upcoming chart.

According to Treasury Secretary Mnuchin, these payments will start going out the week of December 27, 2020. If a direct deposit account is not available, the IRS will mail a paper check. If available, payments will be directly deposited into:

- Any account to which the payee authorized, on or after January 1, 2019, payments of tax refunds;
- Any account belonging to a payee from which that individual, on or after January 1, 2019, made a payment of income taxes; or
- Any Treasury-sponsored account (as defined in §208.2 of title 31 of the Code of Federal Regulations).

Comment

The list of direct deposit accounts is more expansive than the CARES Act, which limited direct deposits into those accounts for which the taxpayer had previously authorized a federal direct deposit (not payments).

NOTICES

The ACRRA does require the IRS to send another notice notifying taxpayers of the amount of their additional stimulus payment. After the first round of stimulus payments authorized by the CARES Act, the IRS sent Notice 1444 to taxpayers within 15 days of issuing their payment. The notice notified the taxpayer of the amount they received and the method of delivery (direct deposit or paper check). The ACRRA requires the same information for the new round of notices.

 **Practice Pointer**

Both the first and second round of economic stimulus payments are treated as advances against a 2020 tax credit that must be reconciled on a taxpayer’s 2020 income tax return. Because of this, many tax professionals have expressed concern about clients who have lost their Notice 1444. As of publication, the IRS has not indicated whether they will send another notice before tax season or whether they will have a stimulus look-up tool on their website.

“SECOND ROUND” EIPs ARE A SEPARATE CREDIT

The second round of EIPs authorized by the ACRRA are made available through new IRC §6428A. The first round of EIPs authorized by the CARES Act were made available through IRC §6428. Because the authorizations for the EIPs are made under different sections of the Internal Revenue Code, each round of EIPs is treated as its own separate credit. This means that the income thresholds apply separately to each credit, not on a cumulative basis.

Differences in EIP Payments Authorized Under CARES Act and ACRRA		
Issue	CARES Act	ACRRA
Amount of payment	\$1,200 per qualifying individual plus \$500 per qualifying child who is under age 17 at the end of 2020	\$600 per taxpayer (\$1,200 for MFJ) plus \$600 per dependent who is under age 17 at the end of 2020
Based on AGI	From 2018 or 2019 (depending on whether the taxpayer’s 2019 tax return was filed prior to payments being issued)	From 2019
AGI limits	Full payments for taxpayers with AGI as follows: <ul style="list-style-type: none"> • \$75,000 single taxpayers • \$112,500 HOH • \$150,000 MFJ Payment phased out by \$5 for every \$100 (or 5%) over the AGI threshold and completely phased out at: <ul style="list-style-type: none"> • \$99,000 single taxpayers • \$146,500 HOH • \$198,000 MFJ if no children • Add \$10,000 for each qualified child 	Full payments for taxpayers with AGI as follows: <ul style="list-style-type: none"> • \$75,000 single taxpayers • \$112,500 HOH • \$150,000 MFJ Payment phased out by \$5 for every \$100 (or 5%) over the AGI threshold and completely phased out at: <ul style="list-style-type: none"> • \$87,000 single taxpayers • \$136,500 HOH • \$174,000 MFJ if no children • Add \$12,000 for each qualified child
Nonfilers	Payments made to Social Security recipients, Social Security disability recipients, VA disability recipients	Same as CARES Act
<i>(continued)</i>		

Differences in EIP Payments Authorized Under CARES Act and ACRRRA (continued)		
Issue	CARES Act	ACRRRA
Social Security number requirements	To receive the payment, the Social Security numbers for the taxpayer, spouse, and qualifying dependent must be included on their tax return. The only exceptions are: <ul style="list-style-type: none"> • If one spouse is a member of the Armed Forces, then a Social Security number need only be provided for one of the spouses; and • If the credit is taken for a qualifying child who is adopted or placed for adoption, the adoption taxpayer identification number should be used 	U.S. citizens and their children are eligible even if they are married to noncitizens. In other words, the U.S. citizen parent with an SSN will receive \$600, plus \$600 for each child under the age of 17, as long the child has an SSN This expansion would be retroactive and would apply to first round EIPs authorized under CARES Act. However, additional first round EIPs won't be sent if a taxpayer didn't qualify under the original CARES Act, but they do under the ACRRRA. Taxpayers in this situation will receive their additional EIP when they reconcile their credit on their 2020 income tax return
Ineligible taxpayers	The credit is not available to: <ul style="list-style-type: none"> • Nonresident aliens; • Individuals who may be claimed as a dependent on another person's tax return (even if they are not actually claimed); and • Estates or trusts 	Same as CARES Act. ACRRRA also disallows credit for individuals who were deceased prior to January 1, 2020, (the deceased individual is treated as if his or her valid identification number was not included on the return) (IRC §6428A(e))

UNEMPLOYMENT BENEFITS

Under the ACRRRA, COVID-related unemployment benefits are extended for an additional 11 weeks, for a total of 50 weeks. (ACRRRA §201) These benefits will be available beginning December 27 and will run at least through March 14, 2021. Individuals who are still receiving benefits on March 14, 2021, and who have not exhausted their claims can continue receiving benefits through weeks beginning before April 6, 2021.

The additional \$600 per week benefits that were available under the unemployment assistance provision of the CARES Act have been reduced to \$300 per week for weeks of unemployment beginning after December 26, 2020. (ACRRRA §203(b))

☑ Planning Pointer

The total additional unemployment compensation available to a worker through the Continued Assistance for Unemployed Workers Act of 2020 is \$3,300 (\$300 per week × 11 weeks). Remember, Pandemic Unemployment Assistance is taxable on the recipient's federal income tax return, but withholding is not available on the benefits. Taxpayers with other sources of income should plan ahead for the additional income tax liability and consider making estimated tax payments.

States can elect to modify their agreements with the federal government to provide an additional \$100 per week, which is available to earners who have self-employment income of at least \$5,000 in the most recent taxable year ending prior to the taxpayer's application for regular UI compensation. (ACRRA §261) These additional payments end on March 14, 2021.

PANDEMIC UNEMPLOYMENT ASSISTANCE OVERPAYMENTS

Individuals who were paid Pandemic Unemployment Assistance to which they were not entitled must repay the overpayments. However, the state agency administering unemployment benefits may waive such repayment if it determines that:

- The payment was without fault on the part of the individual; and
- Such repayment would be contrary to equity and good conscience. (ACRRA §201(d))

RETURN-TO-WORK REPORTING REQUIREMENTS

States providing expanded unemployment benefits must, within 30 days from the date of enactment of the act, establish a method to address circumstances where UI claimants refuse to return to work or to accept an offer of suitable work without good cause. (ACRRA §251, amending CARES Act §2117) Such methods must include:

- Reporting method for employers, such as through a phone line, e-mail, or online portal to notify the state agency when an individual refuses an offer of employment; and
- A plain language notice for claimants about state return-to-work laws, rights to refuse to return to work or to refuse suitable work, and claimant's right to refuse work that poses a risk to the claimant's health or safety. (ACRRA §251)

Comment

The return-to-work reporting requirement appears to be targeting those workers who decided that receiving unemployment compensation was more lucrative than working. This was a problem for some employers during the first COVID-19 shutdowns in the spring of 2020. This second round of unemployment compensation pays only \$300 per week versus the \$600 per week provided when the CARES Act was originally enacted on March 27, 2020. Because of this reduced benefit, fewer employers should be faced with employees refusing to return to work.

APPEAL RIGHTS

Individuals receiving Pandemic Unemployment Assistance have the same rights to appeal to the state agency administering the program as those available to applicants for regular unemployment insurance benefits. (ACRRA §201(c))

FULL DEDUCTION FOR BUSINESS MEALS

Businesses may claim a 100% deduction (rather than a 50% deduction) for food or beverages provided by a restaurant. The full deduction is available for purchases paid or incurred after December 31, 2020, and before January 1, 2023, as long as the taxpayer otherwise meets the criteria for deducting a business meal. (TCDTRA §210; IRC §274(n)(2))

Example of meal deduction

John is a tax professional and owns his own sole-proprietor tax practice. Every Friday morning during tax season, he brings bagels and coffee for breakfast for his staff. Under the TCDTRA, John's deduction for business meals for his Friday bagels and coffee depends on where he acquires them.

If John picks up bagels and coffee from the grocery store on the way to the office, he can deduct only 50% of the cost when he files his income tax return.

If John picks up bagels and coffee from the local bagel restaurant on the way to the office, he can deduct 100% of the cost when he files his income tax return.

Comment

The 100% business deduction for business meals has been promoted as a means to help revive the restaurant industry that has been devastated during the COVID-19 pandemic. But, what is a "restaurant"? The term is not defined in the TCDTRA. Is a catering business or a food truck classified as a "restaurant"? What about a coffee shop?

CHARITABLE CONTRIBUTIONS

The CARES Act provisions regarding charitable contributions are extended and modified for the 2021 taxable year. Specifically:

- Nonitemizers may claim a \$300 above-the-line deduction for cash contributions made to qualified organizations (excluding private foundations or donor advised funds) for 2021. Unlike the above-the-line deduction for the 2020 taxable year, the act clarifies that joint filers may claim up to \$600 on the 2021 return (TCDTRA §212; IRC §§63(b), 170(p));
- A 50% accuracy-related penalty will be imposed on any underpayments attributable to overstatements of the 2021 above-the-line deduction. This penalty will not be imposed automatically, but must be approved by an IRS supervisor prior to assessment (TCDTRA §212; IRC §§6662(b)(9), 6751(b)(2)(A)); and
- The increased charitable contribution limits for cash contributions applicable to individuals (100% of AGI) and corporations (25% of taxable income) and for donations of food inventory (25%) also apply for contributions made in 2021. (TCDTRA §213)

FLEXIBLE SPENDING ACCOUNT CARRYOVERS

Individuals may carry over any unused 2020 benefits or contributions remaining in any health and dependent care flexible spending accounts to their 2021 accounts without disqualifying the cafeteria plan. Individuals may likewise carryover any unused 2021 benefits to a plan year ending in 2022.

Other amendments soften the "use it or lose it" treatment for flexible spending accounts by allowing:

- Plans to extend the annual grace period to 12 months after the plan year ending in 2020 or 2021;
- Health care flexible spending accounts to provide post-termination reimbursements for anyone terminated in 2020 or 2021 throughout the end of the plan year (including the 12 month grace period);

- Dependent care flexible account payments for children under age 14 (increased from age 13) during the plan year if there were unused amounts from the preceding year;
- Participants in either a health or dependent care flexible spending arrangement to prospectively modify their employee contribution amounts for the 2021 plan year; and
- Employers to retroactively amend their cafeteria plans as long as the amendment is consistent with how the plan was operated. Plans can only be retroactively amended to the beginning of the previous calendar year.
(TCDTRA §214)

PAYROLL DEFERRALS

Under an Executive Order issued by President Trump on August 8, 2020, then clarified pursuant to IRS Notice 2020-65, employers can choose to defer their employee's share of Social Security taxes for the period September 1, 2020, through December 31, 2020, (deferral period). Note this deferral only applies to the employee share, not the employer share.

Any deferral under the Executive Order must be withheld from an employee's wages starting January 1, 2021, and fully repaid by April 30, 2021, (repayment period). These dates have now been extended as follows:

- **Deferral period:** September 1, 2020, through April 30, 2021;
- **Repayment period:** May 1, 2021, through December 31, 2021.
(ACRRA §274)

 **Practice Pointer**

The IRS's reporting information says that an employer should only report Social Security withholding that was actually withheld in 2020 and should not include the deferral when filing W-2s. Then, when the employee repays the Social Security tax during the repayment period, the employer must issue a corrected W-2 for the 2020 tax year.

EDUCATOR EXPENSE DEDUCTION

The above-the-line educator expense deduction available under IRC §62(a)(2)(D)(ii) may be claimed for purchases of personal protective equipment (PPE), disinfectant, and other supplies used for the prevention of the spread of COVID-19, retroactively to expenses paid or incurred after March 12, 2020. The IRS must publish regulations or other guidance clarifying what qualifies for the deduction. (ACRRA §275)

EMERGENCY FINANCIAL AID GRANTS

Qualified emergency financial aid grants made after March 26, 2020, are excludable from a student's taxable income and will not be treated as a qualified scholarship, an educational assistance allowance, or other payment that will reduce the amount of the student's American Opportunity Tax Credit or Lifetime Learning Credits. (ACRRA §227)

A “qualified” emergency financial aid grant is:

- Any emergency financial aid grant awarded by an institution of higher education under §3504 of the CARES Act;
- Any emergency financial aid granted from an institution of higher education made with funds available under §18004 of the CARES Act; and
- Any other federal, state, or tribal emergency financial aid grant or grant made by a scholarship-granting organization for the purpose of providing financial relief to students at institutions of higher education in response to a qualifying emergency.

However, payments for teaching, research, or other services required as a condition for receiving the qualified emergency financial aid do not qualify for this special treatment.

A qualifying emergency is:

- A public health emergency related to the coronavirus declared by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act (42 U.S.C. §247d);
- An event related to the coronavirus for which the President declared a major disaster; or
- A national emergency related to the coronavirus declared by the President under section 201 of the National Emergencies Act. (50 U.S.C. §1601 et seq.)

FARMING LOSSES

Taxpayers claiming a farming loss under IRC §172(b)(1)(B)(ii) may make an irrevocable election to not apply the CARES Act provisions that:

- Suspended application of the NOL 80% taxable income limitation; and
- Allowed five-year carrybacks for NOLs incurred in 2018, 2019, and 2020. (ACRRA §281)

The election must be made by the due date (including extensions) for filing the taxpayer’s return for the taxpayers first taxable year ending after December 27, 2020, (the date of the enactment of the ACRRA).

PAID SICK AND FAMILY LEAVE CREDITS

The refundable payroll tax credits for paid sick and family leave, enacted in the Families First Coronavirus Response Act, are extended through March 31, 2021, (previously scheduled to expire on December 31, 2020). The act also modifies the tax credits so that they apply as if the corresponding employer mandates were extended through the end of March 2021, even though the mandates ended at the end of 2020. This provision is effective as if included in the FFCRA. (ACRRA §286)

Comment

This means that employers are no longer required to pay these FFCRA benefits, though if they do, they would be entitled to the credits. It is not clear how the limits on the amount of leave available to employees would apply to employees taking leave in both 2020 and 2021.

REVIEW QUESTIONS

Under the NASBA-AICPA self-study standards, self-study sponsors are required to present review questions intermittently throughout each self-study course. Additionally, feedback must be given to the course participant in the form of answers to the review questions and the reason why answers are correct or incorrect.

To obtain the maximum benefit from this course, we recommend that you complete each of the following questions, and then compare your answers with the solutions that immediately follow. *These questions and related suggested solutions are not part of the final examination and will not be graded by the sponsor.*

1. Which statement correctly describes details of second draw PPP loans available under the ACRRRA?
 - a) An entity eligible for the loan may not employ more than 500 employees
 - b) To be eligible for the loan, the entity must show at least a 20% reduction in gross receipts when comparing the first, second, or third quarters to 2020 to the same quarters in 2019
 - c) Any first PPP loan taken must be forgiven prior to taking a second draw
 - d) Before the disbursement of a second draw loan, borrowers must have used, or will use, the first PPP loan

2. The ACRRRA provides further clarification on PPP loans, including which of the following?
 - a) Religious organizations are not eligible for PPP loans
 - b) Most 501(c)(6) organizations are eligible for PPP loans as long as they don't receive more than 5% of receipts from lobbying activities
 - c) Taxpayers may deduct expenses that were paid with forgiven PPP loans
 - d) Taxpayers who may be in bankruptcy may receive a new PPP loan without approval from the bankruptcy court

3. What is true about unemployment benefits under the ACRRRA?
 - a) The additional weekly unemployment benefits have been reduced from \$600 to \$300
 - b) They have been extended for an additional 12 weeks
 - c) Pandemic Unemployment Assistance is taxable and must have income tax withheld
 - d) States may provide an additional \$100 per week for earners with self-employment income of at least \$2,500 in the most recent taxable year

SOLUTIONS TO REVIEW QUESTIONS

1. Which statement correctly describes details of second draw PPP loans available under the ACRRRA? **(Page 2)**
 - a) Incorrect. The maximum number of employees is 300, including part-time and seasonal.
 - b) Incorrect. The entity must demonstrate at least a 25% reduction in gross receipts when comparing quarters in 2020 with those in 2019.
 - c) Incorrect. The first loan does not need to be forgiven to be eligible for or to take the second draw.
 - d) Correct. The first loan need not have been forgiven, however.

2. The ACRRRA provides further clarification on PPP loans, including which of the following? **(Page 4)**
 - a) Incorrect. Churches and religious organizations are eligible.
 - b) Incorrect. In order to be eligible the organization must not receive more than 10% from lobbying activities.
 - c) Correct. Under the ACRRRA, there is no denial of deductions, no reduction in tax attributes, and no basis increase denied as a result of PPP loan forgiveness.
 - d) Incorrect. These taxpayers must get approval from the bankruptcy court in order to get more PPP funds or a new loan.

3. What is true about unemployment benefits under the ACRRRA? **(Page 15)**
 - a) Correct. Total additional unemployment is \$3,300, or \$300 per week for 11 weeks.
 - b) Incorrect. The extension of benefits is for 11 weeks.
 - c) Incorrect. Although PUA is taxable, withholding is not available.
 - d) Incorrect. States may make an election to modify their agreements with the federal government for the additional \$100, but earners must make at least \$5,000 in self-employment income for the prior year before applying for UI compensation.

FFCRA CREDITS FOR SELF-EMPLOYED TAXPAYERS

Self-employed individuals claiming the FFCRA credit may elect to use their average daily self-employment income from 2019 rather than 2020 to compute the credit, applicable retroactively as if included in the FFCRA. (ACRRA §287)

Example of electing to use 2019 average self-employment income

Jan is a self-employed physical therapist who works part-time as an independent contractor while her children are in school. In 2019, her net income from self-employment was \$80,000. In 2020, Jan had to quarantine in April for two weeks due to COVID-19 exposure, then she was forced to stop working immediately thereafter due to her children's school closures and could not work for the remainder of 2020. Jan's 2020 net income from self-employment was only \$15,000.

The following calculation compares Jan's 2020 FFCRA credits based on her 2019 or her 2020 net income from self-employment:

	2019 SE income	2020 SE income
FFCRA sick leave credit		
Net earnings from self-employment	\$80,000	\$15,000
÷ Divisor (see Form 7202, line 8)	<u>260</u>	<u>260</u>
= Average daily self-employment income (cannot exceed \$511)	307	58
× Days unable to work due because of coronavirus-related care required (10 day maximum) (Jan's quarantine period)	<u>10</u>	<u>10</u>
= FFCRA sick leave credit	\$ 3,070	\$ 580
FFCRA family leave credit		
Net earnings from self-employment	\$80,000	\$15,000
÷ Divisor (see Form 7202, line 27)	<u>260</u>	<u>260</u>
= Average daily self-employment income	307	58
× Percentage of average daily self-employment income eligible for family leave credit	<u>67%</u>	<u>67%</u>
= Eligible daily credit (cannot exceed \$200)	\$ 200	\$ 39
× Days unable to work to care for children under the age of 18 (50 day maximum)	<u>50</u>	<u>50</u>
= FFCRA family leave credit	\$10,000	\$ 1,950

Jan will be able to claim total FFCRA equivalent credits as a self-employed person of \$13,070 (\$3,070 sick leave + \$10,000 family leave) by using her 2019 net income from self-employment. The FFCRA as originally enacted would have forced Jan to use her 2020 net income from self-employment, which would have only generated FFCRA equivalent credits of \$2,530 (\$580 sick leave + \$1,950 family leave).

RENTAL ASSISTANCE GRANTS AND EVICTION MORATORIUM

The eviction moratorium is extended until January 31, 2021, (ACRRA §502) and a new rental assistance program is established to assist landlords and tenants to avoid the eviction process.

The ACRRA allocates \$25 billion for fiscal-year 2021 in tax-free rental assistance to state and local governments and Native American tribes to be used to help pay up to 12 months (15 months in some situations) of a tenant's:

- Current and back rent;
- Current and back utilities and home energy costs; and
- Other expenses related to housing incurred due to COVID-19.

NONTAXABLE

Assistance provided through this program is not considered as income to the tenant and is not regarded as a resource for purposes of determining the eligibility of the household or any of its members for benefits or assistance under any governmental program. (ACRRA §501(j)) However, these amounts are considered taxable income to the landlord.

ELIGIBLE RECIPIENTS

Eligible recipients are households with one or more members who have:

- Qualified for unemployment benefits; or
- Experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due to COVID-19; and
- Can demonstrate a risk of homelessness or housing insecurity (e.g., past due utility or rent notice, unsafe or unhealthy living conditions); and
- Have household income that is not more than 80% of area median income for the household.

LANDLORDS CAN APPLY

Landlords may apply on behalf of their tenants but must obtain the tenant's original or digital signature on the application. They must provide a copy of the completed application to the tenant.

EXTENDERS

QUALIFIED TUITION DEDUCTION REPEALED AND LIFETIME LEARNING CREDIT INCREASED

The qualified tuition deduction under IRC §222 is repealed, effective for taxable years beginning after December 31, 2020. (TCDTRA §104(b))

In lieu of the deduction, the phaseout modified AGI limitation for the IRC §25A Lifetime Learning Credit is increased to match the limitations applied to the American Opportunity Credit. (TCDTRA §104(a)) Thus both credits will now begin to phase out when modified AGI reaches \$80,000 (\$160,000 for MFJ). Previously, the Lifetime Learning Credit began to phase out when the taxpayer's modified AGI reached \$40,000 (\$80,000 MFJ).

Prior to the TCDTRA, the phaseout range for the Lifetime Learning Credit was adjusted annually for inflation but the American Opportunity Tax Credit was not. In order to bring the phaseout range for both of these credits into parity, the TCDTRA eliminated the Lifetime Learning Credit's inflation adjustment. (TCDTRA §104(a)(2))

PROVISIONS MADE PERMANENT

Under Division EE, The Taxpayer Certainty and Disaster Tax Relief Act (TCDTRA) of the Consolidated Appropriations Act of 2021, the following tax provisions, have been made permanent:

- 7.5% AGI threshold for medical expenses, meaning the 10% AGI threshold that was scheduled to go into effect in 2021 will not go into effect (TCDTRA §101; IRC §213);
- The IRC §179D energy efficient commercial buildings deduction and an inflation adjustment applies to the maximum deduction limitations, effective beginning with taxable years beginning after 2020. (TCDTRA §102; IRC §179D) In addition, various energy standards are updated and revised, applicable to property placed in service after December 31, 2020;
- The exclusion of state and local tax benefits and qualified payments made to volunteer firefighters and emergency medical responders under IRC §139B (TCDTRA §103);
- The IRC §45G Railroad Track Maintenance Credit; and
- The reductions in the beer, wine, and distilled spirits excise taxes enacted by the TCJA. (TCDTRA §106)

PROVISIONS EXTENDED

The following provisions, which were scheduled to sunset at the end of the 2020 taxable year, have now been extended an additional five years through the end of the 2025 taxable year:

- Qualified principal residence COD exclusion, but reduces the maximum acquisition indebtedness that may be taken into account to \$750,000 (\$375,000 MFS) (TCDTRA §114; IRC §108(a)(1));
- Exclusion of employer payments of student loans under employer educational assistance program (TCDTRA §120; IRC §127(c));
- Work Opportunity Tax Credit (TCDTRA §113; IRC §51);
- Employer Credit for Paid Family and Sick Leave (TCDTRA §119; IRC §45S);
- New Markets Tax Credit (TCDTRA §112; IRC §45D);
- Carbon Oxide Sequestration Credit (TCDTRA §121; IRC §45Q);
- Empowerment zone tax incentives (TCDTRA §118; IRC §§1391, 1397, 1397B);
- Expensing rules for qualified film, television, and theatrical productions (TCDTRA §116; IRC §181);
- Seven-year recovery period for motorsports entertainment complexes (TCDTRA §115; IRC §168(i)(15)(D)); and
- The look-through rule for related controlled corporations. (TCDTRA §111; IRC §954)

The American Samoa Economic Development Credit is extended through the end of the 2021 taxable year. (TCDTRA §139)

ENERGY INCENTIVES EXTENDED

The following were extended for an additional year, except as otherwise noted:

- Residential energy property credit (which mainly covers residential solar credits) extends the 26% credit for years 2020 and 2021, then drops to 22% in 2022 and expires after that. (TCDTRA §148; IRC §25D) The credit is expanded to include biomass fuel property expenditures;
- The phaseouts for the business solar credit have been extended, allowing for construction that begins in 2021 and 2022 to qualify for a 26% credit, and the reduced 22% credit will apply to property for which construction begins in 2023. (TCDTRA §132; IRC §48) In addition the business Energy Credit is extended to apply to waste energy recovery property, which is defined as property that generates electricity solely from heat from buildings or equipment not normally used for generating electricity, beginning with the 2021 taxable year (TCDTRA §203; IRC §48);
- The election to claim the IRC §48 Investment Credit in lieu of the IRC §45 Energy Credit. The election is also extended to apply to offshore wind facilities through 2025 (TCDTRA §§131(b), 204; IRC §48(a)(5));
- Nonbusiness Energy Credit (energy efficient windows and doors in a principal residence) (TCDTRA §141; IRC §25C);
- Credit for Electricity Produced From Certain Renewable Sources, including the phaseouts (TCDTRA §§131, 132; IRC §45(d));
- Qualified Fuel Cell Motor Vehicles Credit (TCDTRA §142; IRC §30B);
- Alternative Fuel Refueling Property Credit (TCDTRA §143; IRC §30C);
- Two-Wheeled Plug-In Electric Vehicle Credit (TCDTRA §144; IRC §30D);
- Energy Efficient Homes Credit for home builders (TCDTRA §146; IRC §45L);
- Second Generation Biofuel Producer Credit (TCDTRA §140; IRC §40); and
- Extension of Excise Tax Credits relating to alternative fuels. (TCDTRA §147; IRC §6426)

PROVISIONS EXTENDED ONE ADDITIONAL YEAR

The following provisions, which were scheduled to sunset at the end of the 2020 taxable year, have now been extended an additional year through the 2021 taxable year:

- Treatment of mortgage insurance premiums as qualified residence interest (TCDTRA §133; IRC §163(h));
- Credit for Health Insurance Costs of Eligible Individuals (TCDTRA §134; IRC §35);
- Indian Employment Credit (TCDTRA §135; IRC §45A);
- Mine Rescue Team Training Credit (TCDTRA §136; IRC §45N);
- Accelerated depreciation for Indian reservation business property (TCDTRA §138; IRC §168(j)(9)); and
- Classification of certain race horses as three-year property. (TCDTRA §137; IRC §168(e))

OTHER PROVISIONS

The TCDTRA and ACRRRA also make the following changes:

- Allows taxpayers who claim the Earned Income Credit or the refundable child tax credit to elect to base their 2020 credit on their 2019 earned income rather than their 2020 earned income, but only if their 2019 earned income is higher than 2020 (TCDTRA §211);
- Clarifies that money purchase pension plans are included in the retirement plans from which taxpayers may make penalty-free withdrawals to cover COVID-19 related expenses (ACRRRA §280);
- Allows pension plans to make distributions to an employee who has attained age 59½ (age 55 in the case of certain building and construction industry employees) and is still working without disqualifying the plan (TCDTRA §208; IRC §401(a)(36));
- Provides a reprieve from the partial plan termination requirements of IRC §411(d) during any plan year that includes the period beginning on March 13, 2020, and ending on March 31, 2021, if the number of active participants covered by the plan on March 31, 2021, is at least 80% of the number of active participants covered by the plan on March 13, 2020 (TCDTRA §209);
- Sets a minimum 4% Low-Income Housing Credit rate for federally subsidized buildings (TCDTRA §201; IRC §42(b));
- Clarifies that ADS depreciation over 30 years applies for residential rental property, no matter when the property was placed in service, for taxpayers that are electing real property trades or businesses under the business interest imputation rules (TCDTRA §202); and
- Restores taxpayer confidentiality protections removed by the CARES Act related to tax information provided by the IRS to the Department of Education for evaluating student loan applications. (ACRRRA §284)

DISASTER TAX RELIEF

QUALIFIED DISASTER AREA

The TCDTRA also provides various disaster relief provisions that apply to qualified disaster areas. As an initial matter, defining “qualified disaster area” and other key disaster-related terms is important to understanding many of the TCDTRA’s disaster relief provisions. The COVID-19-related disaster is not considered a “qualified disaster” for purposes of these provisions.

Comment

Many of these provisions are similar to the CARES Act changes but only apply to taxpayers impacted by qualified disasters, and there are specific requirements that must be met for this disaster relief.

Qualified disaster area

A qualified disaster area is any geographic area designated as a Presidentially declared disaster from January 1, 2020, until February 25, 2021, (60 days after the date of the TCDTRA’s date of enactment). (TCDTRA §301(1)(A))

Disaster areas

Many of the communities struck by California's wildfires during 2020 are qualified disaster areas. See page 11-17 in the manual for a list of the California wildfires that have been declared a major disaster area.

A full list of the 2020 major disasters can be found by searching FEMA's website for 2020 major disasters at:

 **Website**

www.fema.gov/disasters/disaster-declarations

The COVID-19 declaration is not included as a qualified disaster.

Qualified disaster zone distinguished

A qualified disaster zone is a geographic area within the qualified disaster area that FEMA has designated as warranting individual or individual and public assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Some of the relief discussed below, such as the Disaster-Related Employment Retention Credit, is only available to individuals or businesses located in a qualified disaster zone. (TCDTRA §301(2))

Disaster incident period

The incident period is the period specified by FEMA as the period during which such disaster occurred (except such period is not treated as ending after the date which is 30 days after the date of the enactment of the TCDTRA). (TCDTRA §301(4))

RETIREMENT PLAN RELIEF

Penalty-free disaster distributions

Individuals may take penalty-free withdrawals from their qualified retirement accounts up to \$100,000, less all other amounts treated as qualified disaster distributions to the individual for all prior taxable years. (TCDTRA §302(a)) However, if an individual is affected by more than one disaster, the \$100,000 limitation above is applied separately with respect to distributions made with respect to each qualified disaster.

The amount withdrawn is recognized in gross income ratably over a three-year period beginning with the year of withdrawal, unless the taxpayer elects to have it recognized in the year of the withdrawal. (TCDTRA §302(a)(5))

The distributions are not subject to withholding. (TCDTRA §302(6))

If the retirement plan accepts rollover contributions, taxpayers may repay the amount distributed within a three-year period, beginning on the date on which the distribution was received. The distribution/repayment will be treated as a direct trustee-to-trustee transfer. This means it will not be counted against the "one rollover per year" limitation.

Qualifying distributions

The distribution only qualifies if it is made:

- On or after the first day of the incident period of the qualified disaster and before June 25, 2021, (180 days after the date of the TCDTRA's enactment);
- To an individual whose principal place of abode is located in the qualified disaster area; and
- To an individual who has sustained an economic loss by reason of the qualified disaster.

Eligible retirement plans

Distributions may be made from a plan described in IRC §402(c)(8)(B), which includes:

- Individual retirement accounts;
- Individual retirement annuities;
- A qualified retirement plan, such as a 401(k), pension, and profit sharing plan;
- An annuity plan;
- An IRC §457 plan for government and nonprofit employers; and
- An annuity contract described in IRC §403(b).

Comment

Defined benefit plans are not included. However, the TCDTRA confirmed that money purchase plans qualify.

Comparison to coronavirus-related distributions provided under the CARES Act

Penalty-free disaster distributions from retirement accounts under the TCDTRA are different from coronavirus-related withdrawals provided under the CARES Act, even though some of the provisions are similar. For example, both the disaster distributions under the TCDTRA and the coronavirus-related distributions under the CARES Act provide:

- A three-year window to repay the distributions and treat them as trustee-to-trustee rollovers; and
- Distributions are eligible from the same type of retirement accounts.

However, there are a couple of key differences:

- The CARES Act limits coronavirus-related withdrawals to \$100,000 in total, but the TCDTRA allows withdrawals of up to \$100,000 per disaster;
- Coronavirus-related distributions under the CARES Act must be made during 2020, but disaster withdrawals under the TCDTRA must be made between the first date of the applicable disaster's incident period and June 25, 2021 (180 days after the end of the incident period), regardless of year. But keep in mind, only taxpayers located in areas that are a Presidentially declared disaster from January 1, 2020, until February 25, 2021 (60 days after the date of the TCDTRA's date of enactment), qualify for this relief.

See page 5-6 in the manual for a complete discussion of coronavirus-related withdrawals.

Recontributions of withdrawals for home purchases

Individuals who withdrew funds from a retirement account to purchase a home and were unable to complete the sale due to a qualified disaster can recontribute the funds, or any portion thereof, to the

same retirement account or another retirement account to which a rollover contribution is allowed. (TCDTRA §302(b)) The recontribution is treated as a direct trustee-to-trustee rollover.

There are very specific requirements in the TCDTRA that must be met for a recontribution to be allowed. The original retirement account distribution must have been:

- Treated as:
 - A hardship distribution from a 401(k) plan (IRC §401(k)(2)(B)(i)(IV)) used to purchase a home;
 - A hardship distribution from an employee annuity (IRC §403(b)(7)(A)(i)(V) and (b)(11)(B)) used to purchase a home; or
 - A penalty-free distribution for first-time homebuyers (applies to IRAs, SEP IRAs, SIMPLE IRAs, and SARSEP plans only) (IRC §72(t)(2)(F));
- Intended for use to purchase or construct a principal residence in a qualified disaster area, but was not so used due to the qualified disaster;
- Received within 180 days before the first day of the disaster incident period and ending 30 days after the last day of the disaster incident period; and
- Repaid within the “applicable period,” which begins on the first day of the disaster’s incident period and ends June 25, 2021, (180 days after the date of the enactment of the TCDTRA).

Disaster-related loans from qualified retirement plans

Under the TCDTRA, if a taxpayer’s principal place of abode is located in a qualified disaster area and the taxpayer has sustained a disaster-related economic loss, then the taxpayer is eligible to increase his or her qualified plan loan limit:

- From \$50,000 to \$100,000; and
- Can borrow up to 100% of the employee’s vested account balance. (TCDTRA §302(c))

In order to qualify for the disaster-related qualified plan loan rules, the taxpayer must borrow the funds from his or her qualified plan by June 25, 2021, (within 180 days of the TCDTRA’s date of enactment). (IRC §72(p)(A))

Comment

Remember, taxpayers are only eligible to take qualified plan loans, including any enhancements made under the TCDTRA, if the employer plan allows them. Employers are not required to include loan provisions in their retirement plans.

Delay of repayment

If a taxpayer had an outstanding loan from a qualified employer plan at the time of the disaster, then the due date for any payments that falls within the period beginning with the disaster’s first incidence day and ending 180 days after the incident period, the due date for repayment will be extended to the later of:

- One year from the due date; or
- June 25, 2021, (180 days after the date of enactment of the TCDTRA). (TCDTRA §302(c)(2))

All payments due under the loan are delayed accordingly. (TCDTRA §302(c)(2)(B)) This provision is intended to push back all payments due under the plan loan.

Plan amendments

Businesses that choose to do so have until January 1, 2022, to retroactively amend their plans in accordance with the aforementioned benefits. Employers are not required to offer these benefits.

DISASTER-RELATED EMPLOYEE RETENTION CREDIT

Eligible employers located in a qualified disaster zone whose trade or business was inoperable at any time during the beginning of a disaster incident period and ending on December 27, 2020, (the date of enactment of the TCDTRA) as a result of damage sustained by the qualified disaster may claim a 2020 disaster-related Employee Retention Credit. (TCDTRA §303)

CARES Act Employee Retention Credit vs. TCDTRA Disaster-Related Employee Retention Credit

The disaster-related Employee Retention Credit is completely separate from, and not related to, the CARES Act's Employee Retention Credit, even though some of the provisions of the two credits appear similar.

The disaster-related Employee Retention Credit is part of the IRC §38 general business credit and is therefore:

- Subject to the limitations that apply to all other general business credits; and
- Is a nonrefundable income tax credit.

By contrast, the CARES Act's Employee Retention Credit is a refundable payroll tax credit.

Credit amount

The Disaster-Related Employee Retention Credit is equal to 40% of qualified wages paid to each employee. The qualified wages that may be taken into account is capped at \$6,000 per year, per employee, meaning the maximum credit is equal to \$2,400 per employee (\$6,000 maximum annual wages per employee × 40%). The credit is reduced by the amount of qualified wages with respect to such employee taken into account for any prior taxable year.

Annual wages or total wages for the life of the credit?

The TCDTRA §303(a) contains directly conflicting language. It says, in part:

"The amount of qualified wages with respect to any employee which may be taken into account [for purposes of the disaster-related employee retention credit] by the employer for any taxable year shall not exceed \$6,000 (reduced by the amount of qualified wages with respect to such employee taken into account for any prior taxable year.)"

So, if an employer claims the disaster-related Employee Retention Credit based on \$6,000 of wages paid to an employee in 2020, can the employer claim the credit for wages paid to the same employee in 2021? The first part of the quoted statement would indicate that the employer can because wages are taken into account for each employee annually. However, the immediately following parenthetical states the exact opposite.

We may have to wait for IRS guidance on this point.

Qualified wages

Only wages paid to an employee whose principal place of employment immediately before the disaster was in the qualified disaster zone are included in computing the credit.

In addition, qualified wages (as defined by IRC §51(c)) are limited to those wages paid on or after the date on which the business became inoperable due to the Presidentially declared disaster and before the earlier of:

- The date the business resumed significant operations at the principal place of employment; or
- The date that is 150 days after the last day of the disaster incident period.

The wages may include wages paid to employees who are:

- Not working;
- Performing services at a difference location; or
- Performing services at the principal place of employment before significant operations resume.

Nonqualified wages

The credit may not be claimed for wages:

- For which an employer claims the Employee Retention Credit under the CARES Act; or
- Paid to an employee related to the employer as defined in IRC §51(i)(1) (including owners and those related to the owners, among others) and employees of a controlled group, as defined under IRC §52.
(TCDTRA §303(c))

No double benefit

For other credits

Taxpayers may not claim the following credits for the wages used to determine the amount of the Employee Retention Credit:

- IRC §41 Credit for Increasing Research Activities;
- IRC §45A Indian Employment Credit;
- IRC §45P Employer Wage Credit for Employees Who are Active Duty Members of the Uniformed Services;
- IRC §45S Employer Credit for Paid Family and Medical Leave;
- IRC §51 Work Opportunity Credit; and
- IRC §1396 Empowerment Zone Employment Credit.

For wage expenses

A taxpayer may not claim a deduction for wages paid for the wages used to compute the Disaster-Related Employee Retention Credit. (TCDTRA §303(c))

Example of wage deduction reduced

ABC suffered a loss in the California fires. ABC continued to pay wages to its two employees after the business was shut down due to the fire. ABC paid \$6,000 in wages to each employee. ABC may claim a credit of \$4,800 for the two employees ($\$6,000 \times 40\% \times 2$). ABC must reduce the wage expense by \$6,000. For California purposes, ABC may deduct the entire \$6,000 in wages paid.

PPP loan forgiveness

PPP loan forgiveness may not include loan amounts that were used to pay wages taken into account for purposes of calculating the Disaster-Related Employee Retention Credit. (TCDTRA §303(g))

Electing out of the credit

Taxpayers may elect out of claiming the Disaster-Related Employment Tax Credit. The TCDTRA directs the Secretary of the Treasury to issue regulations and guidance to provide a method for electing out of the Disaster-Related Employee Retention Credit. As such, we do not know the method of electing out as of the date of this publication.

The Secretary is also directed to issue guidance that would allow PPP loan recipients that elect out of claiming the credit so they could include the wages in their payroll costs eligible for PPP loan forgiveness, to reverse their election out should their loan not be forgiven. (TCDTRA §303(e))

Payroll tax Employee Retention Credit for tax-exempt organizations

Qualified tax-exempt organizations are also eligible for the disaster-related Employee Retention Credit if they have unrelated business income. However, tax-exempt organizations may also claim a nonrefundable payroll tax credit for qualified wages even if the wages are not related to unrelated business income. The organization may not claim both credits for the same wages. (TCDTRA §303(d)(8))

Electing out of the payroll tax credit

Tax-exempt organizations have the same option to elect out of claiming the credit as is available under the Disaster-Related Employee Retention Credit previously discussed. (TCDTRA §303(d))

Calculation of the payroll tax credit

The payroll tax credit is claimed against the employer's share of Social Security taxes (6.2% OASDI tax) equal to 40% of the qualified wages paid to eligible employees during the calendar quarter.

Like the Disaster-Related Employee Retention Credit above, qualified wages are capped at \$6,000 per year, meaning the maximum annual credit per employee is equal to \$2,400. (TCDTRA §303(d)) The \$6,000 maximum qualified wages are reduced by the amount of qualified wages with respect to which the payroll credit was allowed for any prior calendar quarter with respect to the employee.

Advance credits will be allowed based on forms, instructions, regulations, and guidance to be promulgated by the IRS. (TCDTRA §303(d)(89))

Limitations

The total credit claimed by an employer for all employees for any calendar quarter cannot exceed the amount of the employer's share of Social Security taxes, reduced by any payroll credits taken for:

- The employment of qualified veterans under IRC §3111(e); or
- Small business research expenditures under IRC §3111(f).

Carryover of unused credits

The payroll tax credits available to tax-exempt organizations are nonrefundable, but unused credits may be carried over to the next calendar quarter. (TCDTRA §303(d)(3)(B))

⚠ Caution

It appears that this limit will apply each quarter, until the taxpayers have fully used their credits, but we may need additional guidance on this issue.

Interplay with other payroll tax credits

Payroll credits for paid sick and family leave benefits under the FFCRA and the CARES Act Employee Retention Credit must be reduced by the amount of credit taken by the organization for the disaster-related Employee Retention Credit. (TCDTRA §303(d)(3)(C))

Interplay with Paycheck Protection Program loan forgiveness

Payroll costs eligible for loan forgiveness will not include any wages paid for which the payroll credit for employee retention is claimed. (TCDTRA §303(g))

CORPORATE CHARITABLE CONTRIBUTIONS

The TCDTRA increases the charitable contribution limit for disaster-related cash contributions for corporations to 100% by modifying and expanding the 25% corporate limit and increasing corporate charitable contribution allowed under §2205(a)(2)(B) of the CARES Act.

Comment

While all cash contributions to qualified 501(c)(3) organizations qualify for the CARES Act increased limits, only “qualified disaster relief contributions” are subject to the TCDTRA’s 100% limitation.

Ordering rule

If a corporation makes both a qualified contribution under the CARES Act and a qualified disaster relief contribution, the CARES Act qualified contribution will be taken into account first.

Qualified disaster relief contribution

A qualified disaster relief contribution is a cash contribution that the taxpayer elects to be treated as a qualified disaster relief contribution and is:

- Paid during the period beginning on January 1, 2020, and ending 60 days after the TCDTRA’s enactment;
- Made for relief efforts in one or more qualified disaster areas (the charitable organization itself does not have to be located in the qualified disaster area); and
- Substantiated by a contemporaneous written acknowledgement obtained by the taxpayer from an IRC §170(c) organization that the contribution was or will be used for qualified disaster relief efforts.

DISASTER-RELATED PERSONAL CASUALTY LOSSES

Individuals with a net disaster loss for any taxable year may claim a personal casualty loss under IRC §165(h), modified as follows:

- The 10% floor on net casualty losses is not applicable;
- The \$100 limit per casualty is increased to \$500;

- Taxpayers are not required to itemize to claim a casualty loss deduction. Taxpayers who take the standard deduction can increase their standard deduction by the amount of the net disaster loss); and
- If a taxpayer increases their standard deduction by the net disaster loss, then IRC §56(b)(1)(E), which generally disallows the standard deduction for AMT purposes, will not apply to the portion attributable to the net disaster loss.
(TCDTRA §304(b))

A net disaster loss is the excess of qualified disaster-related personal casualty losses over personal casualty gains.



California nonconformity

California does not conform to any of these provisions except the qualified plan distributions and recontributions previously discussed.

HIGHLIGHTS OF CONSOLIDATED APPROPRIATIONS ACT OF 2021

Highlights of Consolidated Appropriations Act of 2021: Tax and Paycheck Protection Program Changes	
Extended application date for first round of PPP loans	The August 8, 2020, application date for PPP loans authorized under the CARES Act is extended until March 31, 2021.
PPP second draw loans	<p>Available to applicants that:</p> <ul style="list-style-type: none"> • Employ 300 or fewer employees (part-time and seasonal count); • Have at least a 25% reduction in gross receipts in Q1, Q2, or Q3 of 2020 compared to 2019 (special rules for newer businesses); and • Were in existence on February 15, 2020. <p>We believe applicant must have received and fully used first round of PPP loans to qualify for second draw, but we are awaiting clarification.</p> <p>Loan amount equal to 2.5 (3.5 for restaurants and hotels) × borrower’s average monthly payroll costs for one-year period prior to loan, or calendar-year 2019, up to \$2 million (seasonal employers may calculate based on any 12-week period between 2/15/19 and 2/15/20).</p> <p>Eligibility expanded to include certain nonprofits such as trade associations, chambers of commerce, destination marketing groups, and various media businesses.</p> <p>Application deadline: March 31, 2021.</p>
PPP supplemental funding	<p>Borrowers can also submit supplemental PPP loan requests in all cases where their original PPP loan amount would have changed due to new rules that have been released.</p> <p>Also applies to borrowers that returned their original loans, or took reduced loans to qualify for other benefits that are no longer limited for PPP recipients.</p>

Highlights of Consolidated Appropriations Act of 2021: Tax and Paycheck Protection Program Changes	
PPP loan forgiveness (applies to all PPP loans)	<p>Expenses paid with forgiven PPP debt are deductible.</p> <p>Simplified forgiveness application for loans of \$150,000 or less (will be available no later than third week in January).</p> <p>EIDL advances no longer subtracted from forgiveness amount.</p> <p>Borrower may choose a covered period that is between eight weeks and 24 weeks after loan origination date (FTEE and salary reductions based on end of covered period).</p> <p>Eligible expenses for purposes of both allowable loan uses and loan forgiveness expanded to include:</p> <p><u>Nonpayroll expenses:</u></p> <ul style="list-style-type: none"> • Covered operations expenditures (e.g., business software or cloud computing services that facilitate business operations, deliveries, human resources, billings, etc.); • Covered property damage costs related to 2020 public disturbances; • Covered supplier costs; and • Covered worker protection expenditures. <p><u>Payroll expenses:</u></p> <ul style="list-style-type: none"> • Group insurance benefits include life, disability, vision, and dental insurance.
Other PPP provisions (apply to all PPP loans)	<p>Farmers reporting on Schedule F may base loan amount on gross income (not net profit), with a \$100,000 annual gross income cap.</p> <p>Taxpayers applying for bankruptcy must receive approval from the bankruptcy court to receive additional PPP funds, or a new PPP loan.</p>
Grants for shuttered venue operators (e.g., theaters [both live and film], museums, etc.)	<p>Grants of up to \$15 million to shuttered venue operators that demonstrate a 25% reduction in revenues. Grants must be used for specific expenses, such as payroll costs, rent, utilities, and personal protective equipment. Grants are administered by the SBA.</p>
Employee Retention Credit	<p>PPP borrowers may claim Employee Retention Credit, but wages paid with forgiven PPP debt are not included in payroll costs taken into account in computing the Employee Retention Credit.</p> <p>Credit extended to July 1, 2021.</p> <p><u>For credits claimed after 2020:</u></p> <ul style="list-style-type: none"> • Increases the credit rate from 50% to 70% of qualified wages; • Revises the \$10,000 qualified wage limitation to apply per quarter rather than annually; • Eases significant gross receipts decline eligibility threshold to less than 80% (previously 50%); • Expands definition of small employer for purposes of determining qualified wages; and • Tightens advance payment eligibility requirements.

Highlights of Consolidated Appropriations Act of 2021: Tax and Paycheck Protection Program Changes	
Economic impact payments	<p>Allows for \$600 per taxpayer (\$1,200 for MFJ) plus \$600 per dependent who is under age 17 at the end of 2020.</p> <p>Based on 2019 AGI.</p> <p>Phaseout ranges:</p> <ul style="list-style-type: none"> • Single taxpayers: \$75,000–\$87,000 • HOH: \$112,500–\$136,500 • MFJ: \$150,000–\$174,000 • Add \$12,000 for each qualified child. <p>Automatically sent to Social Security, disability, and VA disability recipients. Taxpayer and children eligible even if spouse doesn't have SSN (retroactive to apply to CARES Act EIP).</p> <p>Credit disallowed if taxpayer deceased prior to January 1, 2020.</p>
Unemployment benefits	<p>COVID-19–related unemployment benefits, including Pandemic Unemployment Assistance, extended an additional 11 weeks, beginning 12/27/20 through 3/14/21 (4/6/21 if claims not exhausted by week of 3/14/21).</p> <p>Extended benefits are equal to standard state unemployment benefits plus \$300 per week. In participating states, an additional \$100 per week allowed if applicants have both self-employment income of \$5,000 in last tax year and W-2 income.</p> <p>States offering extended benefits must establish specified minimum return to work reporting requirements.</p>
Business meal deduction	<p>100% business meal deduction for food and drink purchases from a restaurant, paid or incurred in 2021 and 2022 calendar years.</p>
Charitable contributions deduction	<p>\$300 (\$600 MFJ) above-the-line charitable deduction for cash contributions made in 2021.</p> <p>Increased CARES Act charitable contribution limits extended to 2021.</p>
Education-related benefits	<p>Expands educator expense deduction to include PPE and other sanitation expenses.</p> <p>Excludes qualified emergency aid grants from taxable income.</p> <p>Excludes employer-paid student loans from being treated as a qualified scholarship for purposes of education credits.</p> <p>Repeals qualified tuition deduction and increases phaseout modified AGI limitation for Lifetime Learning Credit beginning with 2021 taxable year.</p>
Family First Coronavirus Response Act paid leave credits	<p>Extends FFCRA paid leave benefits employer credits until 3/31/2021.</p> <p>Allows self-employed individuals claiming FFCRA paid leave benefit credit to use their prior-year average daily self-employment income to compute the credit.</p>

Highlights of Consolidated Appropriations Act of 2021: Tax and Paycheck Protection Program Changes	
Other provisions	<p>Easing of “use it or lose it” flexible spending account benefit and contribution rules for 2020–2022.</p> <p>Allows payroll deferrals made under Presidential Executive Order to be repaid by 12/31/21.</p> <p>Allows taxpayers claiming a farmer’s loss to irrevocably elect not to apply CARES Act five-year carryback and 80% taxable income limitation suspension.</p> <p>Allows Earned Income Credit and refundable Child Tax Credit to elect to be based on 2019 earned income rather than 2020 earned income.</p> <p>Excludes rental assistance grants from taxable income.</p> <p>Allows pension plans to make distributions to employees who have reached age 59½ (age 55 for certain construction workers) and are still working.</p>
Tax provisions made permanent	<p>7.5% AGI threshold for medical expenses.</p> <p>IRC §179D energy efficient commercial buildings deduction.</p> <p>Reductions in the beer, wine, and distilled spirits excise taxes.</p>
Extenders extended	<p><u>Five years:</u></p> <ul style="list-style-type: none"> • Qualified principal residence COD exclusion; • Employer educational assistance program exclusion; • Work Opportunity Credit; and • Employer Credit for Paid Family and Sick Leave under IRC §119. <p><u>One year:</u></p> <ul style="list-style-type: none"> • Mortgage insurance premiums treated as qualified residence interest.
Residential energy credits extended for one year (except as noted)	<p>Residential energy property credit (which mainly covers residential solar credits): extends the 26% credit for years 2020 and 2021, 22% for 2022, expires thereafter.</p> <p>Nonbusiness Energy Credit (e.g., energy efficient windows).</p>
Disaster tax relief (applicable to Presidentially declared disasters declared between 1/1/20 and 2/25/21, other than COVID-19 disaster)	<p><u>Retirement plan relief:</u></p> <ul style="list-style-type: none"> • Penalty-free disaster distributions of up to \$100,000 (can be recognized ratably over three years and recontributed within three years); • Recontributions of withdrawals made for home purchases that couldn’t be completed due to disaster; and • Increased loan limits for employer retirement plans that authorize loans. <p>Employee Retention Credit of up to \$2,400 per employee.</p> <p>Payroll credit for eligible nonprofits of up to \$2,400 per employee.</p> <p>Increased corporate charitable contributions limit for qualified disaster contributions.</p> <p>Expanded personal casualty losses.</p>

REVIEW QUESTIONS

Under the NASBA-AICPA self-study standards, self-study sponsors are required to present review questions intermittently throughout each self-study course. Additionally, feedback must be given to the course participant in the form of answers to the review questions and the reason why answers are correct or incorrect.

To obtain the maximum benefit from this course, we recommend that you complete each of the following questions, and then compare your answers with the solutions that immediately follow. *These questions and related suggested solutions are not part of the final examination and will not be graded by the sponsor.*

4. The TCDTRA and the ACRRRA made numerous changes, including:
 - a) Taxpayers claiming the Earned Income Credit must base their 2020 credit on their 2019 earned income
 - b) For purposes of the business interest limitation rules, ADS depreciation over 30 years applies for residential real property, regardless of when the property was placed in service
 - c) Pension plans are allowed to make distributions to employees who have reached age 55 and are still working without the plan being disqualified
 - d) Money purchase pension plans may not be included in retirement plans from which a taxpayer may take a penalty-free withdrawal to cover expenses related to COVID-19

5. Which statement correctly identifies factors related to the disaster-related Employee Retention Credit under the TCDTRA
 - a) The TCDTRA disaster-related Employee Retention Credit is an expansion of the Employee Retention Credit issued under the CARES Act
 - b) The disaster-related Employee Retention Credit is a refundable payroll tax credit
 - c) The disaster-related Employee Retention Credit is equal to 40% of qualified wages paid to each employee
 - d) Qualified wages do not include wages paid to employees who are not working

SOLUTIONS TO REVIEW QUESTIONS

4. The TCDTRA and the ACRRRA made numerous changes, including: **(Page 24)**
 - a) Incorrect. Taxpayers may elect to base their 2020 credit on their 2019 earned income if their 2019 earned income was higher.
 - b) Correct. This applies to taxpayers that are electing trades or business under the business interest limitation rules.
 - c) Incorrect. This change applies to employees who have reached, in general, age 59½; the age 55 limit applies only in cases of certain building and construction industry employees.
 - d) Incorrect. Money purchase pension plans are included in eligible retirement plans.

5. Which statement correctly identifies factors related to the disaster-related Employee Retention Credit under the TCDTRA **(Page 28)**
 - a) Incorrect. The two credits are not related.
 - b) Incorrect. It is a nonrefundable income tax credit.
 - c) Correct. Qualified wages are capped at \$6,000 per year, per employee.
 - d) Incorrect. Wages may include wages paid to employees who are not working or who are performing services at a different location or who are perform services at the principal place of employment prior to operations resuming.

GLOSSARY

ACRRA: Additional Coronavirus Response and Relief Act, part of the Consolidated Appropriations Act of 2021

American Opportunity Tax Credit (AOTC): a credit for education expenditures paid for a qualified student for the first four years of their higher education. The maximum annual credit per student is \$2,500. Available for four tax years per eligible student

Economic injury disaster loan (EIDL): offered by the Small Business Administration to small businesses, which may request an emergency advance grant against the loan for up to \$1,000 per employee up to a maximum of \$10,000. The advance does not need to be repaid under any circumstances, but the grant is taxable for federal and state purposes

Employee Retention Credit: a refundable credit against quarterly employment taxes equal to 50% of the qualified wages and compensation paid to each employee by a qualified employer. Wages paid after March 12, 2020, and before January 1, 2021, qualify for the credit. The credit has been modified, expanded, and extended under the TCDTRA and is available for the first two quarters of 2021, with an increased credit rate from 50% of qualified wages to 70%, and an increase of the wage limitation to \$10,000 per quarter

Families First Coronavirus Response Act (FFCRA): provides immediate relief for individuals and employers affected by the coronavirus pandemic. Provisions include mandatory paid sick leave; mandatory paid family leave; employer payroll tax credits; and expanded unemployment benefits

Lifetime Learning Credit: for qualified tuition and related expenses for eligible students enrolled in an eligible institution. The nonrefundable credit is 20% of the first \$10,000 of qualified education expenses, or a maximum of \$2,000 per return; available for an unlimited number of years

Pandemic Unemployment Assistance: expanded unemployment benefits under the CARES Act to include individuals who historically are ineligible for benefits, such as long-term unemployed or self-employed individuals and independent contractors who are unemployed, partially unemployed, or unable to work due to COVID-19. Benefits begin on or after January 27, 2020, and end on December 31, 2020. Under the ACRRA, COVID-related unemployment benefits are extended for an additional 11 weeks at \$300 per week for 11 weeks of unemployment beginning after December 26, 2020

Paycheck Protection Program (PPP): under the CARES Act, whereby the Small Business Administration will guarantee 100% of loans made under the program between February 15, 2020, and June 30, 2020 (known as the “covered period”). Benefits include: loans may be forgiven for amounts used to cover basic operating expenses, loan payment deferral for six months (interest will run), no personal guarantees required, and waiver of SBA administration fees. Under the PPP Flexibility Act, the loan forgiveness period has been extended from eight weeks to 24 weeks for the loan origination date, as long as the covered period does not extend beyond December 31, 2020. Changes have also been made with regard to loan forgiveness and the payroll cost threshold, maturity date, deferring payments, and eliminating the full-time equivalent employee reduction provision under certain circumstances. Under the ACRRA, the loan program is extended to March 31, 2021, with an additional \$284.45 billion in funding

Residential energy efficient property (REEP) credit: a tax credit under IRC §25D for residential solar energy property. Under the TCDTRA, the 26% credit has been extended for years 2020 and 2021, then drops to 22% in 2022 and expires thereafter

TCDTRA: Taxpayer Certainty and Disaster Tax Relief Act of 2020, part of the Consolidated Appropriations Act of 2021

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CONSOLIDATED APPROPRIATIONS ACT OF 2021

Course description and study guide

Course objectives: This course is a comprehensive review and analysis of the Consolidated Appropriations Act of 2021, which provides expanded and additional benefits to individuals and businesses affected by the COVID-19 pandemic. Topics discussed include: Taxpayer Certainty and Disaster Tax Relief Act (TCDTRA); Additional Coronavirus Response and Relief Act (ACRRA); PPP second draw loans; supplemental funding requests; deductibility of expenses; Employee Retention Credit; Economic Impact Payments; unemployment benefits; charitable contributions; payroll deferrals; paid sick and family leave credits; extenders; disaster tax relief; disaster-related Employee Retention Credit; and much more.

Completion deadline and exam: This course, including the examination, must be completed within one year of the date of purchase. In addition, unless otherwise indicated, no correct or incorrect feedback for any exam question will be provided.

Category: Taxes

Recommended CPE Hours: CPAs – 1 Tax
EAs – 1 Federal Tax Update
CRTPs – 1 Federal Tax Update

Level: Basic

Prerequisite: None

Advance Preparation: None

Course qualification: Qualifies for QAS and NASBA Registry CPE credit based on a 50-minute per CPE hour measurement

CPE sponsor information: Spidell Publishing, Inc. (Registry ID: 104931)

Expiration Date: January 2022*

*Exam must be completed within one year of the date of purchase

Learning assignment and objectives

As a result of studying the assigned materials, you should be able to meet the objectives listed below.

Assignment:

At the start of the materials, participants should identify the following topics for study:

- PPP provisions
- Employee retention credit
- Economic Impact Payments

Learning Objectives:

After completing this course, you will be able to:

- Determine if an entity qualifies for a second draw PPP loan based on their gross receipts
- Identify how unemployment benefits have been expanded under the ACRRA
- Recall how to calculate the Employee Retention Credit based on amendments in the TCDTRA
- Recall how the TCDTRA and the ACRRA have affected taxpayers that are electing trades or businesses under the business interest limitation rules
- Identify differences between the Employee Retention Credit under the CARES Act and the disaster-related Employee Retention Credit under the TCDTRA

After studying the materials, please answer exam questions 1-5.

Course Evaluation for Spidell Publishing, Inc.

Program title: **Consolidated Appropriations Act of 2021**

If applicable, program instructor: _____

Program date: _____ Participant name (optional): _____

Instructions: Please comment on all of the following evaluation points for this program and assign a number grade, using a 1-5 scale, with 5 as the highest rating.

1. Were the stated learning objectives met? _____
2. If applicable, were prerequisite requirements appropriate and sufficient? _____
3. Were the program materials accurate? _____
4. Were program materials relevant, and did they contribute to the achievement of the learning objectives? _____
5. Was the time allotted to the learning activity appropriate? _____
6. If applicable, were the individual instructors knowledgeable and effective? _____
7. Were the facilities and/or technological equipment appropriate? _____
8. Were the handout and/or advanced preparation materials satisfactory? _____
9. Were the audio and visual materials effective? _____

IRS Course Number (if applicable): CRA7E-U-00496-21-S

TTP (CTEC) Course Number (if applicable): 1019-CE-1049

Date course completed: _____

Number of hours it took to complete the course: _____

Examination for Spidell's Consolidated Appropriations Act of 2021

PLEASE: Place the correct response for each question on the attached answer sheet and retain this examination for your records. If you purchased the online version, or would like to complete your exam online, please log-in to your SpidellCPE online account to submit your answers to the exam. 70% or more (4 of 5) correct responses are necessary to receive credit for this course. This course must be completed within one year of the date of purchase.

Final Exam Questions

1. All of these businesses are eligible for a second draw PPP loan except:
 - a) A business that was not operating on February 15, 2020
 - b) Tribal business
 - c) Sole proprietor
 - d) Veterans' organizations
2. For purposes of the Employee Retention Credit, the TCDTRA has amended the CARES Act so that which of the following is true?
 - a) The credit has been extended to apply to qualified wages paid prior to July 15, 2021
 - b) The credit rate has been increased from 50% of qualified wages to 70%
 - c) The \$10,000 qualified wage limitation applies on an annual basis
 - d) All of the above
3. What are among the modifications to the CARES Act for charitable contributions?
 - a) Nonitemizers are able to claim a \$300 above-the-line deduction for cash contributions made to qualified organizations or private foundations for 2021
 - b) A 50% accuracy-related penalty will be imposed automatically on underpayments that can be attributed to overstatements of the 2021 above-the-line deduction
 - c) The increased charitable contribution limits for cash contributions for individuals (100% of AGI) and corporations (20% of taxable income) applies in 2021
 - d) For 2021, joint filers may claim a \$600 above-the-line deduction for cash contributions to qualified organizations
4. Under the TCDTRA, which of these provisions was made permanent?
 - a) Work Opportunity Credit
 - b) New Markets Tax Credit
 - c) Railroad Track Maintenance Credit
 - d) Employer Credit for Paid Family and Sick Leave
5. Eligible retirement plans from which penalty-free qualified disaster distributions may be made include all of the following except:
 - a) Annuity plan
 - b) Defined benefit plan
 - c) Money purchase plan
 - d) Individual retirement account

Name _____



Answer Sheet for Spidell's Consolidated Appropriations Act of 2021

Name: _____ Signature: _____

Company: _____ No. of Hours to Complete (Max. 1): _____

Address: _____

City/State/ZIP: _____

Phone: _____ Fax: _____

E-mail: _____

License/Registration No.: _____ CPA EA CRTP (CTEC) Atty

PTIN: _____

If you are an EA or CRTP (CTEC), we must have your PTIN in order to report your hours to the IRS.

Deadline to Complete the Course: *In accordance with NASBA and IRS requirements, you have one year from the date of purchase to complete the examination and submit it to our office for grading.*

This examination is designed to test your knowledge on the content of **Spidell's Consolidated Appropriations Act of 2021**. We will grade the answer sheet, and if you answer 70% or more of the questions correctly you will be sent a certificate of completion. Passing CPAs will be recommended for one hour of continuing education credit, and passing EAs and CRTPs will be recommended for one federal tax update hour of continuing education.

* Attorneys will be recommended for .75 hours of general MCLE credit.

Mail or fax this Answer Sheet to:

Spidell Publishing, Inc.
P.O. Box 61044
Anaheim, CA 92803-6144
Fax: (714) 776-9906

Name _____

Final Exam Questions

1. **a)** A business that was not operating on February 15, 2020
 b) Tribal business
 c) Sole proprietor
 d) Veterans' organizations

2. **a)** The credit has been extended to apply to qualified wages paid prior to July 15, 2021
 b) The credit rate has been increased from 50% of qualified wages to 70%
 c) The \$10,000 qualified wage limitation applies on an annual basis
 d) All of the above

3. **a)** Nonitemizers are able to claim a \$300 above-the-line deduction for cash contributions made to qualified organizations or private foundations for 2021
 b) A 50% accuracy-related penalty will be imposed automatically on underpayments that can be attributed to overstatements of the 2021 above-the-line deduction
 c) The increased charitable contribution limits for cash contributions for individuals (100% of AGI) and corporations (20% of taxable income) applies in 2021
 d) For 2021, joint filers may claim a \$600 above-the-line deduction for cash contributions to qualified organizations

4. **a)** Work Opportunity Credit
 b) New Markets Tax Credit
 c) Railroad Track Maintenance Credit
 d) Employer Credit for Paid Family and Sick Leave

5. **a)** Annuity plan
 b) Defined benefit plan
 c) Money purchase plan
 d) Individual retirement account