

December 2020

Client Advisory

Business Tax Provisions in New Coronavirus Relief Legislation

Both Houses of Congress passed the COVID-19 relief package yesterday December 21st, and the bill now moves to the President's desk for his expected signature.

While we believe you will learn about its principal measures through media sources, we want to alert you to the principal business tax provisions which likely will not attract as much attention. Our comments are subject to receipt and review of the final version of the legislation.

The Paycheck Protection Program ("PPP"). Congress approved \$284 billion of funding for the PPP to provide forgivable loans to first and second-time small business borrowers, and it expanded eligibility for nonprofits. Second-time loans are limited to businesses with fewer than 300 employees, and which experienced at least a 25% decrease in gross receipts in any quarter in 2020 compared to the same quarter in 2019. The maximum loan for second-time borrowers is \$2 million.

This is new: Businesses taking a PPP loan will now, in addition, be able to take advantage of the Employee Retention Tax Credit. Previously, they were not allowed to do both (i.e., take a PPP loan and claim the tax credit).

Another new one: The expenses for which PPP loan proceeds may be used have been expanded to include expenses such as certain property damage, supplier costs and worker protection expenditures. Previously, PPP loan proceeds were limited to paying only employee wages or operating expenses such as rent and utilities.

When used for qualifying expenses, PPP loans are forgivable. A simplified forgiveness application process for loans up to \$150,000 is now provided for.

This is new (and very important): Businesses may now deduct expenses paid with the proceeds of forgiven PPP loans. This new entitlement applies to "old" PPP loans, as well as loans made after the enactment of the new legislation. By way of background, the amount of a loan which is forgiven is often considered income which is taxable to the debtor. The CARES Act made clear that PPP loans which are forgiven do not constitute taxable income - that was a good thing. Congress may have also intended that expenses paid for with PPP loans are deductible, but it didn't say so in the CARES Act - not so good. Instead, it left in place a provision in the Internal Revenue Code which generally prohibits taxpayers from deducting expenses associated with income that is tax-free. Long story short, the IRS ruled, here in 2020,

that expenses paid with the proceeds of PPP loans are not deductible. This new provision effectively overrides the IRS position and results in a significant "double benefit" for businesses: tax deductions and tax-free loan forgiveness.

Employee Retention Tax Credit. This credit has been extended and expanded through July 1, 2021. The bill increases the refundable payroll tax credit by changing the calculation from 50 percent of wages paid up to \$10,000 to 70 percent of wages paid up to \$10,000 for any quarter. Not to be repetitious, but it's important to make clear that businesses will now be able to utilize the Employee Retention Tax Credit and participate in the PPP.

Low-Income Housing Tax Credit. The bill increases allocations to states for this credit, which subsidizes the construction and rehabilitation of low-income housing developments.

Deduction for Business Meals. The bill increases the deduction for business meals to 100% for 2021 and 2022.

Tax Extenders. The bill extends or provides permanence for certain temporary provisions in the tax code:

- **Craft Beverage Tax Relief:** The bill makes permanent the Craft Beverage Modernization & Tax Reform Act, legislation that provides excise tax relief to the craft beverage industry.
- **CFC Look-Through Rules:** The bill extends, for five years, the look-through rules for U.S. multinationals to allow them to bring back dollars trapped overseas in order to help keep U.S. companies competitive abroad.
- **New Markets Tax Credit:** The bill extends this credit for an additional five years at 2020 levels.
- **Work Opportunity Tax Credit:** The bill extends this credit for an additional five years.
- **Health Coverage Tax Credit:** The bill extends this credit for one year.

Please reach out to your Archer contact or any member of Archer's COVID-19 Task Force with any questions you may have.

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