



Federal and State Tax Update

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Postlethwaite & Netterville, A Professional Accounting Corporation

Agenda

- American Rescue Plan
- Infrastructure Investment and Jobs Act
- Build Back Better
- Consolidated Appropriations Act
 - Employee Retention Credit and Other Business Updates
- State Tax Update

American Rescue Plan Act of 2021

ARPA- Individual Updates

- Signed into law on March 11, 2021.
- \$1.9 trillion package

Recovery Credits

- Provides \$1,400 refundable tax credit to individuals (\$2,800 for joint filers) with up to \$75,000 in AGI (or \$112,500 for heads of household and \$150,000 for married couples filing jointly)
 - Provides \$1,400 for dependents (both child and non-child)
- Reduces credit for incomes between \$75,000 and \$80,000
 - Between \$112,500 and \$120,000 for heads of household; \$150,000 and \$160,000 for married couples filing jointly
- Phases credit out entirely for incomes above \$80,000
 - Above \$120,000 for heads of household; \$160,000 for married couples filing jointly
- Pays out in advance like Economic Impact Payments (commonly known as stimulus checks) provided under prior legislation
 - Uses most recent AGI in IRS's system (2020 or 2019)
 - If individual qualifies for a larger payment using 2021 income, difference will be claimed as a credit on 2021 return

Earned Income Credit

- For 2021:
 - Temporarily modifies definition of "eligible individual" (without qualifying children) by decreasing minimum age to 19 and eliminating maximum age limit
 - Increases credit phaseout percentage to 15.3%
 - Increases earned income and phaseout amounts to \$9,820 and \$11,610, respectively
- Allows eligible individuals to claim childless EITC even if they have qualifying children who fail to meet certain identification requirements
- Treats separated spouse who meets certain requirements as unmarried, such that he/she may be EITC-eligible, despite not filing jointly
 - Requirements: Does not file jointly, lives with qualifying child for over half the year, and either (1) does not live with other spouse during the last 6 months of the year or (2) has separation instrument and does not live with other spouse by the end of the year
- Increases the disqualified investment income amount to greater than \$10,000, adjusted for inflation
- Allows taxpayer to elect to determine EITC using 2019 earned income if 2019 earned income is higher than 2021 earned income

Premium Tax Credit

- The premium tax credit is a refundable credit designed to assist lower income individuals and families cover their monthly premiums under health insurance plans offered through a public health insurance exchange
- For tax years beginning in 2021 or 2022, expands eligibility to taxpayers whose household income for the year exceeds 400% of the poverty line for their family's size
- For tax years beginning in 2021 or 2022, updates sliding scale of percentages used to calculate monthly amount of premium assistance
 - 0% for individuals with household income of up to 150% of the poverty line
 - 8.5% for individuals with household income equal to or greater than 400% of the poverty line
- For tax year beginning in 2020, suspends the increase in tax for taxpayers who receive excess advance payments where such taxpayers file returns that reconcile the advance payments
- Treats individuals who receive unemployment compensation during 2021 as eligible for the premium tax credit
 - Amount of household income taken into account is generally capped at 133% of the poverty line

Child Tax Credit

- Increases child tax credit amount for 2021 only, to \$3,600 for children under age 6, and to \$3,000 for children ages 6 to 17; expands definition of "qualifying child" to include 17-year-olds
- From July 2021 through December 2021, IRS will make periodic advance payments of the child tax credit based on 2019 or 2020 tax return information
- IRS advance payments comprise half the child tax credit to which the taxpayer is otherwise entitled for 2021, with the remaining half claimed on the 2021 tax return
- Phases out the additional credit amount (i.e., the additional \$1,000 per child age 6 or over, and the additional \$1,600 per child under age 6) for joint filers with modified adjusted gross income above \$150,000 (\$112,500 for head of household filers and \$75,000 for single filers)
- For taxpayers whose income is too high to qualify for the child tax credit expansion, the regular credit amount of \$2,000 per child can nevertheless be taken if adjusted gross income is below \$200,000 (single filers) or \$400,000 (joint filers)
- Makes child tax credit fully refundable in 2021

Dependent Care Credit

- Makes the household and dependent care tax credit refundable for 2021
- Increases maximum credit amount to \$8,000 if there is 1 qualifying individual with respect to the taxpayer for such tax year, or \$16,000 if there are 2 or more qualifying individuals with respect to the taxpayer for such tax year
- Increases creditable portion of the employment-related expenses to 50% for 2021, reduced (but not below the "phaseout percentage") by 1 percentage point for each \$2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds \$125,000
- The "phaseout percentage" is 20% reduced (but not below zero) by 1 percentage point for each \$2,000 (or fraction thereof) by which the taxpayer's AGI exceeds \$400,000
- Increases to \$10,500 (\$5,250 in the case of a separate return by a married individual) the amount which may be excluded from an employee's gross income for 2021 for dependent care assistance with respect to dependent care services provided during the tax year

Unemployment Compensation

- Excludes from 2020 gross income up to \$10,200 of unemployment compensation received for individuals with adjusted gross income of less than \$150,000.
- IRS processed changes to tax returns without the need to file amended return.

Loss Limitations

- Extends for an additional year (through 2026) the suspension of the limitation on current-year deduction of farming losses
 - Thus, the limitation on current-year deduction of farming losses will NOT apply until 2027
- Extends for an additional year (through 2026) the denial of a current-year deduction of business losses of a noncorporate taxpayer, to the extent they exceed business income plus a threshold amount (461(l))
 - \$262,000 for single in 2021
 - \$524,000 for married filing joint in 2021
 - Example: Taxpayer has \$2M of investment income (capital gains, interest, dividends, etc.) and a \$2M loss from a trade or business. 461(l) will limit the \$2M loss to \$262,000 for single taxpayer or \$524,000 for married filing joint.

Student Loan Forgiveness

- Excludes from gross income eligible student loan amounts discharged in 2021-2025
- Exclusion does not apply to the discharge of a loan made by certain lenders if the discharge is on account of services performed for the lender

ARPA- Business Updates

- ERTC extension/creation of targeted programs
- COBRA Premium subsidy
- Restaurant Revitalization Grants

Employee Retention Credit

- Extended to 3rd and 4th quarter (only to have 4th quarter removed under recent infrastructure plan)
- Created targeted ERC qualifications
 - Recovery Startup Business (RSB)
 - A business started after February 15, 2020
 - With annual gross receipts not exceeding \$1,000,000
 - And that does not otherwise qualify for the ERTC
 - Credit is limited to \$50,000 per quarter
 - Severely Financially Distressed Employers
 - An employer who has experienced a greater than 90% decline in gross receipts as compared to the same quarter in 2019
 - All wages will qualify, regardless of employer size.

COBRA Premium Subsidy

- Notice 2021-31

- 86 FAQs on the new Cobra credit. ARPA requires employers to pay premiums for certain Assistance Eligible Individuals entitled to federal COBRA coverage from April 1, 2021 through the end of September.
- COBRA premiums paid by an employer on behalf of an employee are NOT included in the taxable income of the employee. Employer can receive a refundable payroll tax credit for payment of premium subsidy.
- Can reduce payroll tax deposit in anticipation of credit. Can also request an advance of the credit on Form 7200.
- No double benefit allowed. Businesses claiming the credit must include the amount of the credit in gross income in the tax year that includes the last day of any calendar quarter with respect to which the credit is allowed.

Infrastructure Investment and Jobs Act

Infrastructure Act

- Repeals Employee Retention Credit for 4th Quarter
- Focus on Crypto Currency
 - Broker includes “any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person.”
 - Act provides that a digital asset is a specified security, starting in January 1, 2023.
 - Hence, a digital asset acquired on or after January 1, 2023, is a covered security and brokers will have to report customer’s basis and gain/loss when the customer sells or exchanges the digital asset.

Build Back Better

Tax Increases Would Raise About \$1.48 Trillion

Top corporate and international changes			Top individual changes	
15% minimum "book tax" for corporations with income over \$1 billion \$318.9B	15% GILTI and 15.8% FDII rates \$144.3B	1% surtax on corporate stock buybacks \$124.2B	3.8% net investment income tax expanded to business income \$252.2B	5% surtax on individual income over \$10 million, plus 3% over \$25 million \$227.8B
	BEAT changes \$67.1B	GILTI country-by-country basis \$57.0B		Excess business loss deduction limitation \$160.3B

Notes: GILTI – global intangible low-taxed income; FDII – foreign-derived intangible income; BEAT – base erosion and anti-abuse tax
Source: Joint Committee on Taxation Nov. 4 [estimate](#)

Build Back Better

- 15% minimum tax on profits of large corporations
 - Impose 15% minimum tax on profits of corporations that report over \$1 billion in profits to shareholders (based on financial statement income).
 - Corporations with foreign parents – test is \$100 million.
- 1% surcharge on corporate stock buyouts
 - Apply to public companies
 - Effective for purchases after December 31, 2021.
- Excess business loss rule (461(l)) becomes permanent
- 1202 stock – 75% or 100% exclusion wouldn't apply if the taxpayer's AGI is over \$400k or is a trust or estate.

Build Back Better

- Net Investment Income Tax (3.8%)
 - Will apply to income derived from a trade or business (active or passive) for taxpayers with taxable income over \$400k (single), \$500k (married filing joint) or \$250k (married filing separate).
 - SE income is not subject to this expanded NIIT.
 - NIIT will cost more than SE due to ability to deduct ½ of SE tax.
- Surcharge on high income earners.
 - 5% on AGI exceeding \$10M (\$5M for married filing separate) or \$200k for an estate or trust
 - 3% on AGI exceeding \$25M (\$12.5M for married filing separate) or \$500k for estate/trust.

Build Back Better - International

- International provisions
 - FDII – change deduction to 24.8% down from 37.5% (bringing effective rate to 15.8%)
 - GILTI – change deduction to 28.5% down from 50% (bringing effective rate to 15%)
 - GILTI will be computed on a country by country basis
 - Foreign tax credit determinations made on a country-by-country perspective.
 - Changes to BEAT tax

Bill Includes More Than \$550 Billion for Climate, Clean Energy

Proposal	Details
Clean energy tax incentives	\$300.5 billion in green energy tax incentives, such as extending PTC, ITC, and individual credits and creating new credits for clean electricity, zero-emission nuclear power, clean hydrogen, electric vehicles, and advanced manufacturing facilities
Climate programs	Provide funding for new initiatives, including to deploy rooftop solar power systems and zero-emission vehicles, provide rebates for high-efficiency appliances, replace lead water lines, support state greenhouse gas reduction plans
Revenue raisers	Impose a per-ton methane fee on the oil and gas industry; increase lease and royalty fees for fossil energy extraction on federal land and water
Drilling limits	Repeal authorization to drill in the Arctic National Wildlife Refuge; impose a moratorium on new offshore leasing on the Pacific and Atlantic coasts and in the eastern Gulf of Mexico
EV Procurement	Provide a combined \$9 billion for GSA, USPS procurement of electric vehicles

Notes: PTC – production tax credit; ITC – investment tax credit; GSA – General Services Administration; USPS – U.S. Postal Service

Bloomberg Government

Consolidated Appropriations Act

Consolidated Appropriations Act, 2021

- Provides \$900B for COVID-19 related relief & 1.4T to fund federal government through September 2021.
 - Passed Congress on December 21, 2020.
 - Signed by President Trump on December 27, 2020.
- PPP round 2 and changes
- Extension and expansion of certain COVID-19 tax credits
- Funding of various other programs

Extension of Expiring Provisions

- Provisions made permanent:
 - 179D – deduction for energy efficient improvements to commercial building and systems.
 - Several favorable alcohol related provisions:
 - 263A(f)(4) amended to exempt the aging period for beer, wine or distilled spirits
 - Reduced rate of excise tax on beer, wine and distilled spirits
 - Transfer of beer between bonded facilities
 - Refunds in lieu of reduced rates for certain craft beverages produced outside of the US
 - Reduced rates not allowed for smuggled or illegal booze
 - Minimum processing requirements for reduced distilled spirits rates
 - Modification of single taxpayer rules (for beer, wine and distilled spirits)

Extension of Expiring Provisions

- Extended until December 31, 2025
 - New Markets Tax Credit
 - Work Opportunity Tax Credit
 - Immediate expensing of certain film and television and live theatrical productions under §181
 - Allowing employers to pay up to \$5,250 of an employee's qualified tuition, student loan and interest tax-free to an employee §127(c)(1)(B)
 - Look-through rule for related CFCs
 - 7 year recovery period for motorsports entertainment complexes
 - Employer credit for paid FMLA §45S

Extension of Expiring Provisions

- Extended until December 31, 2025 (cont)
 - Extension of carbon oxide sequestration credit §45Q
 - Empowerment zone tax incentives

Extension of Expiring Provisions

- Extended until December 31, 2021
 - Accelerated depreciation for business property on Indian reservations §168(j)
 - American Samoa economic development credit
 - Second generation biofuel producer credit §40
 - Nonbusiness energy property §25C
 - Qualified fuel cell motor vehicles §30B
 - Alternative fuel refueling property credit §30C
 - 2-wheeled plug-in electric vehicle credit §30D
 - Production credit for Indian coal facilities §45(e)(10)
 - Energy efficient homes credit §45L
 - Extension of excise tax credits relating to alternative fuels

PPP Changes under CCA

PPP Taxation

- New Rule
 - PPP is not taxable upon forgiveness.
 - Expenses paid with PPP loan process are deductible
 - Basis increase for S corporation and Partnership when loan is forgiven
 - Can one make the argument that basis increase occurs in 2020?

PPP Basis Increase

- Rev. Proc. 2021-48/2021-49 and 2021-49 address taxability of PPP loan forgiveness
 - Rev. Proc. 2021-48 – taxpayers may treat PPP loan as tax-exempt income in the year:
 - Eligible expenses are paid or incurred,
 - When a PPP forgiveness application has been filed, or
 - When PPP loan forgiveness is granted.
 - Rev. Proc. 2021-49 provides guidance for partnerships and consolidated groups for PPP loan forgiveness.
 - Rev. Proc. 2021-50 allows eligible partnerships subject to the centralized audit rules under the BBA to file amended Form 1065 on or before December 31, 2021.

PPP Basis Increase

- Why is this important?
 - S corporation – treating the loan as tax-exempt income in 2020 will cause an increase in the S corporation shareholders stock basis. This may avoid a distribution in excess of basis or allow the S corporation shareholder to claim a loss in 2020.
 - Partnerships – similar to S corporation. PPP loan would have been treated as nonrecourse debt. This would have provided sufficient tax basis in the partner's interest, but not at-risk basis. Therefore, treating the PPP loan as tax-exempt interest does provide a substantial benefit if partnership incurred losses or made distributions (which may have caused at-risk basis to go negative).

Rev. Proc. 2021-20 – PPP Deductions

- Taxpayers that did not deduct expenses paid for with PPP funds can do so on their 2021 return if certain requirements were met per Rev. Proc. 2021-20.
- Recall – original IRS guidance provided that PPP expenses could not be deducted by the taxpayer if the PPP loan was forgiven or if taxpayer “reasonably expected” forgiveness. CAA reversed the IRS guidance.
- Rev. Proc. 2021-20 allows the taxpayer to take the deduction in a subsequent year rather than amending prior year return.

Taxation of Other SBA Relief

- Tax Free treatment also available for other areas.
 - Other debt relief on existing SBA 7(a) loans
 - Emergency EIDL grants
 - Grants for Shuttered Venue Operators
 - Emergency Financial Aid Grants

Employee Retention Credit

Employee Retention Tax Credit

- Extends and expands the CARES Act employee retention tax credit.
- CARES provided payroll credit of 50% of \$10,000 of employee's wage per year.
- Was set to expire on December 31, 2020.
- Employer had to either experience a:
 - Partial or full suspension of operations as a result of a government order that limits commerce OR
 - Experience a greater than 50% reduction in quarterly receipts
- Under CARES Act, not able to claim credit if received PPP.

Employee Retention Tax Credit- 2020

- Several changes to ERTC for 2020
 - Can still claim it if had a PPP, but not able to obtain the credit on wages paid with forgiven PPP loan proceeds.
 - Group health plan expenses considered qualified wages even when no other wages are paid to employee.
- Reminders
 - Under 100 employees (based on 2019 employee count), any wages paid to an employee during partial shutdown or quarter of significant decline in revenue would count.
 - Over 100 employees, only wages paid to an employee NOT working during partial shutdown or quarter of significant decline in revenue would count. Also, for these employers, wages were capped at whatever the employee was paid during the prior 30 day period.

Employee Retention Tax Credit- 2021

- Several changes to ERTC for 2021
 - Increased credit to 70% of qualified wages.
 - Expands eligibility by reducing the gross receipt test to decline of 20% rather than 50% and provides for a safe harbor to use the prior quarter receipts in the test.
 - Increase limit on per-employee wages from \$10,000 per year to \$10,000 per quarter (in essence turning it from a \$5,000 to a \$14,000 credit in 2021).
 - Increases the 100-employee count to 500-employee count. So employers with 500 or fewer can now have any wages paid to an employee during a partial shutdown of business or decline in revenue count!
 - Removes 30-day wage limitation

Employee Retention Credit

- Notice 2021-20
 - Formal guidance relating to ERC and replaced FAQs issued throughout 2020.
 - Also provided guidance to implement changes made by the CAA and addressed overlap of PPP and ERC.
 - Applies to wages paid in 2020
- Notice 2021-23
 - Extends Notice 2021-20 guidance to wages paid in first and second quarter of 2021
- Notice 2021-24
 - Provides penalty relief for employer deposits
- Notice 2021-49

Full or Partial Suspension

- Trade or business is partially suspended if:
 - An appropriate governmental authority imposes restrictions on the employer's operations
 - The orders limit commerce, travel or group meetings due to COVID-19 and
 - The orders affect an employer's typical operations.
- All three of the above tests must be met.

What is an “Order from an Appropriate Governmental Authority”

- Governmental orders include:
 - An order from the city’s mayor stating that all non-essential businesses must close for a specified period;
 - A State’s emergency proclamation that residents must shelter in place for a specified period, other than residents who are employed by an essential business and who may travel to and work at the workplace location;
 - An order from a local official imposing a curfew on residents that impacts the operating hours of a trade or business for a specified period;
 - An order from a local health department mandating a workplace closure for cleaning and disinfecting.

Suspension of Business/Customer/ Voluntary Closures

- Shutting down voluntarily for a period of time to protect your employees **does not qualify**.
- An employer that operates an essential business that is not required to close its physical locations or suspend its operations is not considered to have a full or partial suspension of its operations for the sole reason that its customers are subject to a government order requiring them to stay at home.

Example: *Employer B, an automobile repair service business, is an essential business and is not required to close its locations or suspend its operations. Due to a governmental order that limits travel and requires members of the community to stay at home except for certain essential travel, such as going to the grocery store, Employer B's business has declined significantly. Employer B is not considered to have a full or partial suspension of operations due to a governmental order.*

Supply Chain Issues

- An **essential business** may be considered to have a full or partial suspension of operations if the business's suppliers are unable to make deliveries of critical goods or materials due to a governmental order that causes the supplier to suspend operations.

Example: Employer A operates an auto parts manufacturing business that is considered an essential trade or business. Employer A's supplier of raw materials is required to shut down its operations due to a government order. Employer A is unable to procure these raw materials from an alternate supplier. As a consequence of the suspension of Employer A's supplier, Employer A is not able to perform its operations. Employer A is eligible.

Remote Work/Telework

- If an employer's workforce is closed by a governmental order, but the employer is able to continue operations **COMPARABLE** to its operations prior to the closure by requiring its employees to telework, the employer's operations are not considered to have been fully or partially suspended.

Example 1: *Software development company maintains an office in a city that order only essential businesses may operate. Software company is not essential per the order. Prior to order, all employees teleworked once or twice per week and business meetings were held at various locations. Company ordered everyone to telework and limited client meetings to telephone or video conferences. **NOT ELIGIBLE.***

Example 2: *Physical therapy company was required to close due to government order. None of the company's services were delivered through telework and all appointments, administration and other duties were carried out at the workplace. After the closure, not all work was able to be done remotely and employees cannot access specific equipment or tools typically used in therapy. **ELIGIBLE.***

Partial Suspension – “More than Nominal” Test – QA #11 and #17

- If an employer’s workplace is closed by a governmental order for certain purposes, but the employer’s workplace may remain open, the employer’s operations **would be considered partially suspended**.
- However, the portion of the business that is suspended must be more than a nominal portion of the employer’s business.
- “More than a **nominal portion**” of an employer’s business exists when:
 - The portion of the business is at least 10% of the business by gross receipts
 - The portion of the business is at least 10% by hours of service by employees

Partial Suspension – “More than Nominal” Test – Modifications QA #18

- More than nominal test also applies to business modifications
- If an employer’s business operations may continue, even if subject to modification, such a modification of operations is not considered to be a partial suspension **unless the modification has more than a NOMINAL effect on the business operations** under the facts and circumstances.
- IRS guidance has specifically stated that modifications altering **customer behavior** such as mask-wearing **DO NOT** have more than a nominal effect on business operations.

Partial Suspension – “More than Nominal” Test – Modifications QA #18

- Note the Notice uses the terms “nominal **portion** of a business” when determining whether an essential business is partially suspended. However, when discussing whether a modification is considered a partial suspension, the Notice uses the term “nominal **effect** on the business”. Under the “effect” test, the Notice lists a number of factors rather than providing a quantitative test.
- Factors include:
 - Limiting occupancy to provide for social distancing,
 - Requiring services to be performed only on an appointment basis (for businesses that previously offered walk-in service),
 - Changing the format of service (for example, restrictions on buffet or self-serve, but not prepackaged or carry-out), or
 - Requiring employees and customers to wear face coverings.

Partial Suspension – “More than Nominal” Test – Modifications QA #18

- The mere fact that an employer must make a modification to business operations due to a governmental order does not result in a partial suspension unless the modification has more than a nominal effect on the employer’s business operation.
- This is based on facts and circumstances.
- A governmental order that results in a reduction in an employer’s ability to provide goods or services in the normal course of the employer’s business of not less than 10% will be deemed to have more than a nominal effect on the employer’s business operations.
- How do you measure the “ability to provide goods or services” and how do you have a 10% decrease in this “ability”?

Significant Decline Gross Receipts

- If employers do not meet the test for full or partial suspension, then they can qualify by experiencing a significant decline in gross receipts
 - CARES Act: A quarter in 2020 is less than 50% of the same quarter in 2019; continues across quarters in 2020 until the quarter **after** the quarter where the decline is less than 20%
 - Consolidated Appropriations Act: Applies to the first two quarters in 2021; an employer will qualify if the quarter has greater than a 20% decline as compared to the same quarter in 2019; can qualify using immediately preceding quarter
 - American Rescue Plan Act: Extends CAA through third and fourth quarter of 2021; creates provision for Recovery Startup Businesses and Severely Financially Distressed Businesses

Gross Receipts

- “Gross receipts” has the same meaning as when used under Section 448(c).
 - Receipts include total sales (less returns and allowances) and income from services provided
 - Receipts also include interest, dividends, rents and royalties and sale of assets
 - Gross receipts are not reduced by COGS.
- For tax-exempt entities, gross receipts has the same meaning under Section 6033.

Qualified Wages – Related Individuals

- Wages paid to related individuals are not taken into account for purposes of the credit.
- Types of relationships:
 - Employer is a corporation, a related individual is any person that bears a relationship with an individual owning, directly or indirectly, more than 50% in value of outstanding stock of corp.
 - Employer other than corporation, a related individual is any person that bears a relationship with an individual owning, directly or indirectly, more than 50% of the capital and profits interest in the entity.

Qualified Wages – Related Individuals

- Related individual is any employee who has any of the following relationships to the employee's employer who is an individual:
 - A child or a descendant of a child
 - A brother, sister, stepbrother or stepsister;
 - The father or mother, or an ancestor of either;
 - A stepfather or stepmother;
 - A niece or nephew;
 - An aunt or uncle,
 - A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law

Qualified Wages – Related Individuals

- Confusion has existed over whether an owner of a business who is also an employee would meet the related individual definition
- IRS has clarified that an owner of a business is a related individual via attribution rules if the owner has an ancestor, lineal descendant, or sibling
- Similar rules applicable to spouses of owners

Qualified Wages (cont.)

- Average full-time employees (FTE) for 2019 = important calculation for purposes of determining qualified wages
- FTE means any employee, with respect to any calendar month in 2019, had an average of at least **30 hours of service per week** or **130 hours of service in the month**.
- To determine average FTE for the year, sum of full-time employees in each calendar month in 2019 and dividing that number by the number of months.
- The IRS has clarified that the number of full-time employees does not have to include full-time equivalents who are not full-time employees in the employee count

Qualified Wages - Large Employer

- If an employer is a large employer, then qualifying wages are only those wages being paid when an employee is not working
 - CARES Act threshold: More than 100
 - Consolidated Appropriations Act: More than 500
 - American Rescue Plan Act: More than 500
- Pay for PTO is not qualified wages for a large employer.
- For all other qualifying employers, all wages paid during qualifying period are eligible for ERTC

Qualified Wages - Large Employer

Example 1:

- Employer operates a restaurant and has more than 100 FTEs in 2019. State forced Employer to discontinue sit-down service to customers for Q2 and Q3 of 2020. Employer continues to pay kitchen staff to prepare food. It also pays its wait staff to stay at home and not work. Because Employer is over 100 FTEs and its operations are partially suspended, only wages paid to the wait staff would qualify. Wages paid to the kitchen staff would not qualify.
- If Employer had 100 or less FTEs in 2019, all wages paid during Q2 and Q3 would be eligible.

Example 2:

- Employer has more than 100 FTEs and forced to discontinue sit-down service. Employer cut all employees hours to 20% of normal but still paid 100% of normal pay. The 20% paid to provide services is NOT eligible, but the 80% continued to pay them to NOT work is eligible.

Example 3:

- Employer has more than 100 FTEs. Employer continues to pay its hourly employee who are not providing services 50% of their normal hourly wages. Employer may treat these wages as qualified wages. Employer also reduced headquarter administrative staff hours by 40%, but continues to pay 100% of normal hourly wage rates. Employer may treat the 40% as wages paid for not performing services. The 60% of wages would not qualify since employee is performing services.

Aggregated Groups

- Knowledge of structure is critical
- Aggregated groups include
 - Combined group of corporations (Parent – Subsidiary relationships)
 - Brother-sister entities
 - Need to assess the voting control of each owner, as well as combined voting power
 - Family-owned businesses, as well as the impact of estates and trusts
 - Affiliated service groups

Aggregated Groups

- Companies are aggregated and treated as a single employer under IRC Sections 52 and 414.
 - Whether the employer has a trade or business that was fully or partially suspended.
 - Whether the employer has a significant decline in gross receipts.
 - Whether the employer has more than 100 FTEs.
- Potential unintended application/consequences (e.g., private equity)

Overlap with PPP

- IRS released guidance on overlap
 - The same wages cannot be counted for both PPP forgiveness and ERTC
 - Employers may “elect” not to claim wages for ERTC purposes
 - Election is made by not claiming a credit for those wages
 - Deemed election is made by claiming qualified wages on a PPP loan forgiveness application
 - However, the election is limited to the amount of payroll costs needed to maximize forgiveness
- Strategies to Maximize PPP and ERTC

Gross Receipts Safe Harbors

- **Gross Receipts Safe Harbor – PPP loans**
 - Without safe harbor, gross receipts may include PPP forgiveness
 - IRS created safe harbor so that PPP loan forgiveness is not included in gross receipts
 - Safe harbor must be applied consistently across all quarters and related employers
- **Gross Receipts Safe Harbor - Acquisitions**
 - Allows employees to include gross receipts from acquired businesses in their 2019 comparison quarters even if the acquisition happened later
 - However, gross receipts must always include receipts from an acquired business after acquisition

Disaster ERC

- Taxpayer Certainty and Disaster Tax Relief Act of 2020 (part of CAA) allows eligible employers in a qualified disaster zone in 2020 to claim an employee retention credit.
- The ERC for these employers is 40% of \$6,000 of wages per each qualifying employee for the 2020 tax year.

Other CAA Business Provisions

Employee Sick and Family Medical Leave

- Employee credit is a refundable payroll tax credit.
- Credit was set to expire on December 31, 2020.
- Extension of credits through March 2021.
- Paid leave mandates are not extended (still expire December 31, 2020); however, if employers want to voluntarily provide these benefits through March 31, 2021, they are eligible to receive credit for providing the leave.

Business Meals Deduction

- Allows 100% deduction for the cost of business meals in 2021 & 2022
- Only applies to food and beverage provided by restaurants
- Notice 2021-25
 - Defines a restaurant as:
 - ...a business that prepares and sells food or beverages to retail customers for immediate consumption, regardless of whether the food or beverages are consumed on the business's premises. However, a restaurant does not include a business that primarily sells pre-packaged food or beverages not for immediate consumption, such as a grocery store; specialty food store; beer, wine, or liquor store; drug store; convenience store; newsstand; or a vending machine or kiosk

State Tax Updates

Tax Rate Swap

- Repeal the constitutional protected federal income tax deduction in exchange for a lower state tax rate for both corporate and individual taxpayers.
- Repeal the excess itemized deduction for individual other than medical expenses.
- Eliminates franchise tax on first \$300k of taxable capital and reduces franchise rate from .3% on taxable capital to .275% on taxable capital in excess of \$300k.
- Triggers for reduction of tax rate if certain financial criteria is met.

Tax Rate Swap

- Single/Married Filing Separate (post-2022)

Taxable Income	Tax Rate
\$0-\$12,500	1.85%
\$12,501-\$50,000	3.5%
\$50,001 and higher	4.25%

Tax Rate Swap

- Married Filing Joint (post-2022)

Taxable Income	Tax Rate
\$0-\$25,000	1.85%
\$25,001-\$100,000	3.5%
\$100,001 and higher	4.25%

Tax Rate Swap

- Corporate (post-2022)

Taxable Income	Tax Rate
\$0-\$50,000	3.5%
\$50,001-\$150,000	5.5%
\$150,001 and higher	7.5%

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- COVID-19 benefits are not taxable for purposes of Louisiana income tax.
- Main Street Recovery Program and Frontline Worker Relief guidance (RIB 2021-19)
- Not addressed yet – Employee Retention Credit or HHS stimulus payments to health care organizations



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