Individual provisions of the CAA, 2021

The COVID-Related Tax Relief Act of 2020 (COVIDTRA) and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (TCDTR), both part of The Consolidated Appropriations Act, 2021 (CAA, 2021), contains numerous provisions related to individual income tax. Below is a summary of those provisions.

New recovery rebate

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act, PL 116-136) provided for direct payments/rebates to certain individual taxpayers. These were referred to as Economic Impact Payments (EIP).

New law. The COVIDTRA contains a new program, which it refers to as "additional 2020 recovery rebates."

The provision provides a refundable tax credit to eligible individuals in the amount of $600 per eligible family member. The credit is $600 per taxpayer ($1,200 for married filing jointly), in addition to $600 per qualifying child. The credit phases out starting at $75,000 of modified adjusted gross income ($112,500 for heads of household and $150,000 for married filing jointly) at a rate of $5 per $100 of additional income.

The term "eligible individual" does not include any nonresident alien, anyone who qualifies as another person's dependent, and estates or trusts.

The credit is available on the taxpayer's 2020 return.

The provision provides for Treasury to issue advance payments based on the information on 2019 tax returns. Eligible taxpayers treated as providing returns through the nonfiler portal in with respect to their EIP, will also receive payments.

In general, taxpayers without an eligible Social Security number are not eligible for the payment. However, married taxpayers filing jointly where one spouse has a Social Security Number and one

spouse does not are eligible for a payment of $600, in addition to $600 per child with a Social Security Number.

Taxpayers receiving an advance payment that exceeds the amount of their eligible credit will not be required to repay any amount of the payment. If the amount of the credit determined on the taxpayer's 2020 tax return exceeds the amount of the advance payment, taxpayers will receive the difference as a refundable tax credit.

Advance payments are generally not subject to administrative offset for past due federal or state debts. In addition, the payments are protected from bank garnishment or levy by private creditors or debt collectors. (Code Sec. 6428A, as added by COVIDTRA Sec. 272)

Amendments to CARES Act Economic Impact Payment rules

The CARES Act provided for direct payments/rebates to certain individual taxpayers. These were referred to as Economic Impact Payments (EIP).

New law. The COVIDTRA makes the following changes to the CARES Act EIP:

...The $150,000 limit on adjusted gross income before the credit amount starts to decrease, which, under the CARES Act applied to joint returns, also applies to surviving spouses. (Code Sec, 6428(c)(1), as amended by Act Sec. 273(a))

...Changes the requirement, in order to be eligible for an EIP, with respect to providing IRS with the taxpayer's identification number, to conform to that requirement under the new rebate described above under "New Recovery Rebate." (Code Sec. 6428(g), as amended by COVIDTRA Sec. 273(a))

$250 educator expense deduction applies to PPE

Eligible educators (i.e., kindergarten through grade 12 teachers, instructors, etc.) are allowed a $250 above-the-line deduction for certain otherwise allowable trade or business expenses paid by them. (Code Sec. 62(a)(2)(D)(ii))

New law. COVIDTRA provides that, not later than February 28, 2021, the IRS must, by regulation or other guidance, clarify that personal protective equipment (PPE), disinfectant, and other supplies used for the prevention of the spread of COVID-19 are treated as described in Code Sec. 62(a)(2)(D)(ii). Such regulations or other guidance will apply to expenses paid or incurred after March 12, 2020. (COVIDTRA Sec. 275)

Emergency financial aid grants

An individual taxpayer may claim the American opportunity tax credit and/or the Lifetime Learning credit for higher education expenses at accredited post-secondary educational institutions paid for themselves, their spouses, and their dependents. (Code Sec. 25A) However, under Code Sec. 25A(g)(2) higher education expenses paid for by tax exempt income can't be used to claim either of these credit.

New law. COVIDTRA excludes certain CARES Act emergency financial aid grants from the gross income of college and university students. This provision also holds students harmless for purposes of determining their eligibility for the American Opportunity and Lifetime Learning tax credits. (CARES Act sections 3502, 3504, and 18004 as clarified by COVIDTRA Sec. 277)

Effective date. This provision applies to qualified emergency financial aid grants made after March 26, 2020, the date of enactment of the CARES Act. (COVIDTRA Sec. 277(c))

Disclosures to prevent certain taxpayers from being subject to private tax collection

Code Sec. 6306(d)(3) excludes supplemental social security (SSI) and social security disability insurance (SSDI) beneficiaries from the IRS private debt collection program beginning on January 1, 2021.

New law. The IRS and Social Security Administration need statutory authority to share information to determine which taxpayers are SSI or SSDI beneficiaries and eligible for exclusion from the IRS program. The provision provides the authority needed to share such information and make Code Sec. 6306(d)(3) work as intended. (Code Sec. 6103(k)(15) and Section 1106 of the Social Security Act, as amended by COVIDTRA Sec. 283)

Disclosure of tax return information related to education institutions

Code Sec. 6103(l)(13) allows disclosure of return information to carry out the Higher Education Act of 1965.

New law. COVIDTRA allows the IRS to share tax return information of student aid applicants, their parents, students, and borrowers with the Department of Education and further allows that tax return information be redisclosed to colleges and universities (and certain scholarship organizations) with the taxpayer confidentiality protections afforded under section 6103 of the Code. (Code Sec. 6103(l)(13), as amended by COVIDTRA Sec. 284)

Many of these provisons had been in Code Sec. 6103(l)(13) at one time, but were deleted by the CARES Act.

Minimum age for distributions during working retirement

Code Sec. 401(a)(36) provided that a trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust (i.e., will not be subject to tax) solely because the plan provides that a distribution may be made from such trust to an employee who has attained age 59½ and who is not separated from employment at the time of such distribution.

New law. The TCDTR amends the rules in Code Sec. 401(a)(36) to provide that certain pension plan trusts won't lose their status as qualified trusts solely because the plan allows certain employees in the building and construction industries who are not separated from employment to take distributions at age 55. (Code Sec. 401(a)(36), amended by TCDTR Sec. 208(a))

Effective date. The amendment made by this provision applies to distributions made before, on, or after the date of enactment. (TCDTR Sec. 208(b))

Individuals may base 2020 refundable CTC & EIC on preceding year's earned income

Background. Under Code Sec. 24(d)(1)(B)(i), to the extent the child tax credit (CTC) exceeds the taxpayer's tax liability, the taxpayer is eligible for a refundable credit equal to 15% percent of so much of the taxpayer's taxable earned income for the tax year as exceeds $2,500.And under Code Sec. 32(a), the earned income credit (EIC) equals a percentage of the taxpayer's earned income.

For both purposes, earned income means wages, salaries, tips, and other employee compensation, if includible in gross income for the tax year. Earned income also includes self-employment income, computed without the deduction for one-half of self-employment tax. (Code Sec. 32(c)(2))

New law. Under the TCDTR, in determining the refundable CTC and the EIC for 2020, taxpayers may elect to substitute the earned income for the preceding tax year if that is greater than the taxpayer's earned income for 2020. (TCDTR Sec. 211(a))

For joint returns, the taxpayer's earned income for the preceding tax year is the sum of each spouse's earned income for that preceding tax year. (TCDTR Sec. 211(b)(2))

An incorrect use on a return of earned income under TCDTR Sec. 211(a) (above) is a mathematical or clerical error for which IRS may make a summary assessment under Code Sec. 6213(b)(1). (TCDTR Sec. 211(c)(1))

The substitution of the previous year's earned income allowed under TCDTR Sec. 211(a) (above) has no other effect on the application of the Internal Revenue Code. (TCDTR Sec. 211(c)(2))

These changes apply to the taxpayer's first tax year beginning in 2020. (TCDTR Sec. 211(a))

Certain Charitable Contributions Deductible by Non-Itemizers

For 2020, individuals who normally do not itemize deductions may take up to a $300 above-the-line deduction for cash contributions to qualified charitable organizations (deduction limits of $300 also applied to married filers). A 20% penalty applies to tax underpayments attributable to any overstated cash contribution by non-itemizers.

New law. The TCDTR extends the above rule through 2021, allowing individual cash contributions of up to $300, ($600 for married filers) to be deducted above-the-line for cash contributions to qualified charitable organizations. (Code Sec. 170(p), as added by TCDTR Sec. 212(a))

An increased penalty of 50% applies to tax underpayments attributable to any overstated cash contribution by non-itemizers under Code Sec. 170(p). (Code Sec. 6662(l), as added by TCDTR Sec. 212(b))

Modification of Limitations on Charitable Contributions

Under pre-TCDTR law, individuals could not take an itemized deduction of more than 60% of their contribution base on charitable contributions, of cash, made to 50% charities.

New law. For 2020 and 2021, the percentage limitation rules for individuals making qualified charitable contributions, in cash, to 50% charities do not apply. (Code Sec. 170(b)(1)(G)(i), as amended by TCDTR Sec. 213)

Temporary Special Rules for Health and Dependent Care Flexible Spending Arrangements

A cafeteria plan may permit the carryover of unused amounts remaining in a health FSA as of the end of a plan year to pay or reimburse a participant for medical care expenses incurred during the following plan year, subject to the carryover limit (currently $550). This is sometimes referred to as the carryover rule. (Notice 2013-71, 2013-47 IRB 532, and Notice 2020-33, 2020-22 IRB

New law. The TCDTR expands the carryover period for 2020, and 2021. The provision also allows employers to extend the grace period for plan years ending in 2020 and 2021 to 12 months after the end of such plan year for unused benefits and contributions to health flexible spending and dependent care flexible spending arrangements.

In addition, an employer may allow an employee who ceases to participate in the plan during calendar year 2020 or 2021 to continue to receive reimbursements from unused benefits or contributions through the end of the plan year in which the employee's participation ceased, including any extended grace period.

The TCDTR also provides a special carry forward rule for dependent care flexible spending arrangements where the dependent aged out during the pandemic. (TCDTR Sec. 214)