
Tax Changes in the American Rescue Plan Act of 2021

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The American Rescue Plan Act (“ARPA”) of 2021 (H.R. 1319), signed into law on March 11, 2021, is a \$1.9 trillion economic stimulus package intended to provide the tools and support critical to tackling the urgent public health and economic crisis the Nation faces as a result of COVID-19.

ARPA provides funding to set up community vaccination sites nationwide, scale up testing and tracing, eliminate supply shortage problems, invest in treatments, address health disparities, and ensure workplace health and safety. It extends tax credits for employers that provide workers with paid sick and family leave to contain the spread of the virus, and provides K-12 schools and institutions of higher learning with the resources they need to reopen safely and stay open, as well as to address the academic, social and emotional needs of students.

ARPA provides eligible individuals with a \$1,400 payment which, when combined with the \$600 payment provided in December 2020, results in a \$2,000 economic impact payment. It also extends the Child Tax Credit and Earned Income Tax Credit, extends emergency unemployment benefits, and stabilizes pensions for participants in multi-employer pension plans.

To deal with the housing and hunger crisis caused by COVID-19, ARPA extends the emergency benefit increase in the Supplemental Nutrition Assistance Program (“SNAP”). It lowers health care costs and expands health care access by increasing the Affordable Care Act premium tax credits, providing subsidies for continuation health coverage (“COBRA”), funding for veterans’ health, and funding to help address the mental health and substance abuse consequences of COVID-19.

To help businesses and communities, ARPA expands the Paycheck Protection Program (“PPP”), and provides additional funding for the Economic Injury Disaster Loan (“EIDL”) Advance program, the Shuttered Venue Operators Grant

Program (“SVOGP”), and a program that finances innovative small businesses. It establishes a new program to help struggling businesses in the hospitality industry, and a new Community Navigator pilot program to increase awareness of, and participation in, COVID-19 small business relief programs.

Because of the huge scope of ARPA, this article will largely be limited to providing an overview of the tax rules. However, these changes, combined with the cumulative effect of the changes made last year, are substantial and have caused tax practitioners and the IRS alike to struggle with keeping ahead of all the changes. The IRS already had to delay the start of tax season by about three weeks, and is busy now with processing the additional \$1,400 stimulus payments under ARPA.

One of the consequences is the announcement made by the IRS on March 17, 2021, that the federal income tax filing due date for individuals for the 2020 tax year will be automatically extended from April 15, 2021, to May 17, 2021. Individual taxpayers can also postpone federal income tax payments for the 2020 tax year due on April 15, 2021, to May 17, 2021, without interest or penalties. This postponement applies to individual taxpayers, including individuals who pay self-employment tax. Penalties, interest and additions to tax will begin to accrue on any remaining unpaid balances as of May 17, 2021.

Individual taxpayers do not need to file any forms or call the IRS to qualify for this automatic federal tax filing and payment relief. Individual taxpayers who need additional time to file beyond the May 17th deadline can request a filing extension until October 15, 2021, by filing Form 4868. Filing Form 4868 gives taxpayers until October 15th to file their 2020 tax return but does not grant an extension of time to pay taxes due. Taxpayers must pay their federal income tax due by May 17, 2021, to avoid interest and penalties. This relief also does not apply to estimated tax payments that are due on April 15, 2021. These payments are still due on April 15th.

Recovery Rebates for Individuals

The stimulus checks under ARPA are structured as refundable tax credits against 2021 income taxes. Payments are issued per household and equal the sum of \$1,400 per eligible individual (\$2,800 for married joint filers) and \$1,400 for each eligible dependent. The payments phase out ratably between \$75,000 and \$80,000 for single filers, \$112,500 and \$120,000 for head of household filers, and

\$150,000 and \$160,000 for married joint filers.

The amount and eligibility for these advanced credits is generally based on the information from 2020 income tax returns, or 2019 returns if 2020 returns have not been filed when the advanced credit is issued. If an advance payment is issued to a taxpayer based on the 2019 return, and the taxpayer files his or her 2020 tax return before the earlier of 90 days after the 2020 calendar year filing deadline, or September 1, 2021, the taxpayer will receive an additional payment equal to the excess (if any) of the amount to which the individual is entitled based on the 2020 return over the amount of the payment made based on the 2019 return. However, for purposes of advance payments, a tax return is not treated as filed until the return has been processed by the IRS.

Eligible individuals and dependents would generally need to have a Social Security Number (“SSN”) to receive the payment (adoption taxpayer ID numbers would also be valid for dependents). This provision would not apply to married members of the Armed Forces if at least one spouse has an SSN. In that case they would be eligible for up to \$2,800. If an unmarried taxpayer does not have an SSN, or neither spouse of a married joint filing couple has an SSN, they would still receive a payment for a qualifying dependent with an SSN.

Any individual who was deceased before January 1, 2021, is treated as if his or her SSN was not included on the return for the tax year. In the case of a joint return where only one spouse is deceased before January 1, 2021, where the deceased spouse was a member of the armed forces, and the deceased spouse’s SSN is included on the tax return for the tax year, the SSN of one (and only one) spouse is treated as included on the return for the tax year for purposes of determining the rebate amount. No payment will be made with respect to any dependent of the taxpayer if the taxpayer (both spouses in the case of a joint return) was deceased before January 1, 2021.

For eligible individuals who did not file a 2020 or 2019 income tax return, the IRS would be given broad authority to make payments based on information available to the Treasury. These payments would not be taxable. In addition, like other tax credits, these payments would not count as income or resources for a 12-month period in determining eligibility for, or the amount of assistance provided by, any federally funded public benefit program.

The advanced payment of the credit would generally be exempt from offset by

Treasury prior to when the payment is issued for certain past-due debts owed by the recipient, including past-due child support. However, the amount the taxpayer would claim as a credit on their 2021 tax returns would generally be subject to offset.

Child Tax Credit

ARPA increases the child tax credit in 2021 for low-and moderate-income taxpayers to up to \$3,600 per child for a young child and up to \$3,000 for older children by modifying the existing credit as follows:

1. ARPA eliminates the earned-income-based phase-in of the refundable portion of the child credit (often referred to as the “Additional Child Tax Credit” or ACTC) and eliminates the maximum amount of the ACTC (\$1,400). As a result, the child credit would be fully refundable and available to otherwise eligible taxpayers with no earned income.
2. The maximum age for an eligible child is increased to 17.
3. The maximum amount of the credit is increased from \$2,000 per child to \$3,600 per child for children age 0-5, and \$3,000 per child for children age 6-17. This increase in the maximum child credit of \$1,600 per child for younger children and \$1,000 per child for older children gradually phases out at a rate of 5% as income exceeds specified thresholds until the credit amount equals the current-law maximum of \$2,000 per child. These thresholds are \$75,000 for single filers, \$112,500 for head of household filers, and \$150,000 for married joint filers. The actual income level at which the credit phases down to \$2,000 per child depends on the number and age of the qualifying children. The credit would then remain at its current-law level and phase out when income exceeds the current-law thresholds of \$200,000 (\$400,000 for married joint filers).

Treasury would issue half of the expected 2021 credit in equal monthly installments beginning July 1, 2021. The remaining half of the total 2021 credit would be claimed on a 2021 income tax return filed in early 2022. The amount of the payments advanced in 2021 would be estimated based on 2020 income tax data or, if unavailable, 2019 income tax data.

The advanced child credit payments would reduce the child credit received on the 2021 return. Taxpayers with income below \$40,000 for single filers, \$50,000 for head of household filers, and \$60,000 for joint filers in 2021 would not need to

repay up to \$2,000 per qualifying child in advanced credit overpayments (the \$2,000 amount being referred to as the “safe harbor amount”). Taxpayers with income above these thresholds but below \$80,000 for single filers, \$100,000 for head of household filers, and \$120,000 for married joint filers would gradually have the safe harbor amount reduced to \$0 per qualifying child. Taxpayers with income over \$80,000 for single filers, \$100,000 for head of household filers, and \$120,000 for married joint filers in 2021 would need to repay the entire amount of the overpayment.

The IRS will be creating an online portal to allow taxpayers the option to opt out of receiving advanced payments and to provide information regarding changes in income, marital status, and the number of qualifying children in order to modify the advanced credit amounts.

Advanced payments would not be subject to offset prior to when the payment is issued for certain past-due debts owed by the recipient. However, the amount the taxpayer claims as a credit on their 2021 tax returns would generally be subject to offset.

The Treasury would be able to adjust income tax withholding to accommodate these advanced payments.

Earned Income Tax Credit

For 2021, ARPA temporarily expands both eligibility for, and the amount of, the earned income tax credit (“EITC”) for taxpayers without qualifying children by modifying the eligibility age and credit formula.

The minimum eligibility age would be reduced from 25 to 19 for most workers. This change would allow eligible workers ages 19 to 24 to claim the “childless EITC.” For students who are attending school at least part-time, the age limit would be temporarily reduced from 25 to 24. For former foster children and youth who are homeless, the minimum age would temporarily be reduced from 25 to 18. The upper age limit is eliminated, so workers aged 65 and older would be eligible.

The childless EITC is also increased through an increase in the minimum income necessary to receive the maximum credit amount, and the maximum income level at which taxpayers receive the maximum credit amount before it begins to phase out, to \$9,820 and \$11,610, respectively, while also doubling the phase-in and

phase out rates from 7.65% to 15.3%. As a result, the maximum childless EITC would increase in 2021 from \$543 to \$1,502.

For purposes of calculating the EITC on a 2021 income tax return, taxpayers may substitute their 2019 earned income for their 2021 earned income if their earned income at the end of 2021 is less than their 2019 earned income. Taxpayers who currently cannot claim the childless EITC because all of their qualifying children do not have SSNs would be eligible to claim the childless EITC.

In a permanent change, ARPA allows married taxpayers who file their tax returns as married filing separately to claim the EITC if they live with a child for whom they can claim the EITC for more than half the year and either (i) do not have the same principal place of abode as their spouse for the last six months of the year, or (ii) have a decree, instrument or agreement (other than a divorce decree) and do not live with their spouse at the end of the year.

Also permanently modified is the disqualified investment income test. Under current law, taxpayers with investment income over a certain threshold (\$3,650 in 2020) are ineligible for the EITC. Disqualified investment income is defined as interest income (including tax-exempt interest), dividends, net rent, net capital gains, and net passive income. It also includes royalties from sources other than the filer's ordinary business activities. ARPA would permanently raise this amount to \$10,000 for 2021 and annually adjust it for inflation beginning in 2022.

Dependent Care Assistance

ARPA expands the Child and Dependent Care Tax Credit ("CDCTC") for 2021 by making the credit refundable and making it larger. The CDCTC is a product of the amount of qualifying expenses (which are subject to a cap) and the credit rate. The cap on qualifying expenses is increased from \$3,000 for one child and \$6,000 for two or more children to \$8,000 and \$16,000, respectively.

For 2020, the CDCTC is an amount equal to the applicable percentage of the employment-related expenses paid by an individual during the tax year, with the applicable percentage being 35 percent reduced (but not below 20 percent) by 1 percentage point for each \$2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the tax year exceeds \$15,000. For 2021, the maximum credit rate increases from 35 to 50 percent and the phase-out thresholds are amended so they begin at \$125,000 instead of \$15,000. At \$125,000, the credit

percentage begins to phase out, and plateaus at 20 percent. This 20-percent credit rate phases out for taxpayers whose adjusted gross income is in excess of \$400,000, such that taxpayers with income in excess of \$500,000 are not eligible for the credit.

Under current law, the CDCTC is a nonrefundable credit, meaning that the value of the credit cannot exceed a taxpayer's income tax liability. As a result, those with little or no income tax liability, including many low-income taxpayers, receive little or no benefit from the credit. By making the credit refundable, ARPA effectively expands eligibility to lower-income taxpayers.

For 2021 only, ARPA would also increase the maximum amount of qualifying childcare expenses that eligible taxpayers could exclude from their income from \$5,000 to \$10,500 (from \$2,500 to \$5,250 in the case of a separate return filed by a married individual).

Credits for Paid Sick and Family Leave

ARPA extends the employer payroll tax credits for paid sick and family leave created under the Families First Coronavirus Response Act ("FFCRA") from March 31, 2021 through September 30, 2021. Originally, these credits applied to leave that employers with fewer than 500 employees were required to provide through December 31, 2020. The credits were later extended through March 31, 2021, for employers voluntarily providing qualified leave that would otherwise have been payable under FFCRA. However, the overall caps on the paid leave amounts for which tax credits could be claimed was not modified.

In the case of sick leave, employers could claim a tax credit under the FFCRA for 100% of the amount required to be paid in qualifying sick leave wages. Sick leave wages were required to be paid for up to 80 hours (i.e., two work weeks) for a full-time employee (prorated for part-time employees). The maximum amount of qualified sick leave wages required to be paid depended on the purpose for which the sick leave was taken.

For example, paid sick leave wages could not exceed \$511 per day or \$5,110 in aggregate for employees if they took leave because (i) they were subject to a federal, state or local quarantine order related to COVID-19, (ii) the employee had been advised by a health care provider to self-quarantine due to COVID-19, or (iii) the employee was experiencing symptoms of COVID-19 and was seeking a

medical diagnosis.

In contrast, paid sick leave wages could not exceed \$200 per day or \$2,000 in the aggregate for employees if they took leave because (i) the employee was caring for an individual who was subject to a quarantine order or who has been advised by a health care provider to self-quarantine due to COVID-19, (ii) the employee was caring for a minor child whose school, place of care, or caregiver was closed or unavailable due to COVID-19, or (iii) the employee was experiencing any other “substantially similar condition” specified by the Secretary of Health and Human Services.

In the case of family leave, employers could claim a tax credit for 100% of the amount required to be paid in qualifying family and medical leave wages for employees who took leave because they had to care for their own minor child, or if the child’s school or place of care was closed, or if the child care provider was unavailable due to COVID-19. In the case of this credit, the paid leave period began after an individual had already taken 10 days of unpaid family leave (for which the employee could elect to use paid vacation, personal or another form of paid leave, including the FFCRA paid sick leave). After that 10-day period, the employees were entitled to receive from their employer at least two-thirds of their usual pay, but not more than \$200 per day. The credit for family leave wages was then limited to \$10,000 in total per employee.

ARPA makes the following changes to the foregoing scheme of paid sick and paid family leave credits:

- Under FFCRA, paid sick leave was limited to 10 days per employee. ARPA would reset the 10-day limit starting April 1, 2021, and continuing through September 30 2021, for those employers electing to provide it.
- The paid sick leave is expanded to allow leave at the higher rate of 100% of the employee’s wages up to \$511 per day (or \$5,110 in the aggregate), and the respective credits for such leave, for an employee who is seeking or awaiting the results of a diagnostic test for, or medical diagnosis of, COVID-19 and such employee has been exposed to COVID-19 or the employee’s employer has requested such test or diagnosis, or the employee is obtaining immunization related to COVID-19 or recovering from any injury, disability, illness or condition related to COVID-19 immunization.
- The definition of qualifying paid family leave is expanded to allow the family

leave payroll tax credits to be claimed for all of the same qualifying uses permitted for the newly defined sick leave credit.

- While the limits on sick leave have remained the same, the limits on family leave have changed in two respects. First, under ARPA the first two weeks of the twelve-week available family leave do not have to be unpaid. Second, although employees are still entitled to be compensated at two-thirds of regular rate with a \$200 daily cap, the overall limit on family leave has increased from \$10,000 to \$12,000.
- A nondiscrimination rule is added which prevents employers from claiming the credits if paid leave discriminates in favor of highly compensated employees (as defined in 414(q)), full-time employees, or employees on the basis of tenure with the employer.
- Denies credits to an employer which unlawfully discharges, disciplines or discriminates against an employee who has taken leave in accordance with the FFCRA or who has filed any complaint or instituted or caused to be instituted any proceeding under the FFCRA, or who has testified or is about to testify in any such proceeding.

ARPA provides for the paid sick and paid family leave tax credits to be increased by the amount Old-Age, Survivors and Disability Insurance (“OASDI”) tax (6.2%), or the equivalent amount of the Railroad Retirement Tax Act (“RTTA”) tax, and the employer’s share of Hospital Insurance (HI) tax (1.45%) on qualified leave wages. It also provides for them to be structured as a refundable payroll tax credit against only the Hospital Insurance (HI) tax (1.45%), beginning after March 31, 2021.

Self-employed individuals were also allowed a refundable income tax credit for paid sick and family leave under FFCRA. ARPA extends and expands the paid sick and family leave tax credits for self-employed individuals in a similar manner to the changes made for employers as described above. For the self-employed, the number of days for which self-employed individuals can claim the paid family leave credit is increased from 50 to 60 days.

Employee Retention Credit

Under prior law, the employer retention credit is available through June 30, 2021, and is in the amount of 70% of qualified wages. This refundable payroll credit can be computed on up to \$10,000 in qualified wages paid to an eligible employee per quarter. Thus, the maximum credit for 2021 is \$14,000 (70% of up to \$20,000 in

qualified wages paid over the first two quarters).

Qualified wages depend on the number of employees the employer had in 2019. For employers with 500 or fewer full-time employees, all wages paid by eligible employers are credit-eligible. For employers with more than 500 full-time employees, qualified wages are wages paid when employee services are not provided.

ARPA extends the employee retention credit through December 31, 2021. This will double the maximum credit for 2021 from its prior limit of \$14,000 per employee to \$28,000 per employee (\$7,000 per employee per quarter). In addition, a credit of up to \$50,000 per calendar quarter is provided to “recovery startup businesses,” defined as businesses established after February 15, 2020, with average annual gross receipts that do not exceed \$1 million. Severely financially distressed employers, those with gross receipts that are less than 10% of what they were in the same calendar quarter in 2019, will be able to treat all wages as qualified wages. The credit is also restructured to be claimed against the employer’s share of the Hospital Insurance (HI) payroll tax, as opposed to the OASDI or equivalent amount of RRTA tax.

Premium Tax Credit

For 2021 and 2022, ARPA would expand eligibility for the Premium Tax Credit (“PTC”) by modifying the income eligibility criteria and credit formula. ARPA expands income eligibility by eliminating the current-law phase out for households with annual incomes above 400% of the Federal Poverty Level (“FPL”). ARPA increases the credit amount by reducing the percentage of annual income that eligible households are required to contribute toward the premium. The percentages for 2021 and 2022 would range from 0.0% to 8.5% of household income, with higher-income groups subject to the larger percentages.

For 2020 only, ARPA provides tax relief to individuals who would otherwise be subject to the current-law requirement to pay back excess PTC amounts by temporarily suspending the recapture of excess credit amounts. For 2021, ARPA expands eligibility for the PTC for certain individuals who receive unemployment compensation, by “deeming” individuals who receive unemployment compensation for any week in calendar year 2021 to have automatically met the PTC income eligibility credit criteria. Also for 2021, ARPA disregards any household income above 133% of the FPL.

COBRA Subsidy

ARPA includes a six-month federally financed COBRA subsidy covering the full COBRA premium for eligible individuals starting April 1, 2021. The subsidy is available to employees who lose their health coverage due to a job loss or reduction in hours (and their family members) if they meet the following requirements:

- They are enrolled in COBRA or become eligible for COBRA on or after April 1, 2021, and before the subsidy ends on September 30, 2021; or
- They became eligible for COBRA prior to April 1, 2021, and the period of COBRA coverage to which they would be entitled (18 months) includes any month between April and September of 2021 — even if the individual did not elect COBRA when it was initially offered or elected COBRA but discontinued it before April 1, 2021.

The subsidy would end earlier if the individual's maximum period of COBRA coverage (generally, 18 months) ends prior to September 2021. It would also end earlier if the individual becomes eligible for coverage under another group health plan or Medicare. Individuals are required to notify their group health plan if they become eligible for coverage and are subject to a penalty if they fail to do so. Eligibility for excepted benefits, such as limited-scope dental or vision coverage or a health flexible spending arrangement, does not terminate eligibility for the subsidy. However, the subsidy is not available if the employee voluntarily terminates employment.

ARPA requires group health plans to provide a notice regarding the availability of the subsidy to any individual who becomes eligible to elect COBRA between April 1, 2021 and September 30, 2021. Plans also have to provide the notice to individuals who are eligible for the subsidy due to a job loss or reduction in hours followed by a loss of coverage occurring before April 1, 2021. The federal government is required to issue model notices by April 10, 2021. Plans are also required to notify individuals if their subsidy will terminate before September 30, 2021. This notice is not required if the subsidy will terminate due to the individual's eligibility for other coverage. The federal government is required to issue a model for this notice by April 25, 2021.

The subsidy is paid to the plan or plan sponsor as a credit against quarterly payroll taxes. Multiemployer plans and governmental plans are also eligible to

receive the credit. If the credit exceeds the amount of the payroll taxes due, the credit is refundable. It can also be advanced under rules that will be issued by the Treasury.

PPP Expansion and Other Economic Support for Businesses and Non-Profit Organizations

ARPA provides an additional \$15 billion in new funding for EIDL grants; expands the PPP for non-profit organizations, online news publishers, restaurants, and shuttered venues; and modifies the loan forgiveness rules.

Non-profit organizations that are 501(c) entities (other than 501(c)(3), (4), (6) or (19)) that are exempt from taxation under 501(a) (“Additional Non-profits”) are eligible to receive first draw PPP loans if those Additional Non-profits meet the following requirements:

- They employ no more than 300 employees per physical location;
- They do not receive more than 15% of their receipts from lobbying activities;
- Lobbying activities do not comprise more than 15% of their total activities; and
- The cost of the lobbying activities for the most recent tax year ending prior to February 15, 2020, does not exceed \$1 million.

Additional Non-profits are also eligible to receive second draw PPP loans if they meet the revenue reduction and size criteria for a second draw. Lastly, 501(c) organizations that employ not more than 500 employees per physical location are now eligible for first draw PPP loans.

Internet-only news or periodical publishers (or organizations that are majority owned or controlled by internet-only news or periodical publishers) are now eligible under ARPA to receive first and/or second draw PPP loans if they employ no more than 500 employees per physical location or meet the NAICS size standard and they certify in good faith that the proceeds of the PPP loan will be used to support expenses supporting local or regional news.

Restaurants may receive a tax-free federal grant from the Restaurant Revitalization Fund (“RRF”) equal to the amount of their pandemic-related revenue loss for the period from February 15, 2020 to December 31, 2020, if the

following requirements are met:

- The restaurant is not a publicly traded company and does not own or operate, together with any affiliated businesses, more than 20 locations as of March 13, 2020. An affiliated business is one that has equity or a right to profit distribution of 50% or more, or has contractual authority to control the direction of the business, and was established as of March 13, 2020.
- A good faith certification is required that the uncertainty of current economic conditions makes it necessary to request the grant to support ongoing operations and the restaurant has not applied for or received a Shuttered Venues Operators grant.
- The total grant amount for eligible restaurants, and any affiliated businesses, is capped at \$10 million overall, and \$5 million per physical location. The grant must be spent on eligible expenses, which generally means payroll, principal or interest on mortgage obligations, rent, utilities, maintenance, supplies, food and beverage inventory, operational expenses, and paid leave.

Grants for Shuttered Venue Operators (“SVO”) were established on December 27, 2020, under the Economic Aid to Hard-Hit Small Businesses, Non-Profits and Venues Act. Among the requirements for a business to receive an SVO grant are the following:

- The business must be a live venue operator/promoter, a theatrical producer, a live performing arts organization operator, a “relevant” museum operator, a motion picture theatre operator, or a talent representative as defined under the Act.
- The business must not be a publicly traded corporation, be majority-owned by a publicly traded corporation, or have received more than 10% of its 2019 gross revenue from the federal government.
- The business must have been fully operational on February 29, 2020, and experienced a reduction in its gross revenue of at least 25% during one calendar quarter in 2020 compared to the same calendar quarter in 2019.
- The business must have, or intend to, resume its operations.

Previously, an SVO could not access both a PPP loan and SVO grants. This has been changed by ARPA. Thus, an SVO that is a PPP loan recipient may now also apply for an SVO grant.

Finally, PPP loan forgiveness is expanded to include payments for premiums on behalf of individuals who qualify for COBRA health insurance continuation coverage. This expansion applies only with respect to loan forgiveness applications received after March 10, 2021.

Repeal of Election to Allocate Interest on Worldwide Basis

U.S. firms are currently eligible for foreign tax credits up to the amount of U.S. tax paid on foreign-source income. To calculate this limit, U.S. and foreign-source income must be determined. Certain deductions are allocated between U.S. and foreign sources, including interest. Until 2021, firms allocated interest excluding that paid by foreign firms (called “water’s edge” allocation). Under current law, beginning in 2021, firms can elect to include interest paid by related foreign firms. This treatment is called worldwide allocation. It is beneficial for some firms because some of the interest paid for foreign firms is allocated to U.S. sources, increasing foreign-source income, increasing the limit on the foreign tax credit and, thus, increasing foreign tax credits that reduce tax liability. A provision was adopted in 2004 to move to worldwide allocation, but it has been delayed by other legislation and is scheduled to begin in 2021. ARPA would repeal the election to move to worldwide allocation.

Tax Treatment of EIDL Advances and Restaurant Revitalization Grants

A forgiven debt is generally treated as taxable income to the borrower. Prior COVID-19 legislation has allowed forgiven loans for certain programs, such as those provided by the PPP, to be excluded from income. Following an IRS ruling that associated expenses would not be deductible, legislation specified that associated expenses would be deductible. ARPA extends this treatment, i.e., the exclusion from income and deduction of expenses, to additional Economic Injury Disaster Loan (“EIDL”) advances on loans that are not required to be repaid.

ARPA likewise extends the exclusion from income and deduction of expenses treatment to additional grants made from the new Restaurant Revitalization Fund (“RRF”).

Third Party Network Transactions

Credit card companies and electronic payment processors are required to annually file aggregate transaction reports with the IRS listing total annual payments to merchants. A de minimus reporting exception provides that third-party settlement organizations are only required to report transactions of payees who receive more than \$20,000 and conduct more than 200 transactions per year. ARPA modifies this threshold provision for reporting, setting it at \$600 per year.

Student Loan Forgiveness

ARPA excludes from gross income qualifying student loans for post-secondary education that are discharged, for almost any reason, between December 31, 2020 and January 1, 2026. Qualifying student loans include all federal student loans, and certain private education and institutional loans. As a result, these amounts of discharged student loan debt would not be subject to taxation.

What's Next

There were at least six major pieces of legislation during 2020, providing over \$5 trillion in economic relief. In spite of all the tax changes made by this legislation, most of the tax proposals of the current administration have yet to be advanced in legislation. While death has always held an edge over taxes in the area of certainty, the margin may well be narrowing over the foreseeable future . . .