ROUNDUP OF RECENT TAX DEVELOPMENTS

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I. INDIVIDUALS

A. 2021 EIP and Recovery Rebate. (IRC §6428B)

1. $1,400 per taxpayer ($2,800 MFJ).

2. Plus, $1,400 per dependent.

3. Based upon 2019 tax return.

4. EIP received reduces Recovery Rebate Credit on 2021 tax return.

5. Dependent – IRS §152 definition.

6. Phase-out.

a.	Single/MFS	$75,000 - $80,000
b.	MFJ/QW	$150,000 - $160,000
c.	HOH	$112,500 - $120,000

7. Ineligible taxpayers.

a. Nonresident alien.

b. Dependent of another taxpayer.

c. Estate or trust.

d. Person deceased as of January 1, 2021.

8. Valid taxpayer identification number required.

9. $2,800 reduced to $1,400 for MFJ if only one spouse has a taxpayer identification number.

10. $2,800 not reduced if one spouse was a member of the armed services during the year and the other has a taxpayer identification number.

11. For MFJ to single return one-half of EIP is treated as credit to each spouse.

12. An individual can't be taken into account more than once by reason of change in joint return or dependent status.

13. Not subject to offset or levy for unpaid taxes.

14. Not includible in gross income.

B. Child Tax Credit.

1. Prior law.

a. $2,000 per qualifying child.

b. Of which $1,400 was refundable.

2. American Rescue Plan Act of 2021. (IRC §24(i))

a. Increased to $3,000 per qualifying child.

b. Increased to $3,600 if qualifying child has not yet attained age 6.

c. Age limitation increased from 16 to 17.

d. Fully refundable credit.

3. $500 per dependent credit.

   a. Dependents who are not a qualifying child.

   b. Remains the same as under prior law.

   c. Not refundable.

4. Phase-out of amount over prior law $2,000 credit.

a.	MFJ/QW	$150,000
b.	HOH	$112,500
c.	Single/MFS	$75,000

5. Once the increase in the credit is phased out, the $2,000 per qualifying child credit still applies until AGI reaches the $400,000/$200,000 thresholds.

6. Advanced payment of child tax credit. (IRC §7527A)

   a. 50% of annual advance amount estimated by IRS

   b. IRS uses information from prior years.

   c. Made from 7/1/2021 through 12/31/2021.

7. Child tax credit claimed on tax return for 2021 is then reduced by the advance payments.

8. Excess is added to the taxpayer's tax liability for 2021.

9. Potentially reduced by safe harbor amount if MAGI does not exceed the following:

   a. MFJ/QW $120,000

   b. HOH $100,000

   c. Single/MFS $80,000

10. Safe harbor amount:

    a. $2,000 multiplied by the excess of the number of qualified children taken into account for the annual advance amount,

    b. Divided by the number of qualified children taken into account in determining the child tax credit on the tax return.

11. Advance payments began 7/15/2021. (IR-2021-113)

12. Made on the 15th of each month.

13. Up to $300 per month for each child under age 6.

14. Up to $250 per month for each child age 6 and above.

15. Online tool allows taxpayers to update information and/or elect out.

16. Non-filers.

    a. Sign-up tool: IR-2021-129

    b. Simplified return procedures: Rev. Proc. 2021-24

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C. Earned Income Credit.

1. Under prior law. (IRC §32)

   a. Taxpayer with no qualifying children had to be at least age 25 and under age 65.

   b. For MFJ, only one spouse needed to meet these age requirements.

2. Effective for 2021 only, the minimum age is lowered to:

   a. Age 19 if the taxpayer is not a specified student.

   b. Age 24 if the taxpayer is a specified student.

   c. Age 18 if the taxpayer is a qualified former foster youth.

3. New law eliminates the under age 65 limitation for 2021.

4. Phase-out percentages increased from 7.65% to 15.3%.

5. Phase-out amounts are also increased.

6. Earned income amount is increased to $9,820.

7. The phase out amount is increased to $11,610.

8. After 12/31/2020, taxpayers with children that do not meet the TIN requirement are allowed to claim the EIC.

9. Investment income limitation increased from $3,650 to $10,000.

10. For 2021 only, taxpayers may elect to use 2019 earned income.

11. Under prior law, EIC was not allowed if taxpayer was MFS.

12. After 12/31/2020, an individual is not treated as married if:

    a. Is married and does not file a joint return.

    b. Resides with a qualifying child for more than one-half of the tax year; and

    c. During the last six months of the year, does not have the same principal place of abode as his/her spouse.

D. Dependent Care Expenses.

1. Two tax provisions for dependent child or adult:

    a. Dependent Care Credit (IRC §21)

    b. Exclusion for employer provided dependent care benefits (IRC §129).

2. For 2021, the American Rescue Plan Act:

    a. Makes the Dependent Care Credit refundable.

    b. Increases the dollar limit.

        i. For one dependent from $3,000 to $8,000.

        ii. For two or more dependents from $6,000 to $16,000.

    c. Increases the applicable percentage.

3. American Rescue Plan of 2021.

    a. Increases maximum exclusion for employer provided dependent care assistance from $5,000 ($2,500 MFS) to $10,500 ($5,250 MFS).

    b. 2021 tax year only.

    c. Employers were able to retroactively amend their plans.

E. Health and Dependent Care Flexible Spending Arrangements.

1. Prior Law: Health FSAs

a. Employees can contribute up to $2,750.

b. Including a limited-purpose FSA restricted to dental and vision care, which can be used in tandem with an HSA.

2. Prior Law: Dependent Care FSAs.

a. Set by statute, but not adjusted annually for inflation.

b. $5,000 in MFJ.

c. $2,500 in MFS.

d. Subject to earned income limits.

3. Prior law.

a. 2 ½ month grace period for health or dependent care FSAs.

b. Health FSAs can additionally allow participants to roll over up to $550 of unused funds.

4. New dependent care FSA annual limits for pre-tax contributions.

a. $10,500 MFJ.

b. $5,250 MFS.

5. Heath care independent care FSA participants can carry over unused balances. (Notice 2021-15)

   a. From 2020 into 2021.

   b. From 2021 into 2022

   c. Grace period for spending unused FSA funds extended to 12 months for 2020 and 2021.

6. Employees who stopped participating in a health FSA during 2020 or 2021 may continue to be reimbursed through the end of the plan year in which their participation terminates, including grace periods.

7. Employers may extend the dependent care FSA claims period for a dependent who "ages out" by turning 13 years old.

   a. Limiting age remains at 14 for 2021 plan year.

   b. Applies only to dependent care FSA funds remaining unspent at the end of 2020.

8. Dependent care FSA funds that would have been excluded from income if used during 2020 or 2021 are excluded and not considered wages for 2021 and 2022, respectively. (Notice 2021-26)

F. Premium Tax Credit.

1. Background. (IRC §36B)

   a. Refundable credit design to subsidize health insurance purchased through an Exchange.

b. Based on percentage of income the cost of premiums represents ranging from:

i. 2% of income for those below 133% of the federal poverty line, to

ii. 9.5% of income for those at 400% of the federal poverty line.

2. Advanced Premium Tax Credit (APTC).

a. Taxpayer signs up for insurance through the exchange using prior year tax information.

b. Exchange then pays an amount to the health insurance provider.

c. Health insurance provider reduces the monthly health insurance premium paid by taxpayer.

d. Advance received reduces the PTC allowed on the tax return.

3. American Rescue Plan Act of 2021.

a. Changes the percentages to increase the affordability of health insurance for 2021 and 2022.

b. Also makes the PTC available to taxpayers with income above 400% of the federal poverty line if cost of premiums would exceed 8.5% of household income.

c. Anyone receiving unemployment during 2021 qualifies for 100% subsidized health insurance assuming other PTC requirements are met.

G. Charitable Contributions. (IRC §170)

1. AGI limitation for cash contributions under Section 170 made during 2020 and 2021 increased to 100% of AGI.

H. Medical Expenses and Non-Prescription Drugs. (IRC §§106, 220 and 223)

1. Over-the-counter medicines and drugs are no longer limited to those prescribed by a physician.

2. Applicable to distributions from HSAs and Archer MSAs for amounts paid after 12/31/2019.

3. Effective for reimbursements from health FSAs and HRAs for expenses incurred after 12/31/2019.

I. Educational Assistance. (IRC §127)

1. CARES Act expands definition of "educational assistance" to include payments of principal or interest made by an employer on a qualified education loan incurred by an employee.

2. Still subject to the $5,250 overall limit.

3. Any interest paid by the employer is not deductible by the employee as a student loan interest.

4. Applies to payments made after March 27, 2020.

J. COVID-19 coverage for vaccines. (T.D. 9931)

1. Interim final rule released by IRS to implement CARES Act and Families First Coronavirus Response Act.

2. Clarifies that plans must cover recommended immunizations without cost sharing.

K. Medicaid Coverage of COVID-19 Testing. (Notice 2020-66)

1. Premium tax credit allowed only for months an individual is not eligible for minimum essential coverage other than coverage in the individual market.

2. Government-sponsored health insurance programs are minimum essential coverage.

3. Medicaid coverage limited to COVID-19 testing and diagnostic services are not minimum essential coverage under IRC §36B.

4. Does not prevent individual from qualifying for premium tax credit.

L. Qualifying Relative. (T.D. 9913)

1. Reduction of personal exemption to -0- does not alter operation of other provisions of the Internal Revenue Code.

a. Child tax credit (IRC §151).

b. Head of household filing status (IRC §152(d)(1)(B)).

M. Personal Protection Equipment. (Announcement 2021-7)

1. Treated as amounts paid for medical care under IRC §213(d).

2. Deductible as medical expense under IRC §213(a).

a. Provided that taxpayer can itemize deductions; and

b. Medical expenses exceed 7.5% of AGI.

N. Safe Harbor for Eligible Educators. (Rev. Proc. 2021-15)

1. Eligible educators may deduct up to $250 of unreimbursed expenses for the cost of books, supplies, computer equipment and supplementary materials used by the educator in the classroom.

2. $500 MFJ if both spouses are eligible educators.

3. Includes PPE, disinfectant and other supplies.

O. Student Loan Forgiveness Exclusion. (IRC §108(f)(5)

1. American Rescue Plan Act of 2021.

a. Excludes from gross income discharge of indebtedness income relating to student loan debt.

i. Including private student loans.

ii. Unless student is required to provide services to the discharging lender.

b. Effective for 2021-2025.

P. Emergency Aid Granted to Students.

1. Not included in student's gross income.

2. If due to an event related to COVID-19.

II. <u>EMPLOYERS</u>

A. Paycheck Protection Program. (Rev. Proc. 2021-20)

1. Consolidated Appropriations Act, 2021, reversed the IRS position prohibiting the deduction of expenses if the payment resulted in forgiveness of a PPP loan.

2. The deduction may be taken on a taxpayer's return for the immediately subsequent tax year, rather than on an amended return.

B. Paid Sick Leave and Paid Family Leave Payroll Tax Credits.

1. Paid sick leave. (IRC §3131)

a. American Rescue Plan Act of 2021 reinstates the credit for 4/1/2021 through 9/30/2021.

b. Up to 10 days of new paid sick leave is available.

2. Employer is entitled to paid sick leave credit if employee unable to work or telework due to the following COVID-19 issues:

a. Employee is under a federal, state or local quarantine or isolation order.

b. Employee has been advised by a healthcare provider to self-quarantine.

c. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

d. Employee is caring for an individual who is subject to a federal, state or local quarantine or isolation order, or has been advised by a healthcare provider to self-quarantine.

e. Employee is caring for a child if the school or place of care has been closed, or the childcare provider is unavailable.

f. Employee is experiencing any other substantially similar condition specified by U.S. Department of HHS.

3. Reasons 2.a., 2.b. and 2.c.

a. $511 per day per employee

b. Limited to 10 days.

4. Reasons 2.d., 2.e. and 2.f.

    a. $200 per day per employee

    b. Limited to 10 days.

5. American Rescue Plan Act of 2021 Addition:

    a. Employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19;

    b. Employer has requested such test or diagnosis; or

    c. Employee is obtaining immunization relating to COVID-19 or recovering from any illness related to such immunization.

6. New language is added to reasons 2.a., 2.b. and 2.c. (thus, $511 per day per employee limit applies).

7. Leave taken to receive COVID-19 vaccinations also applies.

C. Paid Family Leave Credit.

1. New applicable period for paid family leave credit: (IRC §3132)

    a. Runs from 4/1/2021 through 9/30/2021

    b. $200 per day.

    c. Limited to $12,000 in the aggregate (including 2020).

2. All of the reasons apply.

3. Means after an employee has used up the 10 day limit under the paid sick leave rules, the employee may continue to qualify for paid family leave up to the dollar limitation.

4. Coordination with PPP loans.

   a. Credit for paid sick leave and paid family leave wages does not apply to wages taken into account as payroll cost for a PPP loan.

5. Employers may elect not to take certain wages into account for the paid sick leave and paid family leave credits allowing them to use the wages for other purposes, such as a PPP loan.

D. Tax Credit Calculation.

1. Tax credits equal 100% of qualified paid leave.

2. Plus qualified health plan expenses.

3. Plus the employer's share of Medicare tax.

4. Employers are not subject to the employer's portion of Social Security tax imposed on paid sick and family leave wages.

E. Determining Hours for Purposes of Paid Leave.

1. 10 days of paid sick leave are based on 80 hours over a two-week period.

2. 12 weeks of paid family leave are based on 60 days (12 weeks x 5 days per week), or 480 hours (60 days x 8 hours per day).

F. Telework.

1. Employee's wages do not qualify for paid leave if employee is confined to home, but can still perform work.

G. Intermittent Work Schedule.

1. Generally does not qualify for paid leave.

2. Exception for employee taking paid leave to care for a child whose school or place of care is closed or whose child care provider is unavailable due to COVID-19.

3. *Example:* Employee takes paid leave to stay home on Mondays, Wednesdays and Fridays to care for a child, and works at his/her normal work site on Tuesdays and Thursdays while spouse stays home.

H. Work Site Closed.

1. Qualified leave does not apply if work site closed.

2. Employees sent home for lack of work.

I. Claiming the Credits.

1. Form 941, *Employer's Quarterly Federal Tax Return*

2. In anticipation of receiving the credits, employers may reduce their federal employment tax deposits.

3. If deposits are not enough, employer can request an advance refund by filing Form 7200, *Advance of Employer Credits Due* to COVID-19.

J. Taxation and Deductibility of Tax Credits.

1. Tax credits included in income by employer are offset by the deduction for wages.

2. Employees are taxed on the amount of qualified leave wages received.

K. Self-Employed Individuals.

1. Self-employed individual who already qualified for the credit in 2020 is eligible for an additional credit in 2021, based upon the period from 4/1/2021 through 9/30/2021.

2. See Form 7202, *Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals*.

L. Employee Retention Credit. (IRC §3134)

1. CARES Act.

a. Wages paid after 3/12/2020 and before 1/1/2021.

2. Consolidated Appropriations Act, 2021.

a. Wages paid after 12/31/2020 and before 7/1/2021.

3. American Rescue Plan of 2021.

a. Wages paid after 6/30/2021 and before 1/1/2022.

4. CARES Act Formula:

a. 50% of qualified wages.

b. $10,000 limit on wages per employee for all calendar quarters in 2020.

5. CAA & American Rescue Plan Act Formula:

a. 70% of qualified wages.

b. $10,000 limit on wages per employee applies on a per quarter basis.

6. Eligible employer.

   a. Business fully or partially suspended during the calendar quarter due to governmental order relating to COVID-19;

   b. Gross receipts for calendar quarter are less than 80% of the same quarter in 2019; or

   c. Employer is a recovery startup business.

7. Employer can elect to use the immediately preceding calendar quarter compared to the same calendar quarter in 2019.

8. If more than 500 employees, the credit applies only to wages paid to employees who do not work.

9. If 500 or less employees, the credit applies to wages paid to all employees, including those who are still able to work during the applicable calendar quarter.

10. ERC does not apply to wages taken into account for certain other purposes, e.g.:

    a. Paid sick leave credit.

    b. Paid family leave credit.

11. Wages taken into account for PPP loan forgiveness do not qualify for ERC.

12. Employer can elect not to take qualified wages into account for ERC.

13. Wages include allocable amount of employer paid group health plan expenses.

14. Claiming the ERC. (Notice 2021-23)

    a. Payroll tax credits.

    b. Limited by applicable employment taxes during the quarter.

c. Excess is refundable.

d. May reduce otherwise required payroll tax deposits.

e. Reconciled on payroll tax return.

15. Wages paid to related individuals. (Notice 2021-49)

a. As defined by IRC §51(i)(1).

b. Not taken into account for ERC.

16. Applies to related individual owning, directly or indirectly, more than 50% of:

a. Outstanding stock of a corporation

b. 50% of the capital or profits interest in other types of entities.

17. Employer's operations not considered to have been fully or partially suspended if employees telework.

18. ERC reduces employer's deduction for compensation paid.

a. Offset against deduction for wages paid.

b. Employer does not include credit in income.

M. COBRA Premium Assistance.

1. COBRA.

a. Gives workers the right to continue group health benefits after a separation from service.

b. May be required to pay up to 102% of the cost.

c. Required to be offered by employers with 20 or more employees.

2. American Rescue Plan Act of 2021. (Notice 2021-31)

a. Temporary 100% reduction in the premium otherwise payable for COBRA.

b. Eligible individuals treated as having paid the full amount of their COBRA premium.

c. Employer entitled to a credit against its share of Medicare taxes.

d. Overpayment is refundable.

e. Employers can reduce payroll tax deposits in anticipation of the credit.

3. Temporary "COBRA premium assistance" is available to an "Assistance Eligible Individual" who:

a. Qualifies for COBRA during the period from 4/1/2021 through 9/30/2021.

b. Elects COBRA continuation coverage.

4. Extended election period provides additional 60 days to eligible individuals after they are provided with notice.

5. Applies to eligible individuals who:

a. Had a COBRA election in effect on 4/1/2021.

b. Previously elected COBRA continuation coverage and discontinued the coverage before 4/1/2021.

N. HRA Final Regulations. (IRC Section 4980H)

1. HRAs integrated with individual health insurance coverage or Medicare.

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2. Regulations clarify application of:

   a. Employer shared responsibility provisions

   b. Certain nondiscrimination rules.

3. Proposed regulations issued October 23, 2018.

4. Finalized on 6/14/2019.

5. T.D. 9949 provides additional guidance and safe harbors.

6. Location Safe Harbor.

   a. IRC §4980H applies to applicable large employers (ALE) that average 50 or more full-time equivalent employees.

   b. ALE is subject to a penalty if it fails to offer health insurance coverage to at least 95% of its full-time employees and at least one full-time employee is allowed to claim the premium tax credit.

   c. Penalty does not apply if ALE offers coverage that is affordable.

   d. Affordable means not more than 9.5% of the employee's household income (inflation adjusted).

   e. Based on self-only coverage for the individual's second lowest cost silver plan (SLCSP).

   f. Determining SLCSP based on employee's primary residence, because each employee lives in a different location.

   g. Safe harbor permits employer to use employee's primary site of employment.

7. Age Based Safe Harbor.

   a. Cost of coverage through an exchange also depends on the individual's age.

   b. Final regulations do not adopt an age based safe harbor.

8. Look-Back Month Safe Harbor

   a. May use the look-back month safe harbor to determine affordability.

   b. The look-back month safe harbor is January of the prior calendar year.

9. Household Income Safe Harbor.

   a. Regulations allow employers offering an individual coverage HRA to a class of employees to use one of the HHI safe harbors instead of the employee's household income.

   b. HHI safe harbors are based on employees' W-2 wages.

O. Payroll Tax Deposit Penalty Relief. (Notice 2021-24)

1. Penalty relief is extended to employment tax deposits that are reduced in anticipation of the following credits:

   a. Paid sick and family leave credits.

   b. Employer Retention Credit.

   c. COBRA continuation coverage premium assistance credit.

P. Deferral of Employee Social Security Taxes.

1. August 8, 2020 Presidential Memorandum.

2. Permits deferral of withholding, deposit and payment of the employee's share of Social Security tax.

3. Deferral applies to September 1, 2020 through December 31, 2020 (Notice 2020-65).

4. Allowed to be withheld and paid during January 1, 2021 through April 30, 2021.

5. CAA, 2021 extended repayment period through December 31, 2021.

III. <u>BUSINESSES</u>

A. 100% Deduction for Business Meals (Notice 2021-25)

1. CAA, 2021 added IRC §274(n)(2)(D) which provides a temporary exception to the 50% limitation for business meals that are provided by a restaurant.

2. IRS has released guidance regarding the temporary 100% deduction for expenses paid or incurred after 12/31/2020 and before 1/1/2023, for food or beverages provided by a restaurant.

3. The guidance explains when the 100% deduction applies and when the 50% limitation continues to apply.

4. Generally, the 50% limitation applies to non-restaurant businesses that sell pre-packaged food or beverages not for immediate consumption.

B. COVID-19 Relief for Automobile Lease Valuation Rule (Notice 2021-7)

1. When an employer provides an employee with an automobile that is available to be used for business and personal purposes, the value of the personal use must be included in the employee's gross income.

2. Special valuation rules:

a. Automobile lease valuation rule.

b. Vehicle cents per mile valuation rule.

c. Commuting valuation rule.

3. Each of the above rules include a consistency requirement.

4. Due to COVID-19, the IRS provided relief from the consistency rules.

5. An employer using the automobile lease valuation rule for 2020 may instead use the vehicle cents per mile valuation rule beginning 3/13/2020 if certain conditions are met.

6. Employers that switch from the automobile lease valuation rule to the vehicle cents per mile valuation rule must prorate the value using the lease valuation rule for 1/1/2020 through 3/12/2020.

7. The cents per mile method then begins on 3/13/2020.

8. Employers may choose to revert back to the automobile lease valuation rule for 2021.

C. Qualified Opportunity Fund. (Notice 2021-10)

1. The law allows a taxpayer to exclude from gross income any capital gains from the sale of property if the proceeds are invested in a qualified opportunity fund during the 180-day period beginning on the date of the sale (IRC §1400Z-2).

2. The excluded gain is then included in the taxpayer's gross income in the tax year which includes the earlier of:

   a. The date on which the taxpayer's investment in the fund is sold or exchanged; or

   b. 12/31/2026.

3. The IRS has extended the 180-day deadline due to COVID-19.

4. If the last day of the 180-day investment period falls on or after 4/1/2020 and before 3/31/2021, then the last day of that 180-day investment period is postponed to 3/31/2021.

D. Electing Real Property Trades or Businesses. (Rev Proc. 2020-2022; 2021-9; and 2021-28)

1. Under TCJA, the deduction for interest paid on business debt is limited if the taxpayer's average annual gross receipts is in excess of $26 million (inflation adjusted for 2019 through 2021).

2. The CARES Act further amended the business interest expense deduction rules for 2019 and 2020.

3. Under the CARES Act, business interest is limited to the sum of:

   a. Business interest income;

   b. 50% of the taxpayer's adjusted taxable income (ATI); and

   c. Floor plan financing interest.

4. After 2020, the 50% of ATI is reduced to 30% of ATI.

5. Trade or business does not include an electing real property trade or business or an electing farming business.

6. An electing real property trade or business must depreciate its property under the 30-year ADS rules.

7. The election is made under IRS §163(j)(7).

8. IRS has also provided a safe harbor for a trade or business that manages or operates a qualified residential living facility to be treated as a real property trade or business.

E. PCORTF Fee. (Notice 2018-85; Notice 2020-44; Notice 2020-84)

1. Under the ACA, a fee is imposed on the issuer of a specified health insurance policy, and the plan sponsor of an applicable self-insured health plan.

2. The fee is used to help fund the Patient-Centered Outcomes Researched Trust Fund (PCORTF).

3. The plan sponsor is liable for payment of the fee.

4. The plan sponsor is the employer in the case of a self-insured health plan maintained by a single employer.

5. *Example*: An employer that offers an HRA is considered the plan sponsor of a self-insured health plan.

6. The fee is considered an excise tax that is reported and paid by filing Form 720, *Quarterly Federal Excise Tax Return.*

7. The fee was originally set to expire on 10/1/2019.

8. CAA, 2021 extended the termination date to policy and plan years ending after 9/20/2029.

F. Bonus Depreciation (T.D. 9916)

1. Prior to TCJA, bonus depreciation was 50% of the cost of qualified property acquired and placed in service during the year.

2. TCJA increased bonus depreciation to 100% of the cost of qualified property acquired and placed in service after 9/27/2017.

3. Prior regulations had allowed taxpayers to claim 100% bonus depreciation on components of certain larger constructed property if construction began before 9/28/2017, and was placed in service before 2020, or 2021 for certain longer construction period property.

4. The final regulations removed this 2020 or 2021 cutoff deadline.

G. Deductible Fines and Penalties. (T.D. 9946, 1/7/2021)

1. IRC §162(f) disallows an ordinary and necessary business expense deduction for any fine or similar penalty.

2. TCJA expanded the disallowance rule.

3. Final regulations provide that a taxpayer may not deduct expenses for amounts:

   a. Paid or incurred by suit, agreement or otherwise;

   b. To, or at the direction of, a government or governmental entity; and

   c. In relation to the violation, or investigation or inquiry by such government or governmental entity into the potential violation of any civil or criminal law.

4. The general rule applies whether or not the taxpayer admits guilt or liability or pays the amount imposed for any other reason, including to avoid the expense or uncertain outcome of an investigation or litigation.

5. IRC §162(f) does not apply for amounts paid for the taxpayer’s own legal fees and related expenses.

6. IRC §162(f) does not apply to investigations of regulated businesses or industries conducted in the ordinary course of business.

7. IRC §162(f) does not apply to contract disputes.

IV. <u>CONSOLIDATED APPROPRIATIONS ACT, 2021</u>

A. Unemployment Benefits.

1. CAA, 2021 extended unemployment benefits to 3/14/2021, and allowed individuals receiving benefits who had not maxed out as of that date to continue through 4/5/2021.

2. ARR extended these benefits to 9/6/2021.

B. Medical Expenses. (IRC §213)

1. Prior law raised the threshold for deducting medical expenses as itemized deductions from 7.5% to 10% of AGI.

2. A temporary suspension of this rule applied for tax years beginning before 1/1/2021.

3. CAA, 2021 eliminates the 10% of AGI limitation and makes the 7.5% of AGI limitation permanent for tax years beginning after 12/31/2020.

C. Tuition and Fees Deduction. (IRC §25A(d))

1. The tuition and fees deduction under IRC §222 was set to expire at the end of 2020.

2. CAA, 2021 does not extend this provision.

3. In its place, the new law increases the modified AGI limitation for the Lifetime Learning Credit to equal the modified AGI limitation for the American Opportunity Credit.

4. This is effective for tax years beginning after 12/31/2020.

D. Residential Rental Property Depreciation. (IRC §168(g))

1. Taxpayers who elect under IRC §163(j)(7) to be an electing real property trade or business or an electing farm business are not subject to the business interest deduction limitations.

   Example: Qualified residential living facility that consists of multiple rental dwelling units and provides assisted living.

2. Taxpayers making the election must depreciate the real property under the 30-year straight-line depreciation ADS rule.

3. Generally effective starting in 2018 under TCJA.

4. Under CAA, 2021, residential rental property placed in service before 1/1/2018, by an electing real property trade or business is 30-year property under ADS for tax years beginning after 12/31/2017.

E. Emergency Financial Aid Grants.

1. Not included in gross income after 3/26/2020.

2. Does not reduce the amount of qualified tuition and related expenses for purposes of the American Opportunity and Lifetime Learning Credits under IRC §25A.

F. In Service Retirement Plan Distributions. (IRC §401(a)(36))

1. New provision for employees in the building and construction industry.

2. The 59 ½ minimum age requirement for distributions is reduced to age 55 for multiemployer plans.

3. The plan must have been in existence before 1/1/1970.

4. A determination letter must have been received from the IRS before 12/31/2011, at a time when the plan permitted distributions to employees who had attained age 55 and not separated from service.

G. EIDL Advance Program.

1. The CARES Act introduced the Economic Injury Disaster Loan Emergency Advance (EIDL).

2. Administered by the SBA.

3. Provides up to $10,000 to small businesses to recover a temporary loss of revenue due to COVID-19.

4. EIDL advances do not have to be repaid.

5. CAA, 2021 provides additional funding.

6. The covered period is extended through 12/31/2021.

7. The CARS Act requirement that EIDL advances be deducted from the forgiveness amount of a PPP loan is repealed.

H. No Surprises Act.

1. Prohibits a surprise medical bill.

2. Applies when a patient receives a separate sizable medical bill from an out-of-network health provider.

3. Must occur while the patient is receiving treatment at an in-network facility.

V. AMERICAN RESCUE PLAN ACT OF 2021

A. Unemployment Benefits Extended. (Public Law 117-2)

1. American Rescue Plan Act of 2021 (ARP) extends the enhanced $300 per week of Pandemic Unemployment Assistance and Pandemic Emergency Unemployment Compensation to 9/6/2021.

2. Also extends:

a. Pandemic Unemployment Assistance program benefits from 50 weeks to 79 weeks.

b. Pandemic Emergency Unemployment Compensation program benefits from 24 weeks to 53 weeks.

B. SBA Loans and Grants.

1. CAA, 2021 included provisions excluding EIDL grants, entertainment venue grants, educational grants, and other federal grants from gross income.

2. ARP also includes the following from gross income:

a. Targeted EIDL advances under §331 of the Economic Aid to Hard Hit Small Businesses, Non-Profits and Venues Act (the CAA, 2021).

b. Restaurant Revitalization Grants under §5003 of the ARP.

3. ARP provides that no deduction may be denied, no tax attribute may be reduced, and no basis increase may be denied by the exclusion of these grants from income.

C. Limitation on Excess Business Losses of Non-Corporate Taxpayers. (IRC §461(l))

1. TCJA limited the deduction of non-corporate businesses losses in excess of $250,000 ($500,000 MJF), adjusted annually for inflation.

2. CARES Act temporarily suspended the limitation for 2018-2020.

3. ARP extends the limitation on excess business losses to tax years beginning before 1/1/2027.

D. Pensions.

1. Multiemployer plan.

a. ARP includes provisions to help multiemployer plans in "endangered status" or "critical status" meet their funding obligations.

b. 2020-2022 plan years.

2. Single employer plans.

a. Increases from 7 to 15 years the period over which funding shortfalls may be amortized.

VI. MICHIGAN

A. Historic Preservation Tax Credit.

1. L. 2020, §54 (P.A. 343), effective 12/30/2020, amends the individual income tax and corporate income tax provisions of the Income Tax Act to provide for an historic preservation tax credit of up to 25% of qualified expenditures for the rehabilitation of historic buildings, structures, and sites.

B. Paycheck Protection Program (PPP). (Notice: Treatment of Paycheck Protection Program (PPP) Loans Under the Michigan Income Tax Act, Mich. Dept. Treas., 04/19/2021)

1. The Michigan Department of Treasury has issued a release explaining Michigan's conformity to the federal income tax treatment of loans issued under the federal PPP.

2. Forgiven PPP loans that are excluded from the computation of federal income tax are similarly excluded from the computation of the tax base under both the IIT an CIT.

3. Likewise, business expenses paid for by PPP loans that are deductible at the federal level remain deductible in computing the Michigan tax base under the IIT and CIT.

VII. CITY OF DETROIT.

A. FAQ's on Detroit Income Tax for Telecommuting and COVID Stimulus Payments. (City Income Taxes and Telecommuting FAQ, Mich. Dept. Treas., 02/01/2021)

1. The FAQs clarify that:

   a. Wages earned by a resident of Detroit, who is working from home (telecommuting) for a company in another city are taxable by Detroit; and

   b. Wages earned by a nonresident of Detroit, who is working from home (telecommuting) at a location outside of the city, are not taxable by Detroit.

2. The FAQs detail how a nonresident of Detroit who earned income while both in the city and outside the city should file, and what documentation is required for a nonresident to allocate telecommuting wages to nontaxable income.

3. The FAQs also note that the COVID-19 stimulus payments are not considered income and therefore not included in federal adjusted gross income (AGI) which is used to determine a taxpayer's taxable income for their Form 5118 (*City Resident Income Tax Return*).

4. They should also not be included when calculating taxable income on Form 5119 (*City of Detroit Nonresident Income Tax Return*) or Form 5120 (*City of Detroit Part-Year Resident Income Tax Return*).

VIII. <u>MISCELLANEOUS</u>

A. Retirement Plan Distributions, Recontributions, and Loans. (IRC §72)

1. General Rules.

   a. Distributions are taxable in the year of distribution.

   b. Absent an exception, distributions received before age 59 ½ are subject to a 10% early withdrawal penalty.

   c. Distributions may be rolled over, tax-free, within 60 days to another eligible retirement plan.

   d. Plans may permit participants to take loans if certain conditions are met.

2. Coronavirus-Related Distributions.

   a. Distributions made on or after 1/1/2020 and before 12/31/2020, which meet certain requirements relating to COVID-19.

   b. Plan administrator may rely on the participant's certification that the conditions have been met.

   c. CARES Act allows taxpayers to include income attributable to Coronavirus-related distributions ratably over 3 years.

   d. Not subject to the 10% early withdrawal penalty.

   e. May recontribute Coronavirus-related distributions to another eligible retirement plan within 3 years.

3. Loans.

   a. CARES Act increased maximum loan amount during the 180-day period beginning on 3/27/2020, to the lesser of:

      i. The present value of the non-forfeitable accrued benefit of the employee under the plan; or

      ii. $100,000.

4. Due dates for repayment falling between 3/27/2020 and 12/31/2020 are extended for one year.

5. Plans may be amended to incorporate Coronavirus-related distributions and/or loans provisions.

6. Amendment must be made on or before the last day of the first plan year beginning on or after 1/1/2022.

B. Required Minimum Distributions (RMDs).

1. Prior to 1/1/2020, the age after which RMDs were required to begin was 70 ½.

2. Under the Secure Act, if a person's 70^{th} birthday is July 1, 2019, or later, they do not have to take their first RMD until the year they reach age 72.

3. Under the CARES Act, no minimum distribution is required for calendar year 2020.

4. Next RMD will be for calendar year 2021.

5. In the case of an individual who dies and whose benefit is required to be distributed within 5 years, the 5-year period is determined without regard to 2020.

6. The CARES Act waiver applies to the following RMDs: (IR-2021-57, March 16, 2021)

   a. Initial RMDs that were due by April 1, 2020 (and not already paid before 2020) to retired participants who turned age 70 ½ in 2019 (or 5% owners who turned 70 ½ in 2019, even if still working).

   b. RMDs that would have been due by December 31, 2020 to participants who received their initial RMD before 2020 and to beneficiaries of deceased participants who died before 2020.

   c. Initial RMDs due by April 1, 2021 to participants who retired in 2020 after turning 70 ½ before 2020 (initial RMDs for retired participants or 5% owners turning 70 ½ this year aren't due until April 1 after the year they turn age 72).

7. Ongoing RMDs due by December 31, 2021, are not waived for any participant or beneficiary – including those whose initial RMDs would have been due by April 1, 2021, absent the CARES Act waiver.

8. A 2020 distribution that would have been an RMD is now treated as an eligible rollover. (Notice 2020-51)

9. Plan that made payments in early 2020 and treated the payments as RMDs instead of eligible rollover distributions won't be treated as having violated the rollover rules, i.e., by not applying mandatory 20% withholding or not providing a 402(f) rollover notice for payments mischaracterized as RMDs.

C. New Due Diligence Requirements.

1. CAA, 2021 allows eligible taxpayers to use their 2019 earned income to calculate the 2020 earned income credit or additional child tax credit when more than their 2020 earned income.

2. American Rescue Plan Act of 2021 allows the taxpayer to elect to use 2019 earned income instead of 2021 earned income for purposes of the EIC for the 2021 tax year.

3. A paid preparer preparing a tax return in which the election has been made is subject to due diligence requirements with respect to the following: (Form 8867, Paid Preparers Due Diligence Checklist for the Earned Income Credit, American Opportunity Tax Credit, Child Tax Credit (including the Additional Child Tax Credit and Credit for Other Dependents), and/or Head of Household Filing Status)

    a. The 2020 tax year to determine that earned income has decreased from 2019; and

    b. The 2019 tax year to determine the earned income used to compute each credit claimed under the election.

D. Estate or Nongrantor Trust Expenses that are not Miscellaneous Itemized Deductions. (T.D. 9918)

1. TCJA added IRC §67(g), which disallows miscellaneous itemized deductions for tax years beginning after 12/31/2017 and before 1/1/2026.

2. IRC §67(e) provides that an estate or trust computes its adjusted gross income in the same manner as an individual, except that certain deductions that would have been classified as miscellaneous itemized deductions for an individual are not miscellaneous itemized deductions for an estate or trust.

3. Costs not allowed by a trust in arriving at adjusted gross income:

   a. Costs that would be considered miscellaneous itemized deductions subject to the 2% AGI limit of an individual, and

   b. Such costs would commonly or customarily be incurred by a hypothetical individual holding the same property.

E.. Examples of Nondeductible Expenses.

1. Partnership costs passed through the partner.

2. Insurance premiums.

3. Maintenance and lawn service fees.

4. Auto registration and insurance cost.

5. Tax preparation fees for prior year returns.

6. Most investment advice fees.

7. Appraisal fees for insurance purposes.

F. Examples of Deductions that are Allowable by a Trust in Arriving at Adjusted Gross Income.

1. Property taxes.

2. State and local income taxes.

3. Tax preparation fees (decedent's final Form 1040, Form 1041, and Form 706).

4. Investment advisory fees and other additional charges for advice because the property is held in an estate or trust.

5. Appraisal fees to determine the fair market value of a decedent's assets for preparing an estate tax return.

G. Excess Deductions on Termination of an Estate or Trust.

1. Excess deductions are allowed as items of deduction to the beneficiaries succeeding to the property of the estate or trust.

2. Excess deductions are allowable only in the year of the beneficiary in which the estate or trust terminates.

IX. PENDING/PROPOSED LEGISLATION

A. Increase in Corporate Tax Rates.

1.

Taxable Income	Tax Rate
Not over $400,000	18%
Over $400,000 but not over $5,000,000	21%
Over $5,000,000	26.5%

2. Benefit of graduated rates phases out for corporations making over $10,000,000.

3. Personal services corporations not eligible for graduated rates.

B. Carried Interest (IRC §1061)

1. Extends holding period for long-term capital gain from 3 to 5 years.

2. Exemption for taxpayers with AGI less than $400,000.

3. Changes start of holding period, e.g., to when PE fund has invested "substantially all" of its committed capital.

C. Rollover of Gain from Sale of Small Business Stock. (IRC §1202)

1. 100% exclusion not available:

a. Taxpayers with AGI equal or exceeding $400,000.

b. Trusts and estates.

2. 50% exclusion remains available for all taxpayers.

3. Full amount of gain included in AGI for purposes of determining applicable exclusion.

D. Increase in Top Marginal Individual Income Tax Rate. (IRC §1(j)(2))

1. Top marginal individual income tax rate increased to 39.6%.

Taxpayer	Taxable Income Over
Married Filing Jointly	$450,000
Heads of Households	$425,000
Unmarried Individuals	$400,000
Married Filing Separate	$225,000
Estates and Trusts	$12,500

E. Increase in Capital Gains Rate (IRC §1(h)(1)(D))

1. Top capital gains rate for individuals, estates and trusts increased from 20% to 25%.

2. Aligns top capital-gain breakpoints with top ordinary rate.

F. Expansion of NII Tax to Trade or Business Income of Certain High-Income Individuals.

1. S corporation shareholders, limited partners, and LLC members who currently are not liable for FICA or SECA tax on their pro rata shares, distributive shares, and partnership income and gain become subject to NII tax.

2. Taxable income threshold is $500,000 for a joint return or surviving spouse, $250,000 for married filing separate, and $400,000 in any other case.

G. Qualified Business Income Deduction. (IRC §199A)

1.

Taxpayer	Maximum Deduction
Joint Return	$500,000
Individual Return	$400,000
Married Filing Separate	$250,000
Estates or Trusts	$10,000

H. Excess Business Losses of Noncorporate Taxpayer. (IRC §461(l)

1. For taxable years beginning after 12/31/2020 and before 1/1/2027, IRC §461(l):

   a. Disallows excess business losses (i.e., net business deductions in excess of business income.

   b. Treated as an NOL carryover for subsequent taxable years.

2. Proposal makes the limitation permanent.

I. Surcharge on High Income Individuals, Estates and Trusts. (New IRC §1A)

1. 3% surcharge on modified adjusted gross income in excess of threshold.

J. Unified Credit. (IRC §2010)

1. Reduced to $5,000,000 (indexed).

2. $6,020,000 for 2022 with indexing.

3. Decedent's dying and gifts made after 12/31/2021.

K. Special-Use Valuation. (IRC §2032A)

1. "Qualified real property" used in farming or another qualifying trade or business may be valued for estate tax purposes at its current-use value rather than its fair market value.

2. For 2021, the inflation-adjusted maximum reduction is $1,190,000.

3. Proposal would increase maximum reduction to $11,700,000, indexed after 2021.

L. Grantor Trusts. (New IRC §§1062 & 2901)

1. Aligns income and transfer tax rules for grantor trusts.

2. For portion of the trust that grantor is deemed to be the owner:

    a. Includable in gross estate of decedent.

    b. Distributions from trust subject to gift tax.

    c. Treated as a transfer subject to gift tax if grantor ceases to be treated as the deemed owner.

3. Treats sales between grantor trusts and their deemed owner as equivalent to sales to a third party.

M. Disallowance of Valuation Discounts. (IRC §2031)

1. Disallows valuation discounts on transfers of nonbusiness assets for estate and gift tax purposes.

2. "Nonbusiness asset" means any passive asset.

3. Examples include cash, marketable securities, real estate, and interests in partnerships, LLCs and corporations.

N. IRAs of High-Income Taxpayers. (New IRC §409B (amounts are indexed)

1. Prohibits further contributions to a Roth or traditional IRA for any tax year where the account exceeds $10,000,000.

Taxpayer	Taxable Income Over:
Single or married filing separate	$400,000
Married filing jointly	$450,000
Heads of Households	$425,000

2. New annual reporting requirement to IRS and Participant for defined contribution plans with account balances in excess of $2.5 million.

O. Increased MRD for High-Income Taxpayers. (New IRC §409B (amounts are indexed)

1. Applies when taxable income is above the thresholds for limiting contributions to Roth and traditional IRAs.

Combined IRA, Roth IRA And Defined Contribution Plan Account Balances	MRD
$10,000,000	50% of Excess
$20,000,000	100% of Excess

P. Roth IRA Conversions.

1. Under current law, contributions to Roth IRAs have income limitations.

2. Similar income limitations for Roth IRA conversions were repealed in 2021.

3. Encourages people whose income exceeds the limitation for contributions to a Roth IRA to make nondeductible contributions to traditional IRAs and then convert the nondeductible contribution from the traditional IRA to a Roth IRA.

4. The proposal closes this "back-door" Roth IRA strategy by eliminating Roth IRA conversions. (* Indexed)

Taxpayer	Taxable Income Over:*
Single or married filing separate	$400,000
Married filing joint	$450,000
Heads of Household	$425,000

Q. Other IRA Changes.

1. Prohibits the IRAs from holding investments which are offered to accredited investors because they have not been registered under the federal securities laws.

2. Prohibits an IRA owner from investing IRA assets in a corporation, partnership, trust, or estate in which he or she has a 50% or greater interest.

3. IRA owner always treated as a "disqualified person" under the prohibited transaction rules.

4. Statue of limitations on prohibited transactions increased from 3 to 6 years.

R. Credit for Paid Family Leave and Medical Leave.

1. Currently, the credits terminate for wages paid in taxable years beginning after 2025.

2. Proposal accelerates the termination of the credits to taxable years beginning after 2023.

S. Certain S Corporations Allowed to Reorganize as Partnerships.

1. Allows eligible S corporations to reorganize as partnerships without triggering tax.

2. "Eligible S corporation" means any corporation that was an S corporation on 5/13/1996 (i.e., the date of publication of the "check the box" regulations).

3. The eligible S corporation must completely liquidate and transfer substantially all of its assets to a domestic partnership within the two-year period beginning on 12/31/2021.

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