Coronavirus relief legislation: Individual provisions

On December 27, 2020, the Consolidated Appropriations Act ("CAA") 2021 created a second round of stimulus designed to aid individuals, families, and businesses impacted by COVID-19, as part of a larger appropriations bill. This Act changed and extended a number of provisions from the Coronavirus Aid, Relief, and Economic Security (CARES) Act enacted on March 27, 2020. Some of the key provisions of both of those Acts that impact individuals are highlighted below. For more information about the business provisions, see this **article**. We will continue to provide additional information and analysis as new guidance becomes available.

Recovery rebates for individuals

In one of the most widely publicized features of the new relief legislation, the Treasury Department is required to issue a second round of stimulus rebates to eligible individuals, supplementing the rebates provided under the CARES Act earlier in 2020. Like the earlier checks, the rebate is treated as a refundable tax credit; therefore, it is not subject to federal income tax.

The amount of the credit is $600 per eligible individual ($1,200 in the case of eligible individuals filing a joint return), plus $600 for each qualifying child (generally children under age 17). Proposals to increase this amount to $2,000 per individual remain a topic of debate. The credit is phased out by 5% of adjusted gross income above the following thresholds: $75,000 (single), $112,500 (head of household), or $150,000 (married filing jointly).

The level at which the credit is fully phased out depends on the number of qualifying children. For individuals with no qualifying children, the credit is fully phased out at $99,000 (single), $136,500 (head of household), or $198,000 (married filing jointly).

Income is determined by the individual's 2019 tax return, if filed, or if none was filed, by other information available to the IRS, such as Social Security, Railroad Retirement, or similar information. "Eligible individual" means any individual other than (a) a nonresident alien, (b) one who can be claimed as a dependent by another taxpayer, or (c) an estate or trust. In addition, individuals for whom no Social Security number is provided are not eligible.

Expanded charitable contributions

The CAA expands the charitable giving opportunities under the CARES Act by creating a permanent above-the-line deduction primarily for cash gifts to public charities by individuals who do not itemize. The limit is $300 for single individuals, $600 for joint returns. The CARES Act had added an above-the-line deduction in 2020 only, for up to $300 for cash charitable gifts by individuals, a provision that is now repealed and replaced by this new permanent deduction. The CAA also extends through 2021 an increase in the percentage limitation for cash contributions to public charities, from 60% to 100%. As a practical matter, this affects only individuals who itemize.

Interest rates used to test life insurance contracts

Statutory tests for life insurance policy funding (which were first enacted in 1984) are heavily affected by interest rate assumptions. These tests determine how much can be paid into a cash value policy without violating the definition of life insurance for federal income tax purposes. The interest rates built into the statutory definitions were based on the much higher interest rate environment that existed in the 1980s.

The language in these tests has been changed to take into account the prevailing interest rates (if lower than statutory rates) at the time the policy is issued. This change is likely to increase the amount that can be paid into a policy, resulting in healthier policies and more availability of living benefits.

Enhanced unemployment insurance coverage

The CAA has extended the new category of unemployment insurance called Pandemic Unemployment Assistance (PUA), which was created by the CARES Act to cover workers who would not ordinarily qualify for unemployment, such as part-time employees, gig workers, and other self-employed individuals. This extension covers 50 weeks (instead of 39), ending March 14, 2021; however, for certain individuals who remain eligible on that date for PUA benefits, the extension goes to April 5, 2021.

In addition, the CAA also restores the Federal Pandemic Unemployment Compensation (FPUC) benefit to $300 per week starting after December 26, 2020 and ending March 14, 2021.

Tax-favored retirement distributions

The CAA expands on CARES Act provisions that allowed certain individuals to withdraw up to $100,000 in 2020 for "coronavirus-related distributions" from an "eligible retirement plan." The CAA makes "qualified disaster distributions" (defined to include distributions up to $100,000 received up to 180 days before and 30 days after a qualified disaster) available under similar terms for 180 days following the December 27, 2020 enactment (i.e., prior to June 26, 2021).

The $100,000 limit is reduced by any earlier qualified disaster distributions; however, individuals affected by more than one qualified disaster can apply the limit separately to each disaster.

These distributions are available without a 10% early distribution penalty, and with the ability to spread income taxation over three years. In addition, if the withdrawal is repaid within three years of distribution, the initial distribution is treated as a 60-day rollover, or in the case of IRAs, as a 60-day trustee-to-trustee transfer. This repayment can be made in one or more contributions, up to the aggregate amount withdrawn. Moreover, although amounts not repaid are subject to taxation, taxpayers can elect to include the distributions ratably over three years.

The repayment does not have to be made to the same plan from which the withdrawal was taken; it can be made to any plan eligible to receive rollovers from the type of plan the withdrawal came from. The repayment can be made at any time during the three-year period beginning with the date of the distribution.

An "eligible retirement plan" includes an IRA (Individual Retirement Account or Individual Retirement Annuity), qualified retirement plans (including a 401(k) plan), governmental Section 457(b) plans and 403(a) and 403(b) annuities). A Roth IRA is not an eligible retirement plan, but as always, Roth IRA withdrawals come first from contributions, which are not subject to tax or penalties.

Qualified plan loan restrictions loosened

The CAA extends the loosened restrictions on loans from qualified plans. Ordinarily, such loans are subject to an aggregate dollar limit of the lesser of $50,000 or one-half of the employee's vested accrued benefit, and a five-year payback period. The CARES Act expanded, and CAA extended, the previous $50,000 limit to $100,000 and the percentage limit to 100% of the employee's vested accrued benefit. The CAA provision extends these higher limits to loans taken during the 180 days following enactment (December 27, 2020), while the earlier CARES Act provision applied to loans made between March 27, 2020, and September 27, 2020.

These provisions apply to a “qualified individual” (as defined for purposes of qualified disaster distributions and coronavirus-related distributions, above). In addition, any portion of the repayment can be delayed for 1 year, or until 180 days after the date of enactment (December 27, 2020), whichever is later, and that year will be disregarded in determining the five-year repayment period.

End of required minimum distribution (RMD) delay

The CARES Act suspended all minimum distribution requirements of Section 401(a)(9) for calendar year 2020 for IRAs, most qualified plans, 403(a) and 403(b) annuities, and governmental 457(b) plans. The minimum distribution requirements are reinstated for 2021 and later years.

Health and dependent care flexible spending accounts

The CAA makes it easier to use health and dependent care flexible spending account (FSA) funds by allowing carryovers of funds from 2020 to 2021, and from 2021 to 2022. The age for dependent care expenditures is also changed from age 13 to age 14. In 2021, participants can also be permitted to change their contributions (up to the statutory limit) prospectively, throughout the year.

Moratorium on evictions and foreclosures

The CAA has extended a moratorium on evictions (issued by the Centers for Disease Control and Prevention in September 2020) of certain renters until January 31, 2021.

The CARES Act included relief from foreclosure for homeowners with Federally insured or guaranteed mortgages, and those backed by Fannie Mae or Freddie Mac. Borrowers experiencing a financial hardship directly or indirectly caused by the COVID-19 emergency could request forbearance on payments for up to six months without fees, penalties, or extra interest.

Forbearance was also provided for borrowers with Federally backed loans on multifamily property who are experiencing such a hardship; however, renter protections apply if a multifamily property borrower receives a forbearance. The borrower may not evict a tenant for nonpayment of rent during the forbearance period, nor impose late fees for late payment of rent or issue a notice of eviction. This protection applied for the duration of the national emergency or December 31, 2020, whichever is earlier, now extended to January 31, 2021.

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