

2021 Tax Year-In-Review

January 7, 2022

Highlights

- ✓ Busy Year for Tax Legislation
- ✓ Guidance Implements Previous Relief Legislation
- ✓ TCJA Guidance Continues
- ✓ Build Back Better on Hold for Now?

Inside

Tax Legislation.....	1
COVID-19 RELIEF and Guidance	2
Other Guidance.....	5

SPECIAL REPORT

Ongoing Pandemic Continues Impact While New Administration Makes Its Mark

More than two years after the word “coronavirus” first popped up in everyone’s news feed, the COVID-19 pandemic continues to be the driving force behind much of people’s day-to-day life. Throughout 2021, multiple waves of virus variants have left people everywhere exhausted from the ups and downs of living in a world working through a pandemic. However, with wide availability of vaccines in 2021 as well as the knowledge of treatments gained from two years of treating disease, we are all in a much more manageable place as 2022 begins compared to 2021.

This is especially true from an economic perspective. In March 2020, the world teetered on the brink of a global economic depression as whole cities shut down and businesses closed, some permanently. However, almost two years later, unemployment is low, businesses are growing and the overall economic picture looks much brighter. Much of this in the United States can be attributed to the quick action taken by Congress in passing economic relief legislation early in the pandemic and additional legislation providing economic stimulus for the country. Despite these positive signs, there are still indications that the economy may not be as healthy as everyone hopes it is, and there is the prospect for additional action from Congress in 2022.

As the 2022 tax filing season begins, it is important to look back at what happened in 2021. The IRS and Congress were very busy passing new legislation and providing guidance that will be relevant for preparing 2021 tax returns. With such a busy year, it can be hard to remember what happened back in early 2021, but it is critical to take note of those things as you sit down with clients and review their year. The pandemic has impacted every person and business, and the economic repercussions of the pandemic, and pandemic relief, has been equally impactful.

TAX LEGISLATION

The calendar year opened with a new Congress being sworn in, followed shortly thereafter by President Biden taking office on January 20. Just before the end of 2020, the Consolidated Appropriations Act, 2021 had been signed into law, extending many tax provisions that were set to expire at the end of 2020 and providing additional relief for an economy struggling through the COVID-19



pandemic. Notably, the Act provided a second round of economic stimulus payments to many Americans. However, with a new Democratic president and a new Congress controlled by Democrats, it was clear that additional legislation would not be far behind.

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American Rescue Plan Act

Prior to his inauguration on January 20, 2021, then President-elect Biden released a framework proposal to further help the country deal with the ongoing pandemic and to boost its economic emergence from the pandemic with the rollout of vaccines. The American Rescue Plan Act was passed by Congress on March 10, and it largely aligned with that framework. It included extensions of enhanced unemployment relief, increased funding for COVID-19 testing and vaccination programs, aid to state and local governments, and assistance to schools to help get students back into classrooms. The Act also included several tax provisions, including a third round of direct stimulus payments, enhancements of many personal credits meant to benefit people with lower incomes and children, extensions of highly popular payroll tax credits for employers first instituted at the beginning of the pandemic, and changes related to retirement plan funding.

Infrastructure Investment and Jobs Act

Soon after the American Rescue Plan Act was signed into law, President Biden released his American Jobs Plan. This next step forward was meant to fulfill many promises made during his campaign. It included massive investment in physical infrastructure, commitments to clean energy, and an investment in what was termed “human infrastructure,” which included investments in jobs training, education, and social programs, all paid for by tax increases on corporations and higher-income individuals. However, bipartisan discussions soon developed on a classic infrastructure bill, that would eventually become the Infrastructure Investment and Jobs Act. After quick passage in the Senate in August, the bill languished in the House for months as the progressive wing of the House Democrats refused to support it without movement on the climate and social spending provisions left out. After

months of negotiations, those provisions were made into the proposed Build Back Better Act, and the Infrastructure Investment and Jobs Act was passed and signed into law in November. While the Act did not contain many tax provisions, it did include provisions related to private activity bonds, excise taxes, and an extension of highway trust fund provisions. Notably, the Act also called for increased reporting requirements on cryptocurrency transactions, as well as an earlier termination of the employee retention credit for businesses closed due to the ongoing COVID-19 pandemic. For the most part, the tax changes do not come into effect until 2022, at the earliest.

Build Back Better Act

With the deal struck on the Infrastructure Investment and Jobs Act, House Democrats turned their attention to the recently drafted Build Back Better Act. On November 19, the House passed a \$1.75 trillion dollar version of the bill almost entirely along party lines. This version includes a massive investment in green energy, largely through tax credits, extension of popular provisions included in the American Rescue Plan Act, including a one-year extension of the increased and advanceable child tax credit, and an increase in the cap on the state and local tax deduction, all paid for with a corporate minimum tax and a surcharge on individual incomes over \$10 million.

Since the House passed the bill, there has been no further action. With the Senate divided equally between Democrats and Republicans, even using the budget reconciliation rules which only requires a simple majority for approval in the Senate, the proposal cannot lose a single Democratic vote. At the time of publication, there are no negotiations ongoing. However, reports make it seem that there is still a deal that can be made, so the Build Back Better Act could become law sometime during the early months of 2022.

 **COMMENT.** *Wolters Kluwer covered these pieces of legislation throughout 2021 as they were passed. Further analysis of the Acts can be found in prior Wolters Kluwer Tax Briefings, or on CCH® AnswerConnect.*

COVID-19 RELIEF AND GUIDANCE

Since the early days of the pandemic, Congress and the IRS have both dedicated considerable resources to help Americans and American businesses weather the economic storm. In 2020, Congress passed three Acts to provide resources and assistance to increase virus testing, develop vaccines, and provide employers and businesses

with economic relief caused by lockdowns and employee illnesses and quarantines. The Families First Coronavirus Response Act, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and the COVID-19-Related Tax Relief Act (included in the Consolidated Appropriations Act, 2021) all created or extended new programs providing that relief. With those three Acts, as well as the American Rescue Plan Act, the IRS has had its hands full releasing guidance on the many tax-related programs created.

Filing Delay

In March 2021, the IRS postponed the due date for filing 2020 returns from April 15 to May 17. While not specifically an example of COVID-19 relief, unlike the 2020 filing season extension, this postponement was a result of various responsibilities the IRS had taken on due to other COVID-19 relief initiatives. The 2021 filing season had already started later than usual, on February 12, 2021, due to the IRS having to administer a second round of economic stimulus payments. After a third round had been approved in the American Rescue Plan Act, it became clear that the IRS would fall far behind in processing returns, and thus the extension was granted (Notice 2021-21).

Child Tax Credit

The American Rescue Plan Act provided a one-year enhancement of the child tax credit. Those enhancements included increasing the amount of the credit for taxpayers meeting income requirements, making the credit fully refundable, and allowing for half of the credit to be received in advance on a monthly basis. The IRS was required to create an online portal for taxpayers to make changes to, or opt out of, the advance payments. Over the year, the IRS frequently had to make changes to the portal. The IRS also released massive amounts of guidance on the credit, including Rev. Proc. 2021-24.

 **COMMENT.** *Tax preparers should take extra care this year to make sure that amounts received by their clients as advance payments are properly reconciled with the allowable child tax credit on returns.*

COVID-19 PPE

The IRS issued guidance clarifying that amounts paid for personal protective equipment—such as masks, hand sanitizer and sanitizing wipes—for the primary purpose of preventing the spread of COVID-19, are treated as amounts paid for medical care under Code Sec. 213(d). This means that not only are the expenses eligible for a medical expense deduction, but also eligible for reimbursement

under a health flexible spending arrangement, health reimbursement arrangement, or a health savings account (Announcement 2021-7).

Employment Credits

Much of the relief provided by Congress to businesses during the pandemic has taken the form of credits. Sick leave and family leave credits allowed employers and self-employed to claim a payroll tax credit for amounts that would have been earned while home sick or caring for others. This credit was included in the earliest relief legislation and extended and modified by subsequent Acts. The IRS released a new form (Form 7202) for self-employed individuals to claim the credit. The Service issued guidance to employers about reporting the amount of qualified sick and family leave wages paid to employees for leave taken in 2021 on Form W-2 (Notice 2021-53).

Congress also provided an employee retention credit early in the pandemic, allowing businesses to claim a payroll tax credit for retaining and continuing to pay employees even if the business saw a downturn or a complete shutdown-related closure. The credit was initially applicable through the end of 2020 only, but was subsequently extended through the end of 2021, and then retroactively terminated on September 30, 2021, by the Infrastructure Investment and Jobs Act. The IRS issued massive amounts of guidance on this credit in 2021, including guidance for claiming the credit for the first half of 2021 (Notice 2021-23), the second half of 2021, (Notice 2021-49) and how to handle the retroactive termination (Notice 2021-65). The IRS provided an optional safe harbor allowing employers to exclude certain amounts from gross receipts solely for determining eligibility for the employee retention credit (Rev. Proc. 2021-33).

The IRS provided an extension of penalty relief for employers who failed to make timely deposits of employment taxes in anticipation of claiming these credits (Notice 2021-24). However, the IRS issued temporary and proposed regulations that authorize the assessment of any erroneous refund of the COVID-19 employment tax credits which were added by the American Rescue Plan Act of 2021 (T.D. 9953; NPRM REG-109077-21).

 **COMMENT.** *Ensuring that these credits are properly claimed can be confusing work, as depending upon the time of year during 2021, the credits may be taken against either the old-age, survivors, and disability insurance (OASDI) tax or the hospital insurance (HI) tax. Preparers would be advised to consult the voluminous guidance issued by the IRS in preparing returns where the credits are in play.*

Paycheck Protection Program

Another highly popular relief provision from the early COVID-19 relief legislation was the Paycheck Protection Program (PPP). The PPP was a program that allowed business to take forgivable loans from the Small Business Administration (SBA), provided that certain employment and operational requirements were met. From a tax standpoint, the PPP was significant because any forgiven loans were excluded from tax, and the business expenses paid

using a forgiven PPP loan were ultimately deductible, but only after the COVID-related Tax Relief Act of 2020 (part of the Consolidated Appropriations Act, 2021) invalidated an earlier IRS ruling prohibiting a deduction.

The IRS issued some additional guidance on the PPP, including a safe harbor for certain PPP loan recipients who relied on prior IRS guidance and did not deduct eligible business expenses. These taxpayers may elect to deduct the expenses for their first tax year following their 2020 tax year, rather than filing an amended return or administrative adjustment request for 2020 (Rev. Proc. 2021-20). The IRS released additional guidance that addresses (1) timing issues; (2) partner and consolidated group member basis adjustments; and (3) filing of amended partnership returns and information statements (Rev. Proc. 2021-48; Rev. Proc. 2021-49; Rev. Proc. 2021-50).

 **COMMENT.** *The PPP is a potentially confusing program due to its fluidity in 2020 and 2021. The IRS and SBA released large amounts of guidance for professionals throughout the life of the program. Tax professionals can find complete coverage of this guidance, including a PPP Estimator tool, on CCH® AnswerConnect.*

Proposed and Final Regulations

Various regulations, both proposed and final were issued in 2021. These regulations implemented new provisions of COVID-19 relief legislation from 2020, as well as the provisions of the Tax Cuts and Jobs Act (TCJA)

COVID-19 Relief Regulations

- **T.D. 9953; NPRM REG-109077-21**, Assessment of Erroneous Refund of COVID-19 Employment Tax Credits
- **NPRM REG-109128-21**, Minimum Essential Coverage Does Not Include Medicaid Coverage Limited to COVID-19 Testing and Diagnostic Services
- **T.D. 9956**, CARES Act Impact on FDII, GILTI, and FTC Transition Carryback Rules

TCJA Regulations

- **T.D. 9943**, Guidance on the Business Interest Deduction Limitation
- **T.D. 9947**, QBI Deduction for Agricultural Cooperatives
- **T.D. 9946**, Deductibility of Fines and Penalties

Other Regulations

- **T.D. 9944**, Carbon Sequestration Credit
- **NPRM REG-107706-21; T.D. 9951**, No Surprise Act Guidance
- **NPRM REG-114676-21**, Air Ambulance Reporting
- **NPRM REG-102951-16**, Proposed Electronic Filing Requirements
- **T.D. 9955; NPRM REG-107707-21**, No Surprises Act Independent Dispute Resolution
- **T.D. 9952**, IRS Administrative Proceedings
- **T.D. 9954**, Section 301 Regulations
- **T.D. 9958; NPRM REG-117575-21**, Health Care Plan Data Collection
- **T.D. 9950**, Disaster Deadline Postponement
- **T.D. 9957**, New User Fees for Estate Tax Closing Letter
- **NPRM REG-100718-21**, User Fees for Special Enrollment Examinations
- **NPRM REG-121095-19**, Coordination of QOFs with Foreign Withholding

Additional COVID-19 Relief Guidance

The IRS has announced steps to automatically refund money to taxpayers who filed their tax returns reporting unemployment compensation before the American Rescue Plan Act provided a limited exclusion of unemployment compensation for 2020 (IR-2021-71).

The IRS provided guidance related to the temporary 100-percent deduction for business meals provided by a restaurant. The Taxpayer Certainty and Disaster Tax Relief Act of 2020 (part of the Consolidated Appropriations Act, 2021) temporarily increased the deduction from 50 percent to 100 percent for a business' restaurant food and beverage expenses for 2021 and 2022. All other food and beverage expenses are still subject to the 50 percent deduction limitation unless some other exception applies (Notice 2021-25).

The IRS provided a procedure for making elections and revocations under the CARES Act for taxpayers with a net operating loss (NOL) for any tax year beginning in 2018, 2019, or 2020, all or a portion of which consists of a farming loss (farming loss NOLs). The procedure is effective on the date of its release, June 30, 2021 (Rev. Proc. 2021-14).

The IRS issued guidance on the changes to the funding rules for single-employer defined benefit pension plans that were made by the American Rescue Plan Act of 2021.

These changes also affect the application of the funding-based limits on benefits (Notice 2021-48). Guidance was also issued relating to multiemployer plans arising from the save legislative provisions (Notice 2021-57).

The IRS extended the temporary relief from the physical presence requirement for participant elections required to be witnessed by a plan representative or a notary public. The extension runs through June 30, 2022 (Notice 2021-40).

Similarly, the IRS extended the availability of electronic signatures on certain audit and non-audit forms through October 31, 2023. Taxpayers and their authorized representatives may electronically sign documents and email specified documents to the IRS. Previously, the IRS had allowed e-signatures through the end of 2021 (NHQ-01-1121-0004; NHQ-10-1121-0005).

OTHER GUIDANCE

Even more than four years after the passage of the massive Tax Cuts and Jobs Act (TCJA), the IRS continues to issue guidance on the many changes provided by the Act. While most of this guidance takes the form of regulations finalizing earlier proposed regulations, there was still some new guidance issued. Additionally, the IRS issued guidance not related to COVID-19 relief or the TCJA.

Business Guidance

The IRS issued final regulations providing additional guidance on the limitation on the deduction for business interest. The regulations finalize various portions of the proposed regulations issued in 2020 with few modifications. They address the application of the limit in the context of calculating adjusted taxable income (ATI) with respect to depreciation, amortization, and depletion. The regulations also finalize rules on the definitions of real property development and redevelopment, as well as application to passthrough entities, regulated investment companies (RICs), and controlled foreign corporations (T.D. 9943). The IRS also provided a safe harbor allowing a trade or business that manages or operates a qualified residential living facility to be treated as a “real property trade or business” solely for purposes of qualifying to make the Code Sec. 163(j)(7)(B) election (Rev. Proc. 2021-9).

Final regulations governing the qualified business income (QBI) deduction for specified agricultural cooperatives and their patrons were issued. The final regulations largely adopt proposed regulations issued in 2019 and are effective on January 14, 2021 (T.D. 9947). For determining W-2 wages under the QBI deduction, the IRS has provided guidance that modifies the rule for all taxpayers with short tax years, as well as three methods for most agricultural cooperatives to use. The rules under this guidance apply to tax years ending after 2017 (Rev. Proc. 2021-11).

The IRS released final regulations that address the changes concerning the deduction of certain fines, penalties, and other amounts. The final regulations also provide guidance relating to the information reporting requirements for fines and penalties. The final regulations adopt proposed regulations released in 2020, with modifications (T.D. 9946).

Foreign and International Taxation Guidance

The IRS issued final regulations addressing the calculation of qualified business asset investment for qualified improvement property, under the alternative depreciation system (ADS), for purposes of the Code Sec. 250 deduction (for foreign-derived intangible income and Code Sec. 951A global intangible low-taxed income (GILTI)) and for purposes of determining GILTI (T.D. 9956).

The IRS modified its automatic consent procedures to allow certain foreign corporations to change their method of accounting for depreciation to the alternative depreciation system (ADS). Additionally, terms and conditions are revised, and the audit protection rules are clarified. The changes are made to take into account the global intangible low-taxed income (GILTI) provisions in Code Sec. 951A (Rev. Proc. 2021-26).

The Treasury Department and the IRS announced that they intend to amend the base erosion and anti-abuse tax (BEAT) regulations to defer the information reporting requirements for qualified derivative payments (QDPs) until tax years beginning on or after January 1, 2023. The current regulations provided that the QDP reporting requirements were to apply to tax years beginning on or after June 7, 2021 (Notice 2021-36).