



# Regulation Updates on Tax and Employee Benefit Legislation

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## **Objective**

To provide the senior living industry with a general understanding of recent tax law changes and the impact on their operations, specifically in the areas of individuals, nonprofit organizations, for profit organizations, and employee benefits.

## New Developments from the Consolidated Appropriations Act, 2021 Impacting Individuals

- Additional 2020 recovery rebates of \$600 per eligible family member, subject to phase-out
- Medical expense deduction floor 7.5% threshold permanent
- Increase to “above the line” Charitable Contribution Deduction
  - For 2020 - \$300 per return filing (even if MFJ)
  - For 2021 - \$300 per person (max \$600 if MFJ)

## Nonprofit Recent Developments

<b>November 2020 - IRS Issued Final §512(a)(6) Regulations for Nonprofit Organizations with Multiple UBI Activities</b>	<b>Treatment of Forgiven Loans for Nonprofit Organizations</b>
<ul style="list-style-type: none"><li>▪ Little to no change from proposed regs.</li><li>▪ NAICS codes now very important – separate activities based on first 2 digits of NAIC code.</li><li>▪ K-1s with UBI will generally be treated as a single activity.</li></ul>	<ul style="list-style-type: none"><li>▪ Government grant treatment for forgiven portion preferable.</li><li>▪ Impact on Schedule A Public Support Test.</li></ul>

## Nonprofit Recent Developments

- Fall 2020: TE/GE (Tax Exempt and Government Entities) division released FY2021 Program Letter. IRS priorities for FY21 include:
  - Compliance with retirement plan participant loan arrangements
  - Excess Compensation Issues
  - Employee vs. Independent Contractor issues
  - Specific emphasis on individuals receiving both a W-2 and a 1099 from the same organization.
  - Unrelated Business Income Activities

## Tax Update – For Profit Organizations

- Interest Expense Deduction Limitation §163(J)
  - Old Law – Interest Allowed as a deduction limited to 30% of adjusted taxable income (ATI)
  - New Law – Limitation increased from 30% to 50% for tax years that begin in 2019 or 2020 (applies to S Corporations and C Corporations)
  - Special Rule for partnerships – 2019 still subject to 30% ATI Limitation; for 2020 the ATI limitation is increased to 50%



# Polling question #1

## Tax Update – For Profit Organizations

- Rev. Proc. 2021-9 and Notice 2020-59
- Business Interest Expense Limitation Safe Harbor
  - Applies to qualified residential living facility electing to be treated as a real property trade or business
  - Interest expense is NOT limited, but depreciation of real property extended to 30 years from 27.5 years



## Tax Update – For Profit Organizations

- Net Operating Losses (C Corps) –
  - Old Law – NOLs were only allowed to be carried forward, carryback of NOLs disallowed.
  - New Law – NOL arising in tax years beginning after 12/31/2017 and before 01/01/2021 can be carried back up to five years preceding the year of loss.
  - Old Law – NOL deduction limited to 80% of taxable Income (could not fully offset taxable income).
  - New Law – For tax years beginning before 2021, NOL deduction equal to 100% of taxable income. For tax years beginning after 2021, a 100% NOL deduction of NOLs arising in tax years prior to 2018 and a 80% modified taxable income deduction for NOLs arising in tax years after 2017.

## Tax Update – For Profit Organizations

- Meals Limitation –
  - Old Law – deduction for meals is generally limited to 50%.
  - New Law – the 50% limit won't apply to expenses for food or beverages provided by a restaurant that are paid or incurred in 2021 and 2022.

## Tax Update – For Profit Organizations

- The Consolidated Appropriations Act, 2021 contains numerous extenders related to business.
  - Work Opportunity Tax Credit extended through 2025 for employees starting after Dec 31, 2020
  - Empowerment Zone Tax Incentives extended through Dec 31, 2025

## Tax Update – For Profit Organizations

- The Consolidated Appropriations Act, 2021 contains numerous changes related to PPP loans.
- PPP Loans (and EIDL Grants) –
  - Old Law – Forgiveness of loan not taxable income, however expenses paid with loan were not deductible
  - New Law – Forgiveness of loan not taxable income, expenses paid with loan are deductible

## Tax Update – For Profit Organizations

- New funding of \$284B for PPP loans for both new filers and 2nd loans
- PPP Loan eligibility –
  - No more than 300 employees
  - Revenue drop of 25% during one quarter in 2020 (compared to same 2019 quarter)
  - \$2M loan cap

## Tax Update – For Profit Organizations

- Must use at least 60% of funds for payroll related costs over the covered period
- Additional allowable non-payroll expenses qualifying for forgiveness:
  - Covered operational expenditures (software or cloud computing to facilitate business)
  - Covered property damage (vandalism or looting during public disturbances in 2020)
  - Covered supplier costs (goods essential to business operations ordered before loan disbursed)
  - Covered worker protection equipment (PPE required by DHHS, OSHA, CDC or a state or local gov't)



# Polling question #2



# Employee Benefit Legislation



# Employee Retention Tax Credit

## Who is eligible?

### Organizations that:

- Were fully or partially suspended from an appropriate governmental authority due to COVID-19, or
- Had a significant decline in gross receipts from corresponding quarter in 2019
  - Greater than 50% during 2020
  - Greater than 20% in 2021

### Which organizations may still benefit from the ERC?

- Received a PPP Loan
- Gross receipts have not surpassed 80% in a calendar quarter
- Any newly hired employees

CAA extends and expands the availability of the ERC through June 30, 2021

# Employee Retention Tax Credit

## What is it?

- Credit against applicable employment taxes for each calendar quarter
- Equal to 50% (70% in 2021) of qualified wages per employee:  
Maximum credit of
  - \$5,000 per employee for 2020
  - \$7,000 per employer per quarter in 2021

## Qualified wages:

- Less than 100 employees: all wages paid during shutdown and during depressed quarters
  - Effective January 1, 2021: less than 500 employees
- Greater than 100 employees: wages paid to an employee who is not providing services due to the suspension of the business or a drop in gross receipts
  - Effective January 1, 2021: greater than 500 employees

## Maine Earned Leave Act – Effective 1/1/2021

- Covered Employer:
  - Employ more than 10 employees for more than 120 days
- Covered Employees:
  - Generally ALL
    - Exemptions for seasonal and collectively bargained
- How much leave is “required”?
  - Accrue at least one (1) hour for every 40 hours worked
  - Accrue up to 40 hours in one year of employment
  - Accrual begins at start of employment
  - Can require employment for 120 days before taking leave

## Maine Earned Leave Act

- What guidelines apply to an employee?
  - May use leave for any reason
  - Must give “reasonable” notice
    - Absent an emergency, illness, or other sudden necessity
  - Paid at “base rate of pay”
- Penalties for failure to comply = \$1,000 per occurrence

## Maine Earned Leave Act

### Questions for each employer to consider?

- How is “base rate of pay” defined?
- Can unused leave carry over from one year to the next?
- Forfeit unused leave upon termination?
- Can an employer “front-load” earned time?
- Must an employee’s anniversary year be used to track?
- Impact on existing paid time off (PTO) policies?
- How to calculate accrual for salaried employees?

# Families First Coronavirus Response Act (FFRCA)

## **Paid Sick and Family Leave Credits: The basics**

- Employers with fewer than 500 employees
- Effective for leave paid on or after April 1, 2020
- Tax credit for amounts paid, up to certain limits
- Sick Leave – up to 80 hours paid at regular rate
  - Up to \$511 per day; or
  - 2/3 of the regular rate, up to \$200 per day
- Family Leave – up to 10 weeks paid at 2/3 regular rate, up to \$200 per day
- Exception: health care providers and emergency responders
- Expires December 31, 2020
- **Optional through March 31, 2021 under CAA**

## CARES Act: Student loan relief

### **Does your organization offer student loan repayment benefits?**

- CARES Act permits the following tax free benefits:
  - Up to \$5,250 to be tax-free in **2020 only (extended through December 31, 2025)**
- Included as part of Internal Revenue Code Section 127
  - Exclude up to \$5,250 per employee annually
  - Must have a written plan
  - Graduate or undergraduate courses
  - Not required to be job-related

# Questions



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