Consolidated Appropriations Act, 2020

December 19, 2019

Highlights

- ✔ Massive Spending Bill Includes Tax Legislation
- ✔ More Than Thirty Provisions Extended to 2020, Retroactive to 2018
- ✔ Retirement Changes for Employees and Employers
- ✔ Disaster Tax Relief for 2018 and 2019

Inside

SPECIAL REPORT

Year-End Spending Package Includes Various Tax Provisions, Extenders, Retirement Plan Changes

Just before recessing for the holidays, the House and Senate have passed the Consolidated Appropriations Act, 2020. The new Act averts a government shutdown that would have begun on December 21, 2019. The House passed the bill on December 17, 2019 by a vote of 297 to 120, while the Senate passed the bill on December 19, 2019, by a vote of 71 to 23. The President has indicated his intention to sign the bill into law.

The bulk of the bill lays out how the government will appropriate federal budget monies across various departments and programs. However, as often happens with year-end appropriations bills as a deadline looms, they become Christmas-tree bills, with various amendments hung on like ornaments. The 2020 appropriations bill became just that, with numerous provisions added before being passed by the House. And, several of these provisions relate to taxes.

Although a number of tax law changes are included in the bill, including extenders, retirement plan funding and distribution reform, and disaster tax relief, a number of notable items did not make it into the bill, including the retail glitch fix and other technical corrections of the Tax Cuts and Jobs Act of 2017 (TCJA).

EXTENDERS

The most broadly applicable tax law changes in the Act are the so-called tax extenders. These business and individual taxpayer-friendly provisions have a long history. The provisions historically have only been extended two years at a time, in some cases stretching back for 20 years. Over time, some have been made permanent, and the remainder were almost allowed to entirely expire after the TCJA. However, the Bipartisan Budget Act of 2018, signed into law in February 2018, retroactively extended all of the provisions through the 2017 tax year. Many lawmakers promised they would work on making them permanent, while others promised they would allow them to finally expire.

All of 2018 and nearly all of 2019 passed with no action to extend the provisions. However, the Consolidated Appropriations Act, 2020, resurrects almost all of the expired provisions, making them retroactively effective for 2018 and extending them through the end of 2020.

Individual Extenders

The more well-known of the extenders are those that affect individuals. These include the reduction in the adjusted gross income (AGI) floor for medical and dental expense deductions from 10% to 7.5%, the above-the-line deduction for tuition and fees, the treatment of mortgage insurance premiums (PMI) as deductible qualified residence interest, and the exclusion of qualified principal residence indebtedness from gross income.

Business Extenders

A number of business incentives are also included among the extended provisions. Most relate to the recovery or expensing of business investments. The classification of certain racehorses as 3-year property, the allowance of a 7-year recovery period for motorsports entertainment complexes, and accelerated depreciation for business property on an Indian reservation are all extended through 2020. Also, the provision of special expensing rules for film, television, and live theatrical performances are all extended through 2020, retroactive to 2018. Additionally, the new markets tax credit and the incentives for investments in empowerment zones, both intended to spur investment in economically depressed areas, are extended through 2020. The new markets tax credit was not scheduled to expire until the end of 2019, so only the empowerment zone incentives needed to be retroactively extended.

Energy Credits

The bulk of the extended provisions relate to expired energy credits. A handful of credits requiring regular extension, notably the carbon dioxide sequestration credit and the credit for energy production from certain solar, fuel cell, or wind property, were previously extended beyond 2020 by the Bipartisan Budget Act of 2018. However, other energy credits expired after 2017. The Act extends most of those credits, including the credits for nonbusiness energy property, qualified fuel cell vehicles, alternative fuel vehicle refueling property, and energy efficient commercial buildings, through 2020. It extends incentives for biodiesel and renewable diesel through 2022. All are retroactively extended to 2018.

TCJA Extenders

Not only did the TCJA do little to clear up the biannual uncertainty of tax extenders, it added new provisions that were scheduled to expire after 2019. However, the Act extends through 2020 the credit for employers providing paid family and medical leave, the look-thru rule for controlled foreign corporations, and several provisions meant to incentivize the production of beer, wine, and distilled spirits.

RETIREMENT PLAN FUNDING, DISTRIBUTION AND ADMINISTRATIVE CHANGES

The Act also includes the SECURE Act, which was initially passed by the house as H.R. 1994 in May 2019 with broad bipartisan support, but stalled upon reaching the Senate.

The Act makes major changes for 401(k) plans, IRAs, and creates a new pooled multiple employer plan.

IRA Changes

Changes in the Act for IRAs include:

- Moving the start date for required minimum distributions (RMDs) to the year in which the owner turns 72;
- Ending the 70 ½ age limit for contributions to an IRA; and
- Shortening the distribution period for non-spouse inherited IRAs to a 10-year maximum.

401(k) Changes

The most significant 401(k) changes include:

- Requiring plans to offer participation to long-term, part-time employees;
- Permitting plans to adopt qualified birth or adoption distributions;
- Encouraging auto-enrollment by increasing the cap;
- Adding a new tax credit for small employers using auto-enrollment plans;
- Streamlining the safe harbor for non-elective contributions.

Other Changes for Individuals

Other individual savings changes include

- Permitting qualified birth or adoption distributions up to $5,000 that would be exempt from the early-withdrawal penalty;
- Counting
  - Taxable non-tuition fellowships and stipends and
  - Nontaxable “difficulty of care payments” earned by home healthcare workers

as compensation for purposes of retirement plan contributions.

Changes for Employers

Small employers are now able to more easily band together to participate in pooled multiple employer plans (MEPs).

Additionally, employers are encouraged to steer employees towards lifetime annuities. Other changes include:

- allowing plans administrative flexibility, including relief for "close" plans,
- new annual disclosure requirements,
- providing a safe harbor for plan sponsors in the selection of an annuity provider, and
- qualified defined contribution plans, 403(b) plans, and governmental 457(b) plans are now able to make direct trustee-to-trustee transfers to other employer-sponsored retirement plans or IRAs of lifetime income investments or distributions of a lifetime income investment in the form of a qualified plan distribution annuity.

Plan Administration

A number of administrative changes were adopted that will provide additional flexibility for employees and reduced costs for employer sponsors, such as:

- Plans adopted by the filing due date (including extensions) of the tax return for the tax year may treat the plan as having been adopted as of the last day of the tax year;
- Defined contribution plans, with the same trustee, the same named fiduciary (or named fiduciaries) under ERISA, and the same administrator, using the same plan year, and providing the same investments or investment options to participants and beneficiaries may file a consolidated Form 5500;
- The nondiscrimination rules with respect to closed defined benefit plans to permit existing participants to continue to accrue benefits are modified to protect the benefits for older, longer-service employees as they near retirement;
- The use of credit cards or similar arrangements to draw down on plan loans is prohibited so that plan loans are not used for routine or small purchases;
- If an employer terminates a 403(b) custodial account, the distribution effectuating the termination may be the distribution of an individual custodial account in-kind to a participant or beneficiary;
- Individuals who may be covered by plans maintained by church-controlled organizations include:
  - duly ordained, commissioned, or licensed ministers, regardless of the source of compensation;
  - employees of a tax-exempt organization controlled by or associated with a church or a convention or association of churches; and
  - certain employees after separation from service with a church, a convention or association of churches, or an organization described above; and
- Community newspapers are given funding relief for community newspaper plan sponsors by
  - increasing the interest rate to calculate those funding obligations; and
  - providing a longer amortization period of 30 years from 7 years.

DISASTER TAX RELIEF

The Consolidated Appropriations Act, 2020 also includes disaster tax relief for federally declared disaster areas generally during 2018 and 2019. The relief includes the forgiveness of early-withdrawal penalties under Code Sec. 72(t) for qualified disaster distributions, the recontribution of amounts withdrawn for home purchases, and an increase in the amount of loans from qualified plans. An employee retention credit is also allowed for employers in affected areas, as well as special casualty loss rules for affected individuals.

The package of disaster tax relief is essentially the same as is regularly provided in the wake of major disasters like hurricanes or wildfires. However, unlike the disaster-by-disaster approach that is typically taken, this relief applies to *all* declared disasters during the period beginning January 1, 2018, and ending 30 days after the date of enactment of the Act, except for the California wildfire disaster area, for which relief was already provided in the Bipartisan Budget Act of 2018.

> *"...a number of notable items did not make it into the bill, including the retail glitch fix and other technical corrections of the Tax Cuts and Jobs Act of 2017"*

OTHER PROVISIONS

The Act contains of number of other changes impacting taxes imposed by the Affordable Care Act (ACA) and fixes to the Tax Cuts and Jobs Act of 2017.

Affordable Care Act Taxes

The excise taxes on high cost employer-sponsored health coverage ("Cadillac" plans") and medical devices are fully repealed.

The Act also repeals the fee on health insurance providers. Moratoriums and suspensions of the fee have been in effect for 2017 and 2019, but the fee was scheduled to apply in 2020.

TCJA Fixes

The Act includes several "fixes" to TCJA provisions. First, the application of the estates and trusts tax rate to certain unearned income of children (the "kiddie tax") has been reverted to the prior use of the parents' tax rate for tax years beginning after 2019. The change, although meant to simplify the application of the kiddie tax, had the unintended consequence of increasing the tax on the unearned income, such as military death benefits, of children in low-income families.

The Act also eliminates the notorious "church parking tax," an unintended consequence of the TCJA's attempt to treat the employee fringe benefits of C corporations and tax-exempt entities in the same manner. This had the effect of requiring church employees to pay tax on reserved parking spaces. The IRS attempted to rectify the issue through regulatory guidance, but Congress determined to just eliminate the "tax" entirely.

Notably, the Act does not include a fix for the so-called retail glitch, an oversight that left leasehold improvement property outside the category of 15-year recovery property for depreciation purposes, leaving it in the 39-year recovery category. More significantly, this oversight eliminates such property from qualifying 100%-bonus depreciation, which means improvements must be recovered over 40 years instead of being expensed in the year incurred.

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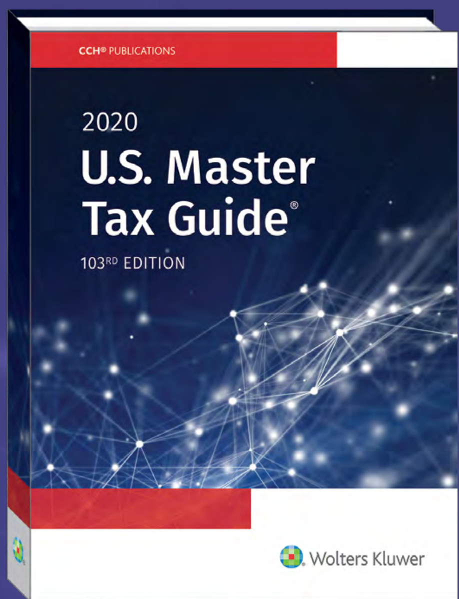

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