Consolidated Appropriations Act, 2021: Taxpayer Certainty and Disaster Tax Relief Act of 2020 - Federal Tax Law Changes

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The Consolidated Appropriations Act, 2021 ("CAA, 2021"), was passed by Congress, and signed into law by the President on December 27, 2020. CAA, 2021 includes federal tax law changes in a part of the bill, the Taxpayer Certainty and Disaster Tax Relief Act of 2020 ("TCDTRA" and "Act").

The TCDTRA makes more than 60 changes in existing federal tax law provisions of the Internal Revenue Code ("Code" and "IRC"). The changes extend, modify, and/or make permanent numerous provisions of the Code previously enacted to be in effect temporarily for only a specified period and which would expire and no longer be in effect unless extended or amended. TCDTRA also adds certain additional provisions to federal tax law stated in the Code. The extensions, amendments, and new tax law provisions enacted by TCDTRA apply to a variety of individual, business, energy, and employee benefit provisions in the Code.

As background of changes enacted, an explanation of the TCDTRA provided with its introduction indicates legislative intent to provide responsible oversight and action with respect to what is referred to as "temporary tax policy" and sound tax administration. The explanation states that temporary tax policy can be used to address a one-time need, to provide transition rules for new policy and for other valid purposes. However, the explanation states certainty in tax policy is important and that uncertainty can reduce consumer confidence, increase volatility in the stock market, and threaten investment and job growth in crucial sectors of the economy, including defense, healthcare, finance, and infrastructure. The explanation states enactment of TCDTRA was proposed to extend numerous expiring provisions and to prospectively extend other provisions set to expire. These provisions are described in the explanation as ones that support families and individuals, provide incentives for employment, economic growth, community development, energy production, efficiency, and green economy jobs. In addition, the bill was described as providing critical tax relief for communities that have been hurt by natural disasters. The COVID-19 pandemic occurred after the introduction of TCDTRA in its original form, and the legislation as enacted includes changes related to certain Code provisions added earlier this year to address effects of the pandemic for individuals and businesses.

CAA, 2021 also includes other federal tax law changes related to COVID-19 pandemic relief in another part of the bill, the COVID-relief Tax Relief Act of 2020 ("COVIDTRA"), which are discussed in a separate GableGotwals Client Alert. Please click here to view.

The following is a summary of some of the changes enacted by CAA, 2021 in TCDTRA.

I. TCDTRA EXTENSION OF CERTAIN EXPIRING PROVISIONS

A. Code Provisions Made Permanent by TCDTRA

Adjusted Gross Income Threshold for Individual Medical Expenses Deduction
The deduction of medical expenses by individuals that exceed a 7.5% of adjusted gross threshold is made permanent by the TCDTRA, applicable for tax years beginning after December 31, 2020. TCDTRA Sec. 101; Code Sec. 213.

Energy Efficient Commercial Building Improvements Deduction
The deduction for energy efficiency improvements to lighting, heating, cooling, ventilation, and hot water systems of commercial buildings is made permanent by the TCDTRA. TCDTRA Sec. 102; Code Sec. 179D.

Benefits Provided to Volunteer Firefighters and Emergency Medical Responders
TCDTRA makes the exclusion from gross income subject to federal income tax of state tax benefits or pay to volunteer firefighters and emergency medical responders permanent, applicable for tax years beginning after December 31, 2020. TCDTRA Sec. 103; Code Sec. 139B.

Qualified Tuition and Related Expenses Deduction and Lifetime Learning Credit Changes
TCDTRA removes the different phaseout rules for the American Opportunities Tax Credit and the Lifetime Learning Credit and replaces them with a single phaseout, effective for tax years beginning after December 31, 2020. A higher education expense deduction for qualified tuition and related expenses is repealed. TCDTRA. Sec. 104; Code Sec. 25A.

Railroad Track Maintenance Credit
TCDTRA makes the railroad track maintenance credit under Code section 45G permanent, for tax years ending after the date of the TCDTRA's enactment. TCDTRA Sec. 105; Code Sec. 45G.

Certain Provisions Related to Beer, Wine, and Distilled Spirits
Certain Code provisions are made permanent, including the reduction of certain excise taxes and simplified recordkeeping requirements related to the taxation of beer, wine, and distilled spirits enacted by the Tax Cuts and Jobs Act, reduced rates for imports to be administered as refunds by the Treasury Department rather than determined upon entry by Customs and Border Protection, information reporting requirements for foreign producers of beer, wine, and distilled spirits that make certain elections, clarification that reduced rates for beer, wine, and spirts are not allowed for smuggled or illegally produced products, modification of the definition of "processing" for purposes of determining volume limitations or reduced rates, and modification of single taxpayer rules for beer, wine, and distilled spirits. TCDTRA Secs. 106-110; Code Secs. 263A,5001, 5041,5051,5067,6038.

B. Code Provisions Extended Through 2025 by TCDTRA

Look-Thru Rule for Related Controlled Foreign Corporations
The Code contains a provision that dividends, interest, rent, and royalties received or accrued from a controlled foreign corporation that is a related person is not treated as foreign personal holding company income to the extent attributable or properly allocable to income of the related person that is not subpart F income or income treated as effectively connected with the conduct of a U.S. trade or business. This provision is extended through 2025. TCDTRA Sec. 111; Code Sec. 954.

New Markets Tax Credit
TCDTRA extends the $5 billion New Markets Tax Credit allocation for each calendar year from 2020 through 2025, and extends by five years, through 2030, the carryover period for unused New Markets Tax Credits. TCDTRA Sec. 112; Code Sec. 45D.

Work Opportunity Credit
TCDTRA extends an elective general business credit to employers hiring individuals who are members of one or more of 10 targeted groups under the Work Opportunity Tax Credit program. through 2025. TCDTRA Sec. 113; Code Sec. 51.

Exclusion from Gross Income of Discharge of Qualified Principal Residence Indebtedness; Reduction in Maximum Indebtedness Limits
TCDTRA extends the exclusion from gross income of a discharge of indebtedness income from qualified principal residence debt, for discharges of indebtedness before January 1, 2026, and reduces the maximum acquisition indebtedness limit from to $2,000,000 to $750,000 ($1,000,000 to $375,000 for married filing separately). TCDTRA Sec. 114; Code Sec. 108.

Seven Year Recovery Period for Motorsports Entertainment Complexes
TCDTRA extends the seven year recovery period for motorsports entertainment complexes, as defined in the Code, through December 31, 2025. TCDTRA Sec. 115; Code Sec. 168.

Expensing Rules for Certain Entertainment Productions
TCDTRA extends a deduction for qualified film, television, and theatrical productions of up to $15,000,000 of the aggregate cost ($20,000,000 for certain areas) through 2025, for productions commencing after December 31, 2020. TCDTRA Sec. 116; Code Sec. 181.

Oil Spill Liability Trust Fund Tax Rate
The excise tax of 9 cents per barrel on crude oil received at a refinery and petroleum products entered into the United States for consumption, use, or warehousing, which tax is to be deposited into the Oil Spill Liability Trust Fund, is extended by TCDTRA through 2025. TCDTRA Sec. 117; Code Sec. 4611.

Empowerment Zone Tax Incentives
Code provisions that make businesses and individual residents within a designated empowerment zone eligible for special empowerment zone tax incentives, including a wage credit, tax-exempt bond financing, and deferral of capital gains tax on sale of qualified assets sold and replaced, are extended through December 31, 2025, with removal of certain provisions for expensing. TCDTRA Sec. 118; Code Sec. 1391.

Employer Credit for Paid Family and Medical Leave
The Code provisions for an employer credit for paid family and medical leave, which permits eligible employers to claim an elective general business credit based on eligible wages paid to qualifying employees with respect to family and medical leave, is extended through 2025, applying to wages paid in tax years beginning after December 31, 2020. These additional benefits are discussed in a sperate GableGotwals Client Alert. Click here to view. TCDTRA Sec. 119; Code Sec. 45S.

Exclusion for Certain Employer Payments of Student Loans
The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") added an exclusion from income of "eligible student loan repayments" made by an employer for an employee after March 27, 2020, and before January 1, 2021. This exclusion for loan repayments is extended through 2025. TCDTRA Sec. 120; Code Sec. 127.

Extension of Carbon Oxide Sequestration Credit
TCDTRA amends the Code section 45Q carbon oxide sequestration credit. The credit is allowed for sequestration using carbon capture equipment originally placed in service before a specified date, disposed of in secure geological storage, and not utilized as a tertiary injectant in a qualified enhanced oil or natural gas recovery project. TCDTRA extends the beginning-of-construction date of certain qualified carbon sequestration facilities to be before January 1, 2026. TCDTRA Sec. 121; Code Sec. 45Q.

C. TCDTRA Extension of Certain Other Code Provisions

Credit for Electricity Produced from Certain Renewable Resources
TCDTRA extends the date by which construction of specified kinds of renewable energy facilities must begin to before January 1, 2022. TCDTRA. Sec. 131; Code Secs.45, 48.

Extension and Phaseout of Energy Credit
TCDTRA provides for changes of the phaseout energy percentages with respect to solar energy property, fiber-optic solar energy property, qualified fuel cell property, and qualified small wind energy property, with certain specified construction and placed in service dates made before 2026, TCDTRA Sec. 132; Code Sec. 48.

Treatment of Mortgage Insurance Premiums as Qualified Residence Interest
The Code provides that mortgage insurance premiums paid or accrued before January 1, 2021, by a taxpayer in connection with acquisition indebtedness with respect to the taxpayer's qualified residence were treated as deductible qualified residence interest, subject to a phase-out based on the taxpayer's adjusted gross income. TCDTRA extends this treatment through 2021 for amounts paid or incurred after December 31, 2020. TCDTRA Sec. 133; Code Sec. 163.

Credit for Health Insurance Costs of Eligible Individuals
The Code provides a refundable credit equal to a percentage of premiums paid by certain individuals for coverage of the individual and qualifying family members under qualified health insurance. TCDTRA extends this credit by one year, through 2022, applicable to months beginning after December 31, 2020. TCDTRA Sec. 134; Code Sec. 35.

Indian Employment Credit
The Code provides a credit on the first $20,000 of qualified wages and qualified employee health insurance costs paid or incurred by the employer with respect to each qualified employee who works on an Indian reservation. TCDTRA extends this credit by one year, through December 31, 2021, applicable to tax years beginning after December 31, 2020. TCDTRA Sec. 135; Code Sec. 45A.

Mine Rescue Team Training Credit
The Code provides employers a credit for training program costs for qualified mine rescue team employees. TCDTRA extends this credit by one year, through December 31, 2021, applicable to tax years beginning after December 31, 2020. TCDTRA Sec. 136; Code Sec. 45N.

Classification of Certain Racehorses as Three Year Property
The TCDTRA extends the 3-year recovery period a three year recovery period applied for racehorses to racehorses two years old or younger placed in service before January 1, 2022. TCDTRA Sec. 137; Code Sec. 168.

Accelerated Depreciation for Business Property on Indian Reservation
The TCDTRA extends the use of accelerated depreciation for qualified Indian reservation property predominantly used for business purposes within a reservation, owned by someone unrelated to previous owner, and unrelated to gaming practices. The extension is through December 31, 2021, applicable to property placed in service after December 31, 2020. TCDTRA Sec. 138; Code Sec. 168.

American Samoa Economic Development Credit
TCDTRA extends a credit allowed to certain corporations in American Samoa through 2022. TCDTRA Sec. 139.

Second Generation Biofuel Producer Credit
A producer is allowed a credit for "qualified second generation biofuel production," in a specified amount, which can be claimed as part of the alcohol fuel credit. The credit is extended by the TCDTRA through 2021. TCDTRA Sec. 140, Code Sec. 40.

Nonbusiness Energy Property
TCDTRA extends the credit for purchases of nonbusiness energy property through 2021, for property placed in service after December 31, 2020. TCDTRA Sec. 141; Code Sec. 25C.

Qualified Fuel Cell Refueling Property Credit
TCDTRA extends the credit for purchases of new qualified fuel cell motor vehicles through 2021. TCDTRA Sec. 142; Code Sec. 30B.

Alternative Fuel Refueling Property Credit
TCDTRA extends the credit for the cost of installing non-hydrogen alternative vehicle refueling property so that it applies to property placed in service before January 1, 2022. TCDTRA Sec. 143; Code Sec. 30C.

2-Wheeled Plug-in Electric Vehicle Credit
TCDTRA extends a credit for highway-capable, two-wheeled plug-in electric vehicles to apply to vehicles acquired before January 1, 2022. TCDTRA Section 144; Code Sec. 30D.

Production Credit for Indian Coal Facilities
TCDTRA extends a credit to producers of coal at Indian coal facilities during the 15-year period beginning on January 1, 2006, by one year. TCDTRA Sec. 145; Code Sec. 45.

Energy-Efficient Homes Credit
TCDTRA extends the credit for energy-efficient new homes for one year, to apply to homes acquired before January 1, 2022. TCDTRA Sec. 146; Code Sec. 45L.

Extension of Excise Tax Credits Relating to Alternative Fuels
TCDTRA extends through December 31, 2021, tax incentives of a 50 cents per gallon (or gasoline gallon ***equivalent*** for non-liquid fuel) excise tax credit, and a credit allowed against removal at terminal excise tax liability, for alternative fuel used to produce an alternative fuel mixture for sale or use in the taxpayer's trade or business. TCDTRA Sec. 147; Code Sec. 6426.

Residential Energy-Efficient Property Credit Extended and Expanded
The residential energy efficient property credit for individuals, equal to applicable percentages of expenditures for qualified solar electric property, qualified solar water heating property, qualified fuel cell property, qualified small wind energy property, and qualified geothermal heat pump property, subject to a phasedown provisions, is amended for property placed in service after December 31, 2020, with extension of phasedown of the credit by two years, and application of a different rate for

property placed in service before January 1, 2023. Qualified biomass fuel property expenditures are added to expenditures qualifying for the credit. TCDTRA Sec. 148; Code Sec. 25D.

Black Lung Disability Trust Fund Excise Tax

The Code imposes an excise tax at specified rates for coal from underground mines and surface mines. The TCDTRA extends these excise taxes through 2021, and the extension applies to sales after December 31, 2020. TCDTRA Sec. 149; Code Sec. 4121.

II. TCDTRA CHANGES OF OTHER CODE PROVISIONS

Minimum Low-income Housing Tax Credit Rate

The amount of the low-income housing credit under Code Sec. 42, is based upon the present value of qualified basis of buildings, subject to a 9% per year floor on the credit for certain buildings. TCDTRA provides for a change to a 4% floor for determining the credit. TCDTRA Sec. 201; Code Sec. 42.

Depreciation of Certain Residential Rental Property over 30-Year Period

TCDTRA amends the Code with respect to a 30-year alternative depreciation schedule (ADS) period for residential rental property that comes within certain requirements. TCDTRA Sec. 202; Code Sec.168.

Waste Energy Recovery Property Eligible for Energy Credit

Waste energy recovery property is added by TCDTRA to list of types of energy property for purposes of the energy credit, with the energy percentage for waste energy recovery property 30%, subject to phase-down rules, and not including property the construction of which begins after 2023. TCDTRA Sec. 203; Code Sec. 48.

Extension of the Election into the Energy Credit for Offshore Wind Facilities

TCDTRA provides in the case of any qualified offshore wind facility the election to take the 30% business energy credit instead of an electricity production credit will apply, without phaseout rules. TCDTRA Sec. 204; Code Sec. 48.

Minimum Rate of Interest for Life Insurance Contracts

TCDTRA provides for changes in setting of interest rate assumptions under Code section 7702 with respect to life insurance contracts. TCDTRA Sec. 205; Code Sec. 7702.

Clarifications and Technical Improvements re CARES Act Employee Retention Credit

TCDTRA clarifies provisions for employers who may claim the employee retention and rehiring credit under the CARES Act during the period after March 12, 2020 and before January 1, 2021. TCDTRA Sec.206; CARES Act Sec. 2301.

Extension and Modification of Employee Retention and Rehiring Tax Credit

TCDTRA provides that the employee retention and rehiring credit provided under the CARES Act is extended until June 30, 2021. The calculation of the credit is amended. TCDTRA Sec. 207; CARES Act. Sec. 2301.

Minimum Age for Distributions During Working Retirement

TCDTRA provides that a qualified retirement plan will remain qualified if the plan allows certain employees in building and construction industries who are not separated from employment to take distributions from a plan at age 55. TCDTRA Sec.208; Code Sec. 401.

Temporary Rule Preventing Partial Plan Termination
TCDTRA provides that a qualified retirement plan will not be treated as having a partial termination during any plan year which includes the period beginning on March 13, 2020, and ending on March 31, 2021, if the number of active participants covered under the plan on March 31, 2021 is at least 80% of the number of active participants covered on March 13, 2020. TCDTRA. Sec. 209; Code Sec. 411.

Business Meal Deduction for Meals Provided by Restaurants
TCDTRA provides that the general 50% of cost limit on deduction of expenses of meals will not apply to expenses for food or beverages provided by a restaurant that are paid or incurred after December 31, 2020, and before January 1, 2023. TCDTRA Section 210; Code Sec. 274.

Temporary Special Rule for Determination of Earned Income
TCDTRA provides that in determining the refundable child tax credit and the earned income credit for 2020, taxpayers may elect to substitute the earned income for the preceding tax year if that is greater than the taxpayer's earned income for 2020. For joint returns, the taxpayer's earned income for the preceding tax year is the sum of each spouse's earned income for that preceding tax year. TCDTRA Sec. 211; Code Secs. 24, 32.

Charitable Contributions Deductible by Non-itemizers
TCDTRA extends the rule enacted for 2020 by the CARES Act that individuals who normally do not itemize deductions may take up to a $300 above-the-line deduction for cash contributions to qualified charitable organizations. This above the line charitable deduction provision is extended through 2021, with provision for deduction of $300 for individuals and $600 for married persons filing federal income tax returns. TCDTRA Sec. 212; Code Sec. 170.

Modification of Limitations on Charitable Contributions
TCDTRA provides for 2020 and 2021, the 50% percentage limitation rules do not apply for individuals making qualified charitable contributions in cash to charities. TCDTRA Sec. 213; Code Sec. 170.

Temporary Special Rules for Health and Dependent Care Flexible Spending Arrangements
TCDTRA expands the rule that a cafeteria plan may permit the carryover of unused amounts remaining in a health flexible spending arrangement as of the end of a plan year to pay or reimburse a participant for medical care expenses incurred during the following plan year, subject to a carryover limit. TCDTRA allows other extensions of benefits in this context. TCDTRA Sec. 214; Code Sec. 125.

III. FEDERAL DISASTER TAX RELIEF PROVIDED BY TCDTRA

Definitions for Disaster Tax Relief
TCDTRA provides certain definitions for purposes of the disaster tax relief which include "qualified disaster area," "qualified disaster zone," "qualified disaster," and "incident period." The definitions relate to areas and portions thereof with respect to which a major disaster is declared by the President, and which are determined to warrant federal government assistance. TCDTRA Sec. 301.

Special Disaster-related Rules for Use of Retirement Funds
TCDTRA provides that the provisions of Code section 72(t) shall not apply to qualified disaster distributions from a qualified retirement plan not exceeding $100,000. A "qualified disaster distribution" is defined as a distribution from a plan to an individual who lives within qualified disaster area who sustained economic loss by reason of the qualified disaster. An individual may recontribute an amount not exceeding the distribution to a qualified plan within three years. The maximum amount of loans from a qualified plan is increased, and requirements for repayment of plan loans are extended in the case of a qualified disaster. TCDTRA Sec. 302; Code Sec. 72.

Employee Retention Credit for Employers Affected by Qualified Disasters
TCDTRA provides a credit to employers impacted by qualified disasters of up to $2,400 per employee, subject to timing requirements for payments of wages, and other limitations related to other applicable credits. TCDTRA Sec. 303; Code Sec. 38.

Other Disaster-related Tax Relief Provisions; Corporation Qualified Disaster Relief Contributions; Disaster Loss Deductions
TCDTRA provides that corporations may make "qualified disaster relief contributions" for which a charitable contribution deduction may be claimed in an amount up to 100% of taxable income, if made within a specified period for relief in a qualified disaster area. TCDTRA provides that individuals with losses incurred by reason of a qualified disaster may deduct such losses, subject to $500 per-casualty floor, with the deduction not subject to the general 10% of adjusted gross income limitation, with increase of the standard deduction by net disaster loss. TCDTRA Sec. 304; Code Secs. 63, 165, 170.

Low-income Housing Tax Credit
TCDTRA increases 2021 and 2022 state ceilings for certain low-income housing tax credit allocations for qualified disaster zones and allows an additional year for properties provided disaster allocations to place buildings in service. TCDTRA Sec. 305; Code Sec 42.

Treatment of Certain U.S. Possessions
TCDTRA provides that the Secretary of the Treasury is authorized to make payments to territories of the United States equal to losses the territories would incur by reason of the application of the disaster relief provisions. TCDTRA Sec. 306.

If you would like to discuss the Taxpayer Certainty and Disaster Tax Relief Act of 2020, or any other federal income tax matters, please contact your GableGotwals attorney, or a member of our Tax Law Practice Group which includes:

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