



WELCOME

Not-for-Profit Tax Update for Spring 2021

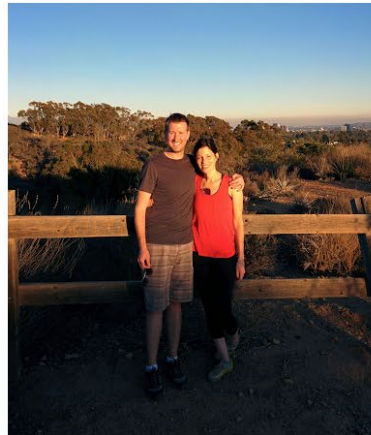
- We will begin at the top of the hour
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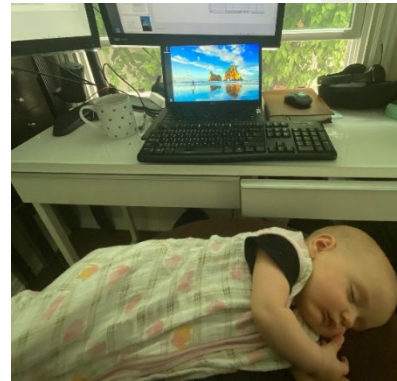
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Today's Topics

- COVID-19 Legislation Update
- IRS Updates
- Other Tax Updates
- TCJA Updates
- IRC §512(A)(6) FINAL REGULATIONS
- IRC §4968 FINAL REGULATIONS
- IRC §4960 PROPOSED REGULATIONS



COVID Legislation Update



Nonprofit Legislation Components (as of 3/15/21)

Deferral of Tax Filings and Payments

Disaster Declaration

Coronavirus Preparedness and Response Supplemental Appropriations Act
("Round 1") – Enacted March 6, 2020 *\$8.3 Billion*

Families First Coronavirus Response Act (H.R. 6201) ("Round 2") – Enacted March
18, 2020 *\$192 Billion*

Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748) ("Round
3") – Enacted March 27, 2020 *\$2.2 Trillion*

Paycheck Protection Flexibility Act (H.R. 7010) – Enacted June 5, 2020

Consolidated Appropriations Act – Enacted December 28, 2020 *\$2.3 Trillion*

American Rescue Plan Act – Enacted March 11, 2021 *\$1.9 Trillion*

PPP Extension Act of 2021– Enacted March 30, 2021



Deferral of Tax Filings and Payments

2020

Payments and filings due between April 1, 2020 and July 15, 2020 were deferred to July 15, 2020

Extension request for deferral to July 15th not required

- Extensions for further deferral were due on July 15th

Interest and penalties did not accrue until July 15, 2020

Most, but not all, states conformed

2021 (as of 3/22/21)

Tax day for individuals extended from April 15, 2020 to May 17, 2021

- Individuals can postpone payments due April 15 to May 17th as well
- Does not apply to estimated tax payments for individuals
- Does not apply to corporations or any other entities with a 4/15 due date



Disaster Relief Payments

President Trump's national emergency declaration on March 13 triggered tax code Section 139, which allows employers to exclude disaster assistance payments from employees' taxable income.

- **NO SUBSTANTIATION REQUIRED**
- **NO DOLLAR LIMIT – “REASONABLE AND NECESSARY”**
- **NO DISCRIMINATION TESTING REQUIRED**
- **NO PAYROLL TAXES OR REPORTING**
- **NO DEDUCTION LIMITATION TO BUSINESS**

The disaster declaration is currently ongoing. Check FEMA website for current status



Families First Coronavirus Response Act

Expands FMLA and paid sick leave requirements for employers with **500 or less** employees

Payroll tax credits to offset costs:

- Applies for wages paid for employees who need to take a paid leave as a result of COVID-19
- *Credit may be used against employer's social security taxes equal to 100% of the qualified wages paid; excess credit may be refunded*
- *Form 7200 has been released to claim COVID-19 related credits*

Health care providers and emergency responders are exempt from required leave and applicable credits

These provisions have been updated per the CAA and ARPA



Paid Sick Leave Credit

Employees who must self-isolate, obtain a diagnosis or comply with a self-isolation recommendation with respect to COVID-19

- Qualified sick wages are paid at 100% rate of normal pay and are capped at \$511 per day for up to an aggregate total of 10 days or \$5,110 in wages

Employees who must care for a family member or child whose school or place of care has been closed

- Qualified sick wages are paid at 2/3 rate of normal pay and are capped at \$200 per day for up to an aggregate total of 10 days or \$2,000 in wages



Paid Family Leave Credit

In addition to the paid sick leave credit, employers may take an additional credit for employees who must care for a family member or child whose school or place of care has been closed

- Qualified wages are paid at 2/3 rate of normal pay
- Capped at \$200 per day and up to an aggregate total of an additional 10 weeks or \$10,000 in wages



CARES Act

- Paycheck Protection Program *
- Expanded EIDL and Emergency Grant Loan Program
 - Available to all private nonprofit organizations
 - Provides loans through SBA to cover paid sick leave, meeting payroll, increased costs due to disrupted supply chain, mortgage, debt service
 - Can be used with PPP, significant restrictions
 - \$10,000 emergency advance
- Mid Size Loan Program “Main Street Lending Program”
- Employee Retention Tax Credit *

* has updated since inception. Will discuss current status after all COVID relief packages



Main Street Lending Program

Main Street Lending Program Nonprofit Loan Options	Nonprofit New Loans	Nonprofit Expanded Loans
Term	5 years	
Minimum Loan Size	\$250,000	\$10 million
Endowment Cap	\$3 billion	
Years in Operation	At least 5 years	
Eligibility Criteria (See Term Sheets for More Detail)	<ul style="list-style-type: none"> •Minimum employees 10 (previously 50) •Total non-donation revenues equal to or greater than 60% of expenses for the period from 2017 through 2019 (previously 70% of revenues) •2019 operating margin of 2% or more, (previously 5%) •Current days cash on hand 60 days (previously 90 days) •Current debt repayment capacity—ratio of cash, investments and other resources to outstanding debt and certain other liabilities—of greater than 55% (previously 65%) 	
Maximum Loan Size	The lesser of \$35 million, or the borrower's average 2019 quarterly revenue	The lesser of \$300 million, or the borrower's average 2019 quarterly revenue
Risk Retention	5%	
Principal Repayment	Principal deferred for two years; years 3-5: 15%, 15%, 70%	
Interest Payments	Deferred for one year	
Rate	LIBOR + 3%	



Payment of Payroll Taxes Extended

- Deposits of employer portion of Social Security taxes (6.2%) originally due between 3/27/20 and 1/1/21 may be deferred
- Amounts deferred repaid over two years:
 - 50% DUE ON 12/31/21
 - 50% DUE ON 12/31/22
- ~~An employer is not eligible if they have debt forgiven under other CARES Act programs~~ Updated by the PPP Flexibility Act enacted on June 5, 2020
- Consider the impact on bond requirements or debt covenants and future cash flow impact



CARES Act – Charitable Giving Incentives

- Lifts the limitations on charitable contributions of cash by individuals who itemize, from 60% of adjusted gross income to 100% (extended to 2021)
- For corporations, the limitations is increased form 10% of taxable to 25% of taxable income; ***may NOT apply to tax-exempt organizations, however (further guidance needed)*** (extended to 2021)
- Donations to donor-advised-funds or 509(a)(3) supporting organizations would not apply
- \$300 above the line deduction available for taxpayers who do not itemize in 2020



CARES Act – Net Operating Loss Rules

- Restores the 5-year NOL carryback for losses in any taxable year beginning in 2018, 2019 or 2020
- Suspends the TCJA rule (until first tax year after 2020) limiting the use of NOL carryforwards to offset 80% of taxable income for the year used
- Technical correction for TCJA drafting error that impacted fiscal year-end taxpayers with an NOL in tax year beginning in 2017, ending in 2018 = 2-year carryback allowed
- Not all states conform



Consolidated Appropriations Act

- Created 2nd draw PPP loan program
- 501(c)(6) entities eligible for PPP
- Extend 2020 charitable benefits from CARES Act to 2021
- Extension of ERTC and expanded access to those who obtained PPP
- Shuttered Venue Operators Grant program
- Extension of employee payroll tax deferral and emergency unemployment relief



Shuttered Venue Operators Grant Program

The new Shuttered Venue Operators Grant (SVOG) program makes \$15 billion in grants available to shuttered venues, to be administered by the Small Business Administration's (SBA) Office of Disaster Assistance.

The grants were established by the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act and are available to for-profit and not-for-profit entities, including relevant museums.

The program is available to:

- Live venue operators or promoters
- Theatrical producers or production companies
- Live performing arts organizations
- Relevant museums
- Movie theater operators
- Talent representatives

To be eligible:

- Have been fully operational as of February 29, 2020
- Show a decline in gross earned revenue of at least 25% from a quarter in 2020 as compared to the same quarter in 2019
- Intend to reopen
- Not have applied for or received a [Paycheck Protection Program](#) (PPP) loan on or after December 27, 2020

Allowable Expenses

- Payroll
- Rent and utilities
- Scheduled mortgage payments—excluding prepayment of principal
- Scheduled debt payments on any indebtedness incurred before February 15, 2020—excluding prepayment of principal
- Worker protection expenses
- Payments to independent contractors—not to exceed \$100,000 in annual compensation per contractor
- Operating leases in effect as of February 15, 2020
- Insurance payments
- Other ordinary and necessary business expenses, such as maintenance expenses, administrative costs, and state and local taxes



American Rescue Plan Act

- Expands ERTC from June 30, 2021 to December 31, 2021
- Expands PPP eligibility to large nonprofits with more than 500 employees that operate in more than one location
- Allows SVOG applications to also obtain PPP funding, although PPP funding would reduce SVOG funds
- Tax credits for nonprofits granting paid sick and family leave to staffers are also extended — to September 30, 2021. The ARPA increases the amount of wages employers can claim from \$10,000 to \$12,000 per employee
- Expands dependent care assistance plans to allow for deferrals of up to \$10,500 in 2021



Where Does PPP Stand Today?

- Two separate loan programs
 - PPP 1 and PPP 2
- Forgiveness Process
 - Applied for with bank – 60 days
 - Sent to SBA – 90 days
 - SBA has right to review all forgiveness applications regardless of amount, but will review applications over \$2 million
 - Economic necessity
 - Properly calculation of maximum loan amount available
 - Authorized use of proceeds
 - In the case of a second draw PPP loan, whether the borrower experienced the required 25% reduction in gross receipts to be eligible for such second draw PPP loan.
- Application Closes 5/31/2021 (updated as of 3/30/2021)



Where Does PPP Stand Today?

- Amount of loan calculated using the average monthly payroll costs x 2.5
- Uses – 60/40 rule
 - 60% for payroll costs
 - 40% other permitted expenditures
 - Occupancy costs
 - Utilities
 - Software
 - Necessary supplier costs
 - Fixing property damage from protests
 - PPE and COVID Barriers
- Forgiveness period – can choose anywhere from 8 to 24 weeks
- Reduction in forgiveness calculated based on reduction in employees or wages
 - Exceptions exist for various hiring situations
 - Exceptions exist if entity is unable to operate at previous levels due to shutdowns



PPP First Draw (As of 3/25/21)

- Available to 501(c)(3), 501(c)(5), 501(c)(6), 501(c)(19), Destination Marketing Entities
- Employee threshold
 - 501(c)(3) – 500 FTE Employees
 - Large 501(c)(3) – No more than 500 FTE per location
 - 501(c)(5) and 501(c)(6) – 300 FTE Employees
- Maximum Loan amount is \$10,000,000
- Economic Necessity
 - No gross receipt reduction required



PPP Second Draw (As of 3/25/21)

- Available to 501(c)(3)
 - Availability to 501(c)(5), 501(c)(6), Destination Marketing Entities less certain based on limited timing
- Employee threshold – 300 employees
- Maximum Loan amount is \$2,000,000
- Economic Necessity and a revenue reduction of at least 25% in at least one of your quarters
 - Any quarter compared to 2019 quarter / or full year comparison
 - Calculated based on gross receipts per IRC 6033 (does not include costs of goods sold – including cost of securities sold)



COVID Loan Programs

Program	Paycheck Protection Program (Emergency SBA 7(a) Loans) Secs. 1102, 1106	Paycheck Protection Program (Emergency SBA 7(a) Loans) Second Draw Secs. 1102, 1106	Expanded EIDL & Emergency Grants (SBA 7(b) Loans) Sec. 1110	Main Street Lending Program Sec. 4003
Description	Emergency loan program for nonprofits and for-profit entities to secure funds to pay staff and operating costs for two months, and secure full loan forgiveness under certain circumstances	Emergency loan program for nonprofits and for-profit entities to secure funds to pay staff and operating costs for two months, and secure full loan forgiveness under certain circumstances	Existing Economic Injury Disaster Loan (EIDL) program expanded to more for-profit entities, applies looser credit standards, and creates a rapid grant procedure.	Created by the Treasury Department to fill the gap between the PPP for smaller employers and the industry stabilization loans to big business. Tranches for nonprofits include: <ul style="list-style-type: none"> - Nonprofit Organization Expanded Loan Facility - Nonprofit Organization New Loan Facility
Size Eligibility	500 or fewer employees for PPP 1 (updated as a result of ARPA for certain large nonprofits)	300 or fewer employees for PPP 1 (updated as a result of ARPA for certain large nonprofits)	Existing EIDL limits for nonprofits*	Between 10 and 15,000 employees or up to \$5 billion in 2019 annual revenues; endowment of less than \$3 billion
Dollar Amount	The lesser of \$10 million or 2.5 times the average total monthly payroll costs from the one-year period (look back) prior to the date of application. Express 7(a) loans available up to \$1 million.	The lesser of \$2 million or 2.5 times the average total monthly payroll costs from the one-year period (look back) prior to the date of application. Express 7(a) loans available up to \$1 million.	Normal EIDL loans available up to \$2 million. EIDL advances of \$10,000 paid within 3 days.	\$250,000 - \$300 million with the upper limit based on average 2019 quarterly revenue, depending on the tranche.
Loan Processor	Local financial institutions	Local financial institutions	Small Business Administration	Local financial institutions



COVID Loan Programs (*continued*)

Program	Paycheck Protection Program (Emergency SBA 7(a) Loans) * Secs. 1102, 1106	Paycheck Protection Program (Emergency SBA 7(a) Loans) Second Draw Secs. 1102, 1106	Expanded EIDL & Emergency Grants (SBA 7(b) Loans) Sec. 1110	Main Street Lending Program Sec. 4003
Nonprofit Eligibility	In operation on 2/15/2020 and had paid employees and/or paid independent contractors. Expressly available for charitable nonprofits as well as 501(c)(5), 501(c)(6) and destination marketing entities with 500 or fewer employees, (or large nonprofits per ARPA) but requires that employees of affiliated nonprofits may be counted toward the 500 employee cap	Must have been in operation on 2/15/2020 and had paid employees and/or paid independent contractors. Expressly available for charitable nonprofits (as of 3/26/21) with 300 or fewer employees.	In operation before 1/31/2020. Loans can be based solely on credit score. Existing EIDL program applies to “private nonprofit organizations” that excludes religious institutions and some other charitable organizations.	Applies to §501(c)(3) or (19) organizations in continuous operation since 1/1/2015; applies to other nonprofits at the discretion of the Fed. Has total non-donation revenues => 100% of expenses for 2017 – 2019. Has a ratio of adjusted 2019 EBIDA to unrestricted 2019 operating revenue => 2%. Meets liquid asset and unrestricted cash ratios.
Personal Guarantee	No collateral or personal guarantee required.	No collateral or personal guarantee required.	Waives personal guarantee up to \$200,000, and requirement of inability to obtain credit elsewhere.	Unspecified
Certification	Good-faith certification that need for the loan is based on economic conditions; funds to be used to retain workers and maintain payroll or make mortgage, lease, and utility payments; and no duplicate application or receipt of funds for same purposes.	25% reduction in gross receipts as defined under 6033. Good-faith certification that need for the loan is based on economic conditions; used to retain workers and maintain payroll or make mortgage, lease, and utility payments; and no duplicate application	Self-certification under penalty of perjury.	Good-faith certification that need is based on economic conditions; funds to be used to retain and restore employment, won’t abrogate collective bargaining agreements, and will remain neutral in union organizing efforts, among other things.



COVID Loan Programs (*continued*)

Program	Paycheck Protection Program (Emergency SBA 7(a) Loans) * Secs. 1102, 1106	Paycheck Protection Program (Emergency SBA 7(a) Loans) Second Draw Secs. 1102, 1106	Expanded EIDL & Emergency Grants (SBA 7(b) Loans) Sec. 1110	Main Street Lending Program Sec. 4003
Loan Use	Payroll costs, mortgage interest payments, rent, utilities, and interest on prior debt during the 8-24 week period following loan origination.	Payroll costs, mortgage interest payments, rent, utilities, and interest on prior debt during the 8-24 week period following loan origination.	\$10,000 advance: Paid sick leave, meeting payroll, increased costs due to disrupted supply chain, mortgage, debt service.	To retain 90% of workforce at full wages and benefits through 9/30/2020 and intention to restore 90% of workforce in place on 2/1/2020.
Loan Terms	1% interest rate; first 6 months of payments (principal and interest) automatically deferred. Maximum of 10 years.	1% interest rate; first 6 months of payments (principal and interest) automatically deferred. Maximum of 10 years.	Normal EIDL: 2.75% interest rate for nonprofits \$10,000 advance treated as a grant	Interest is adjustable rate of LIBOR (1 or 3 month) + 3%. No principle for 2 years, no interest paid for 1 year. 5 year maturity.
Loan forgiveness	Employers that maintain employment for the 8 weeks after origination of loan, or rehire employees by June 30, will have loans forgiven in whole or part, essentially turning the loan into a grant. <i>Section 1106</i> . Revised in June 2020 to include a 24-week option.	Employers that maintain employment for the 8 weeks after origination of loan, or rehire employees by June 30, will have loans forgiven in whole or part, essentially turning the loan into a grant. <i>Section 1106</i> . Revised in June 2020 to include a 24-week option.	\$10,000 advance forgiven even if borrower denied EIDL loans.	Expressly prohibited in statute. <i>Section 4003(d)(3)</i>
Key Definitions	<p>Covered Period means the 8-24 week period following loan origination.</p> <p>Employee means an individual working on a full-time, part-time, or other basis.</p> <p>Payroll Costs include compensation (including benefits costs) paid to employees and contractors, capped at \$100,000 per year per individual (prorated over the “covered” period), and state/local payroll taxes.</p>	<p>Covered Period means the 8-24 week period following loan origination.</p> <p>Employee means an individual working on a full-time, part-time, or other basis.</p> <p>Payroll Costs include compensation (including benefits costs) paid to employees and contractors, capped at \$100,000 per year per individual (prorated over the “covered” period), and state/local payroll taxes.</p>	<p>Covered Period means 1/31/2020 through 12/31/2020.</p> <p>Eligible entity means a business with 500 or fewer employees.</p> <p>*Eligible private nonprofits include, without limitation, nursing homes, food kitchens, educational facilities, senior citizens centers, daycare centers, playhouses, and shelters, among others.</p>	



Forgiveness Period

Advantages to 8-week period	Advantages to using up to a 24-week period
Faster forgiveness – lender has 60 days to review the application & SBA has 90 days to confirm	Greater opportunity to accumulate qualified costs, including payroll costs (e.g. retirement contributions) that may not be captured during the shorter 8-week period
May be easier to meet FTE staffing requirements	Increased time for safe harbor planning to re-hire and salary or wage reduction reversal (12/31 instead of 6/30)
Take advantage of current rules & interpretations; less uncertainty due to changing rules	Gives lenders and SBA more time to streamline the forgiveness application review process
	Longer deferral of principal and interest on unforgiven PPP loans – have 10 months from the end of the covered period to apply for forgiveness



Updates on Loan Programs – PPP (*continued*)

- Necessity of the loan certification:
 - Loans under \$2M are presumed that the borrower's certification was made in good faith
 - Loans > \$2M still need adequate basis for the certification unless the loan is repaid
- SBA has a 5-year statute of limitations to reassess its forgiveness
- PPP loan forgiveness is not taxable income, and expenses are deductible (n/a unless the loan relates to an unrelated activity)



CARES Act – **2020** Employee Retention Credit

- Available to nonprofits participating in the Paycheck Protection Program, but cannot use same expenses
- Available March 12, 2020 through December 31, 2020
- Refundable payroll tax credit of 50% of the first \$10,000 of wages plus health plan expenses (up to \$5,000 per employee) for nonprofits who were:
 1. fully or partially suspended due to a COVID-19 shutdown order, **or**
 2. whose gross receipts declined by more than 50% when compared to the same quarter in the prior year; period ends when gross receipts are at least 80% of the gross receipts for the same prior calendar quarter
- Credit offsets FICA taxes due, excess is refundable on Form 7200



2020 Employee Retention Credit

Eligible wages include regular wages paid plus health plan expenses allocable to the qualified wages under an employer-sponsored plan

Businesses with ≤ 100 employees

Credit is allowed on all eligible wages paid to employees regardless of whether they are performing services

Businesses with > 100 employees

Credit is based solely on eligible wages paid to employees who are not providing services due to COVID-19



CARES Act – 2021 Employee Retention Credit

- Available to nonprofits participating in the Paycheck Protection Program, but cannot use same expenses
- Available for all of 2021
- Refundable payroll tax credit of 70% of the first \$10,000 of wages plus health plan expenses (up to \$7,000 per employee) for nonprofits who were:
 1. fully or partially suspended due to a COVID-19 shutdown order, **or**
 2. whose gross receipts declined by at least 20% when compared to the same quarter 2019
- Credit offsets FICA taxes due, excess is refundable on Form 7200



2021 Employee Retention Credit

Eligible wages include regular wages paid plus health plan expenses allocable to the qualified wages under an employer-sponsored plan

Businesses with ≤ 500 employees

Credit is allowed on all eligible wages paid to employees regardless of whether they are performing services

Businesses with > 500 employees

Credit is based solely on eligible wages paid to employees who are not providing services due to COVID-19



Employee Retention Credit

2020 QUALIFICATION GUIDELINES March 13–December 31	2021 QUALIFICATION GUIDELINES January 1–June 30
<i>WHO IS ELIGIBLE</i>	
<ul style="list-style-type: none">• Employers whose business was fully or partially suspended due to emergency orders from an appropriate government authority that limited commerce, travel, or group meetings• Employers who had at least a 50% reduction in gross receipts for the current calendar quarter as compared to the same calendar quarter in 2019	<ul style="list-style-type: none">• Employers whose business was fully or partially suspended due to emergency orders from an appropriate government authority that limited commerce, travel, or group meetings• Employers who had at least a 20% reduction in gross receipts for the current calendar quarter as compared to the same calendar quarter in 2019
<i>EMPLOYEE THRESHOLD FOR DETERMINING QUALIFIED WAGES</i>	
<ul style="list-style-type: none">• For employers with under 100 full-time employees, measured as average employment in 2019, the credit applies to wages paid to all employees• For employers with more than 100 full-time employees, the credit only applies to wages paid to employees during the time they weren't providing services	<ul style="list-style-type: none">• For employers with under 500 full-time employees, measured as average employment in 2019, the credit applies to wages paid to all employees• For employers with more than 500 full-time employees, the credit only applies to wages paid to employees during the time they weren't providing services



Employee Retention Credit

CALCULATING THE CREDIT

- | | |
|--|--|
| <ul style="list-style-type: none">• The credit is equal to 50% of qualified wages paid to an employee after March 12, 2020, in each qualifying calendar quarter, up to a total of \$10,000 for all quarters, per employee. The credit may be worth up to \$5,000 per eligible employee• Qualified wages, for purposes of this program, include qualified health plan expenses incurred by the employer. | <ul style="list-style-type: none">• The credit is equal to 70% of qualified wages paid to an employee after December 31, 2020, in each qualifying calendar quarter, up to a total of \$10,000 per quarter, per employee. The credit may be worth up to \$14,000 per eligible employee• Qualified wages, for purposes of this program, include qualified health plan expenses incurred by the employer |
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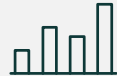
IRS Update



FY 2021 TE/GE Workplan



**STRENGTHEN
COMPLIANCE
ACTIVITIES**



**LEVERAGE
TECHNOLOGY &
DATA ANALYTICS**



**IMPROVE
OPERATIONAL
EFFICIENCIES**



**ENSURE
AWARENESS AND
COLLECTIVE
UNDERSTANDING**



**MAINTAIN A
TAXPAYER-
FOCUSED
ORGANIZATION**



**DEVELOP OUR
WORKFORCE**



2021 Compliance Strategies for TEOs

Worker Classification

Employee Plans

- Required Minimum Distributions in Large Defined Benefit Plans
- Earned Income for Self-Employed Plans
- Participant Loans

Excise Tax on Excess Comp

- under-report income
- over-report charitable contribution

Arbitrage Violations

Form W2/1099 matches

CP2100 Backup Withholding Notice



2020 – 2021 Priority Guidance Plan

- Tax Cuts and Jobs Act
 - UBIT Silos: Final Regulations (Completed 11/22/20)
 - Final regulations under §4960: excess compensation (Completed January 2021)
- General Guidance
 - Rev. Proc. 80-27 regarding group exemption letters. Notice 2020-36 was published on May 18, 2020.
 - circumstances under which an LLC can qualify for recognition under §501(c)(3).
 - deadline relief in response to the COVID-19 pandemic for applicable hospital organizations that are required to meet the community health needs assessment (CHNA) requirements under §501(r)(3) of the Code.
 - Final regulations on §509(a)(3) supporting organizations.
 - Guidance under §4941 regarding a private foundation's investment in a partnership in which disqualified persons are also partners.
 - Regulations regarding the excise taxes on donor advised funds and fund management.



Other Tax Updates



The Taxpayer Certainty and Disaster Relief Act of 2019

- Signed December 20, 2019
- Retroactively repealed the parking tax -- a provision that classified the following as UBI:
 - Transportation benefits
 - Qualified parking facilities
 - On-premises athletic facilities
- IRS released instructions for tax-exempt organizations who paid tax on a 2017 or 2018 form 990-T to claim a refund or credit of UBIT paid in those years
- Removed the AGI limits for cash gifts to a public charity supporting disaster relief
 - Eligible donations from 1/1/18 – 2/18/2020
 - Election to be filed



Electronic Filing Requirements

- Form 990 and Form 990-PF must be e-filed
- Effective for years beginning on or after July 2, 2019
- “Application pending” e-filing for 2020 forms
- Form 990-T and Form 4720 e-filing required for 2020 forms
 - Separate Forms 4720 required for excise tax reporting
- Form 990-EZ e-filing mandate may be delayed up to 2 years for undue burden
- Form 1023, application for exemption, now required to be completed and submitted through Pay.gov



SECURE Act Provisions

The SECURE Act established an across-the-board 1.39% excise tax on net investment income of Private Foundations, as opposed to the two-tier excise tax previously imposed where foundations were taxed at either 1% or 2%

New 1.39% tax rate goes into effect for taxable years beginning after **12/20/2019**

IRAs – disallows contributions to an IRA for individuals > 70.5 years to be rolled to charity



Donor Advised Funds

Expecting regulations which may include:

- Distribution from a DAF to subsidize donor's attendance in charity-sponsored event
- Allowing a DAF distribution to fulfill a donor's pledge
- Flow through reporting of donors to identify situations which may circumvent the public support percentages
- Potentially limiting private foundation's distributions to DAFs
- States are seeing proposed legislation to require reporting of disbursements on a fund-by-fund basis



Dynamex / AB5 Update

April 2018 – California Supreme Court created a new standard for California that presumes workers are employees instead of independent contractors

September 2019 – AB5 signed into place, codifying and clarifying decision

Hiring business must demonstrate the worker meets all 3 of the following:

1. They're free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact
2. They perform work that's outside the usual course of the hiring entity's business
3. They are customarily engaged in an independently established trade, occupation, or business of the same nature as that which the hiring entity performs

January 1, 2020 - Law went into effect



Other Topics

- IRS released FAQs on contribution of virtual currency, and receipt by the charity @ www.irs.gov
- Hiring credits (WOTC, empowerment zone) have been extended through 2020
- IRS Form 1099-NEC replaces Form 1099-MISC, box 7 for non-employee compensation reporting for 2020 payments
- Mayo Clinic ruled to qualify as a school and therefore excludes debt financed income from UBTI
- Schedule B donor info required for §§501(c)(3) and 527 orgs, not for other Form 990 filers; states may still require the information



Group Exemption Rulings

Notice 2020-36, issued May 1, 2020

Apply to both new and pre-existing group rulings

IRS not accepting requests as of June 17, 2020 until final revenue procedures issued

Central organization requirements

- Have at least 5 subordinate organizations
- Only one group exemption letter allowed per central organization
- General supervision and control
- Supplemental group ruling information due 30 days after central organization's year end



Group Exemption Rulings (*continued*)

Subordinate organizations requirements

- Authorization to central organization
- Described in same paragraph of Section 501(c) as central organization
- Section 501(c)(3) subordinates must have same public charity status*
- Similar purpose based on National Taxonomy of Exempt Entities (NTEE) code for non-Section 501(c)(3) organizations*
- Uniform governing instrument*
- Certain organizations not eligible to be subordinate organizations

*Does not apply to pre-existing subordinate organizations



Remote Employees

1. Do you know where people are?
2. Is the move temporary or permanent?
3. Is there a state withholding obligation?
 - a. Reciprocity agreements
 - b. Coronavirus exception

AICPA chart on state tax filing guidance for Coronavirus (542 pages)	https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/coronavirus-state-filing-relief.pdf?cid=referral:aicpainsights:covidstatefilingguidance:taxcomms:aicpa&utm_medium=referral&utm_source=aicpainsights&utm_campaign=covidstatefilingguidance&utm_content=taxcomms
State tax agencies	https://www.taxadmin.org/state-tax-agencies



Tax Cuts and Jobs Act Updated Guidance



Status of Tax Reform Provisions

IRC §512(a)(7) Treating employer provided parking as UBI	Repealed December 2019
IRC §512(a)(6) UBI activity silo-ing	Final regulations issued December 2020
IRC §4960 Excise tax on compensation > \$1 million	Final regulations issued January 2021
IRC §4968 1.4% excise tax on NII of private colleges and universities and their related organizations	Final regulations issued January 2021



IRC §512(a)(6) - Separate Trade or Business

Proposed regulations issued April 2020

Final regulations issued November 2020

- A 2-digit NAICS code can be used to determine if there are separate trades or businesses
- Final regulations clarified that the determination of which 2-digit code is based on the more specific NAICS code, such as at the 6-digit level, that describes the activity
- Separate geographic activities with the same NAICS code will be combined
- Once a code is chosen, it can't be changed
- To determine public support test, exempt organizations can use either its UBTI calculated under the silo rules or its UBTI calculated in the aggregate



Two-digit NAICS Codes

11: Agriculture, forestry, fishing and hunting

21: Mining, quarrying, and oil and gas extraction

22: Utilities

23: Construction

31–33: Manufacturing

42: Wholesale trade

44–45: Retail trade

48–49: Transportation and warehousing

51: Information

52: Finance and insurance

53: Real estate and rental and leasing

54: Professional, scientific and technical services

55: Management of companies and enterprises

56: Administrative and support

61: Educational services

62: Health care and social assistance

71: Arts, entertainment and recreation

72: Accommodation and food services

81: Other services (except public administration)

92: Public administration



Identifying Special Trade or Businesses

- Expense allocations...More guidance to come...
- Gross-to-gross method is **not** a reasonable allocation (unless the amount charged is the same for related and unrelated services/products)
- Charitable contributions will be calculated after §512(b)(6) silos are calculated
- Pre-2018 NOLs will be used before post-2017 NOLs



IRC §512(a)(6) – Aggregation Rules for the “Investment” Silo

All UBI from these sources can be aggregated:

Qualified partnership interest (QPI)

- Meets de minimis or **significant participation (FKA control test)** test, or
- Lower tiered partnership under the look through rule

Debt financed income under §512(b)(4)

S Corporations meeting the de minimis or **significant participation (FKA control test)** test

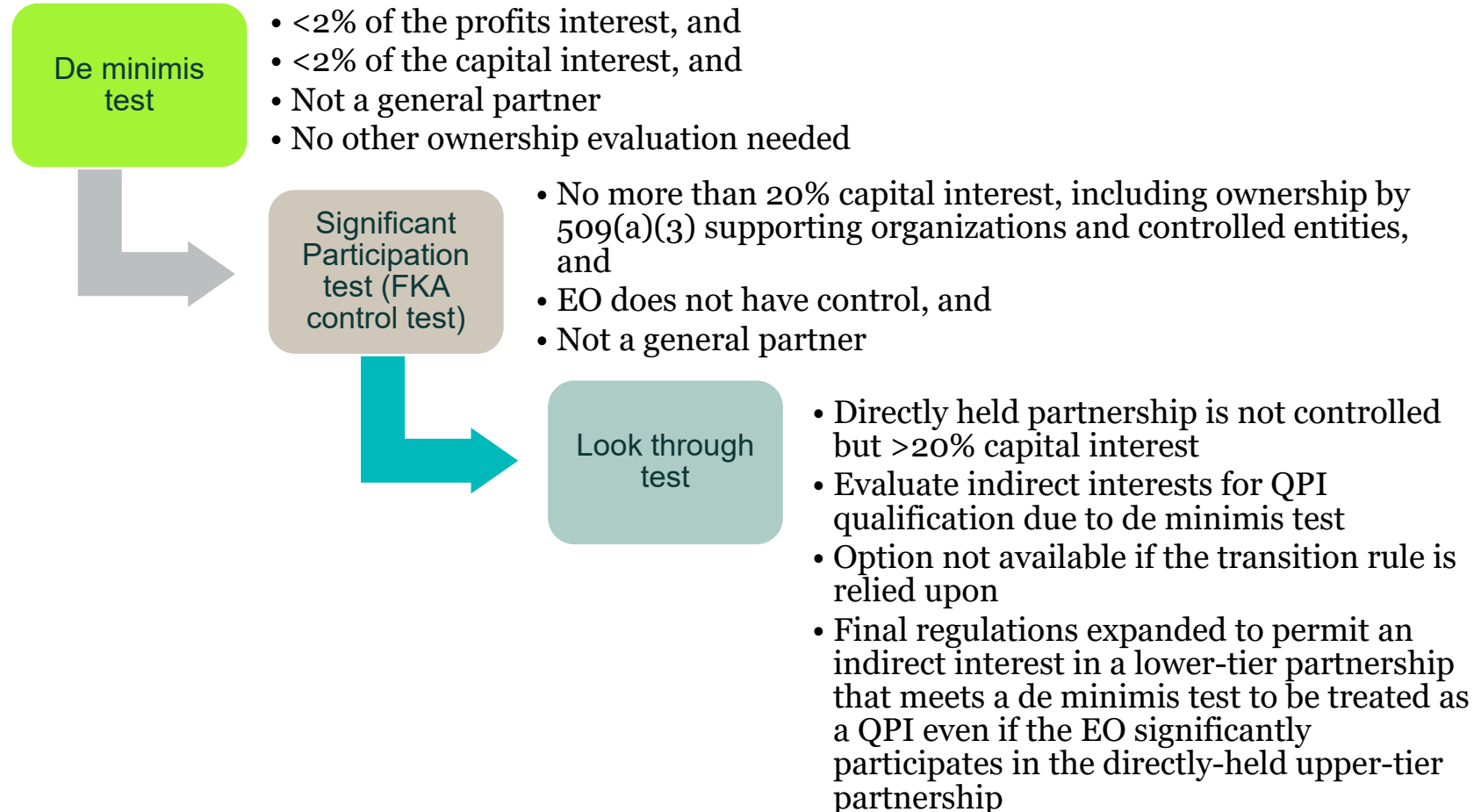
UBI from these sources cannot be aggregated:

Payments from controlled entities are aggregated by payer; not included in investment silo

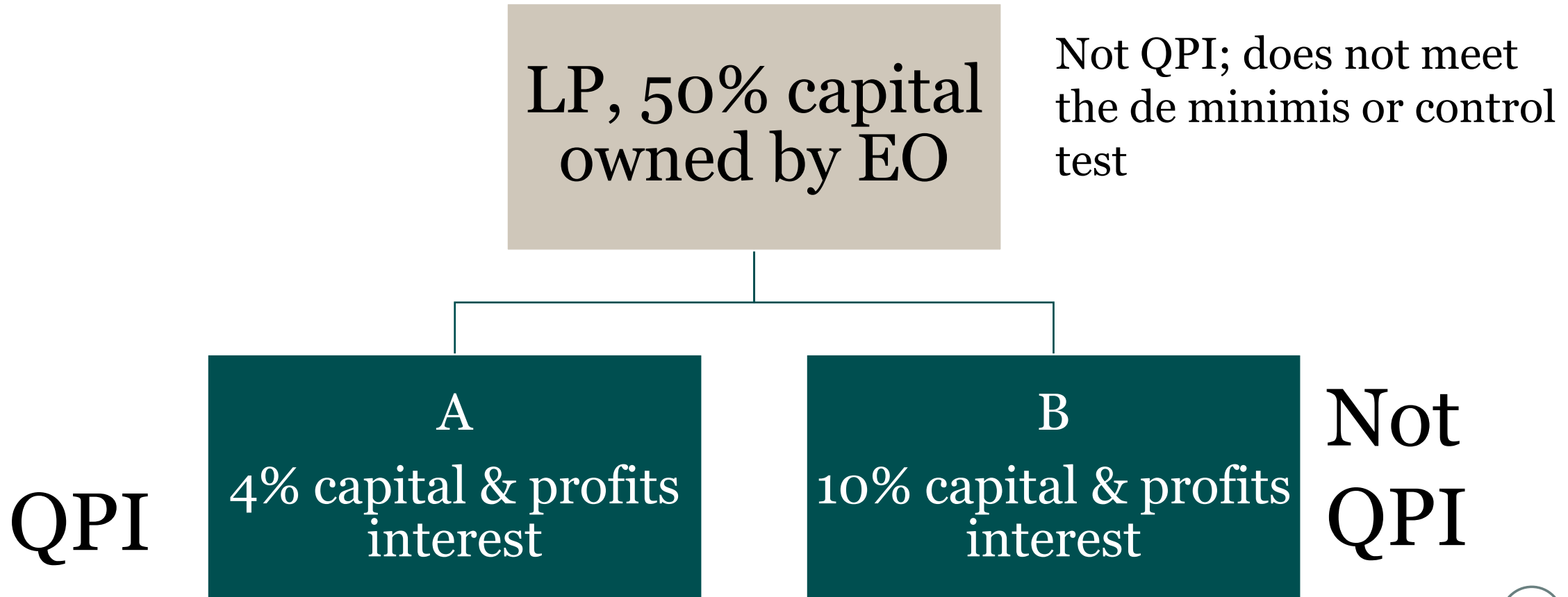
Partnership or S corps that are not qualified



IRC §512(a)(6) – Partnership Aggregation (QPI)



QPI – Look-Through Rule



Excise Tax on Excess Compensation and Parachute Payments

Final regulations issued January 11, 2021

Imposes a 21% excise tax on remuneration in excess of \$1 million and excess parachute payment paid by an applicable tax-exempt organization (ATEO) to any covered employee

ATEOs include

- Organizations exempt under Section 501(a)
- Section 521(b)(1) farmers' cooperative organizations
- Orgs that have income excluded from tax under Section 115(1), and
- Political organization described in Section 527(e)(1)

Governmental entities are excluded, unless: (i) it has a 501(c)(3) ruling, or (ii) relies on Section 115 to exclude income from tax



Excess Compensation Final Regulations (continued)

Covered employees include a current or former employee who:

- Is one of the exempt organization's five highest compensated employees for the year, or
- Was a covered employee of the organization or any predecessor for any preceding tax year beginning after December 31, 2016.
 - No sunset/time limit on covered employees, even if others join the group; once a covered employee, always a covered employee
- Excludes individuals who meet an exception:
 - The employee is a volunteer to the ATEO, and provided no more than 10% of the employee's total hours of service to the ATEO and related ATEOs, or
 - Fewer than 100 hours of annual services to the ATEO and all related ATEOs, or
 - The individual was not paid or granted a legally binding right to nonvested remuneration by the ATEO or any related ATEO and performed services for less than 50% of total hours worked.



Excess Compensation Proposed Regulations (continued)

What Remuneration is Covered?

- Tax applies to “remuneration” in excess of \$1 million paid to a covered employee and to excess parachute payments to a covered employee.
- Remuneration means wages, including comp from related organizations (including governmental or taxable organizations)
- Does NOT include compensation paid to licensed medical professionals for medical services.
- Does NOT include designated Roth IRA contributions
- Does NOT include amounts that aren’t taxable under IRC Section 7872(c)(3), which covers compensation-related loans falling under a \$10,000 *de minimis* exception.





Q & A





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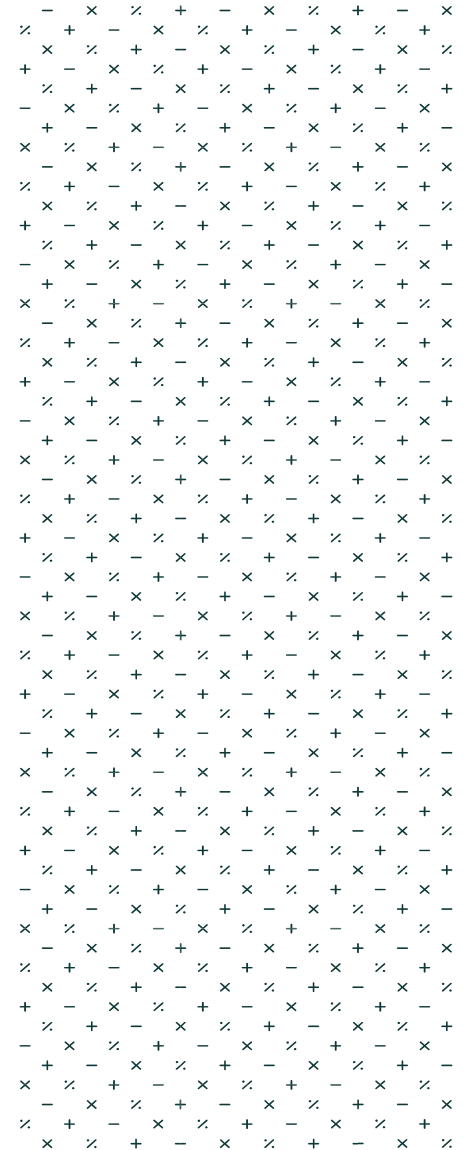
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