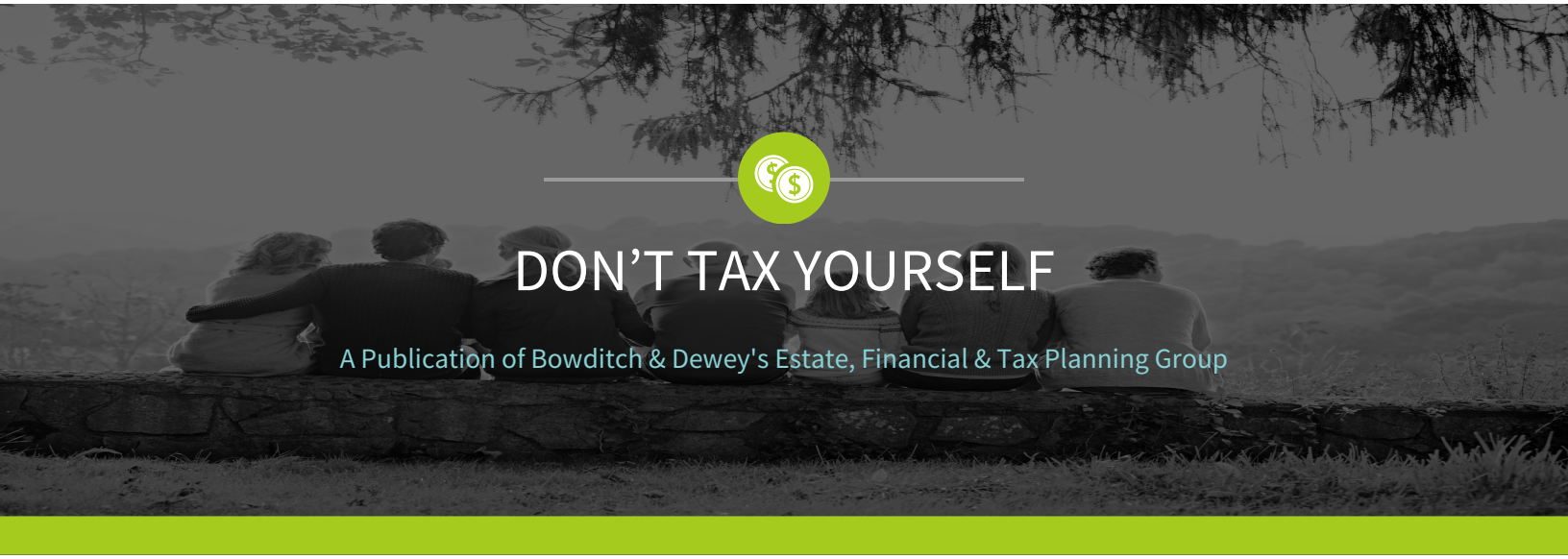


DON'T TAX YOURSELF

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Consolidated Appropriations Act Clarifies CARES Act Tax Measures and Adds New Provisions

BY BOWDITCH & DEWEY • JANUARY 21, 2021

On December 27, 2020, Congress passed the 5,593 page Consolidated Appropriations Act. The "Act" extends and clarifies several COVID-19 tax-related measures passed as part of the CARES Act and adds several new tax provisions relevant to businesses:

DEDUCTIONS FOR PPP RELATED EXPENSES

The Act allows a deduction for Paycheck Protection Program (PPP) loan-related expenses. PPP loans are used to cover payroll expenses and other enumerated operating costs (e.g., rent, utilities) that can be forgiven if the borrower meets certain payroll and employment retention criteria. According to two recent IRS rulings, business expenses that would normally be deductible in computing taxable income would not be deductible if the taxpayer uses funds from a forgiven loan to pay such expenses. The Act clarifies that such expenses are tax-deductible.

DEFERRAL OF SOCIAL SECURITY TAXES

Under the Act, any employee social security taxes deferred pursuant to the President's executive order issued in August 2020 can be deferred until December 31, 2021 (rather than April 1, 2021 as provided under the executive order). Any deferred amount must now be withheld from the employee wages and repaid ratably during the twelve-month period between January 1, 2021 and December 31, 2021.

PAID SICK LEAVE UNDER FFCRA

The Act extends through March 31, 2021 payroll tax credits for employers who provide: (i) paid sick leave for an employee quarantined related to possible COVID-19 symptoms (up to 80 hours); and (ii) family leave for childcare related to COVID-19 (up to 10 weeks). Such credits were originally available until December 31, 2020 under the Families First Coronavirus Response Act (FFCRA). As of January 1, 2021, employers are no longer required to provide such paid sick leave to employees for COVID-19 symptoms.

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BUSINESS MEAL DEDUCTIONS

The Act provides that 100% of expenses for food and beverages provided by a restaurant are deductible if the expense is paid or incurred in 2021 and 2022.

BEER, WINE AND DISTILLED SPIRITS

The Act makes permanent a temporary reduction in the federal excise tax rate on beer, wine, and distilled spirits set to expire after December 31, 2020 (excise taxes reduced to $3.50 per barrel on the first 60,000 barrels and $16 on all subsequent barrels for domestic beer brewers producing fewer than 2 million barrels annually). The Act also allows beer to be transferred tax-free between bonded facilities, subject to regulations and increases the threshold alcohol content level for the application of excise tax rates.

Deduction For Energy Efficient Commercial Building Property

The energy-efficient commercial buildings property deduction under section 179D of the Code is made permanent, using updated American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Reference Standards for tax years beginning after December 31, 2020.

NEW MARKETS TAX CREDITS

The Act provides $5 billion in new markets tax credit limitation for each year from 2021 through 2025. No amount may be carried over to a calendar year after 2030.

WORK OPPORTUNITY CREDITS

The work opportunity credit (for members of targeted groups such as unemployed veterans) is extended for another five years, to apply to wages paid or incurred to an individual who begins work for the employer on or before December 31, 2025.

EMPOWERMENT ZONES

Empowerment zone designations (and, thus, the tax incentives applicable to empowerment zones) are extended for five additional years, through December 31, 2025.

RENEWABLE ELECTRICITY PRODUCTION TAX CREDIT

The renewable electricity production credit is extended, but only for electricity produced from renewable sources at one of the following types of facilities: wind facilities, closed-loop biomass facilities, open-loop biomass facilities, geothermal energy facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities. Construction of such facilities must begin on or before December 31, 2021.

ENERGY CREDIT (INVESTMENT TAX CREDIT)

The Act makes waste energy recovery property eligible for the energy credit component of the investment tax credit (sometimes referred to as the energy investment tax credit), effective for 2021 through 2023. It extends for four additional years the energy credit for electing offshore wind facilities, to facilities that begin construction through 2025 (previously applicable to facilities that begin construction through 2021). The Act extends by two additional years the phaseout of the energy credit for solar energy, fiber-optic solar, qualified fuel cell, and qualified small wind energy property.

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LOW-INCOME HOUSING TAX CREDIT

The Act establishes a 4% minimum credit rate for calculating credits related to acquisitions and housing bond-financed developments for purposes of the low-income housing tax credit, effective beginning in 2021. The Act provides additional housing credit allocations for qualified disaster zones.

For more information on the tax provisions of the Act, please contact Sandra O'Neill.

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