



# Tax News and Industry Updates

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### Further Consolidated Appropriations Act of 2020

#### Cross References

- Public Law 116-94

Signed into law on December 20, 2019, the Further Consolidated Appropriations Act of 2020 averted a government shutdown that would have begun on December 21, 2019. The appropriations act funds the federal government through September 30, 2020.

Included in the appropriations act are a number of tax law changes, including extenders, retirement plan funding and distribution reform, disaster relief, and certain

changes to some of the provisions contained in the Tax Cuts and Jobs Act (TCJA).

#### Extension of Expiring Provisions

The following provisions were extended through 2020 unless otherwise noted.

- Cancellation of qualified principal residence indebtedness exclusion from gross income that expired at the end of 2017.
- Mortgage insurance premiums deduction that expired at the end of 2017.
- Medical expense AGI limitation threshold reduced from 10% to 7.5% of AGI for all taxpayers for regular tax and for AMT purposes that expired at the end of 2018.
- Tuition and fees deduction that expired at the end of 2017.
- Indian Employment Credit that expired at the end of 2017.
- Race horse two years old or younger treated as 3-year property instead of 7-year property that expired at the end of 2017.
- Indian reservation property accelerated depreciation recovery periods that expired at the end of 2017.
- Empowerment zone tax incentives that expired at the end of 2017.
- Biodiesel and Renewable Diesel Fuels Credit that expired at the end of 2017 has been extended through the end of 2022.
- Second Generation Biofuel Producer Credit that expired at the end of 2017.
- Nonbusiness Energy Property Credit that expired at the end of 2017.

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- Alternative Motor Vehicle Credit for qualified fuel cell motor vehicles that expired at the end of 2017.
- Alternative Fuel Vehicle Refueling Property Credit that expired at the end of 2017.
- Electric Vehicle Credit for highway-capable 2-wheeled vehicles that expired at the end of 2017.
- Energy Efficient Home Credit that expired at the end of 2017
- Energy efficient commercial building property deduction that expired at the end of 2017.
- Alternative Fuel Excise Tax Credit that expired at the end of 2017.
- New Markets Tax Credit that expired at the end of 2019.
- Employer Credit for Paid Family and Medical Leave that expired at the end of 2019.
- Work Opportunity Credit that expired at the end of 2019.
- Health Coverage Tax Credit that expired at the end of 2019.

Other tax provision that were extended in the new law include the following:

- Black Lung Disability Trust Fund excise tax,
- Railroad Track Maintenance Credit,
- Mine Rescue Team Training Credit,
- 7-year recovery period for motorsports entertainment complexes,
- Expensing rules for certain qualified film and television and live theatrical productions,
- American Samoa Economic Development Credit,
- Credit for Electricity Produced from Certain Renewable Resources,
- Production Credit for Indian Coal Facilities,
- Special allowance for second generation biofuel plant property,
- Special rule for sales or dispositions to implement FERC or state electric restructuring policy for qualified electric utilities,
- Oil Spill Liability Trust Fund rate,
- Certain provisions related to beer, wine, and distilled spirits,
- Look-thru rule for related controlled foreign corporations.

### Setting Every Community Up for Retirement Enhancement Act (SECURE Act)

The Further Consolidated Appropriations Act of 2020 includes the SECURE Act, which contains the following changes to the retirement plan rules.

**Repeal of maximum age for traditional IRA contributions.** Under prior law, taxpayers who had attained age 70½ were prohibited from making contributions to their traditional IRAs. Congress recognizes that as Americans live longer, an increasing number continue employment beyond traditional retirement age.

Effective for tax years beginning after 2019, the age 70½ maximum age limitation for making deductible traditional IRA contributions no longer applies. Thus, taxpayers of any age can make deductible contributions to their traditional IRAs, provided all of the other IRA contribution rules are met. A similar rule has always applied to making nondeductible Roth IRA contributions.

This rule also modifies the rules for qualified charitable distributions (QCDs). In general, a taxpayer who is at least age 70½ can make a QCD of up to \$100,000 to a qualified charity. The qualified charitable distribution is not reported as income and is not reported as a charitable contribution (the two transactions cancel each other out).

Under the new law, the amount of any distributions not includible in gross income by reason of the QCD rules for a tax year must be reduced (but not below zero) by an amount equal to the excess of:

- 1) The aggregate amount of IRA deductions allowed to the taxpayer for all tax years ending on or after the date the taxpayer attains age 70½, over
- 2) The aggregate amount of reductions under this rule for all tax years preceding the current tax year.

**Increase in age for required beginning date for mandatory distributions.** Under current law, participants are generally required to begin taking distributions from their retirement plans by April 1 of the calendar year following the later of:

- 1) The calendar year in which the employee attains age 70½, or
- 2) The calendar year in which the employee retires.

The policy behind this rule is to ensure that individuals spend their retirement savings during their lifetime and not use their retirement plans for estate planning purposes to transfer wealth to beneficiaries. However, the age 70½ rule was first applied in the retirement plan context in the early 1960s and has never been adjusted to take into account increases in life expectancy.

Effective for distributions required to be made after December 31, 2019, with respect to individuals who attain age 70½ after December 31, 2019, the required minimum distribution age is increased from age 70½ to age 72.

A similar rule applies to the required beginning date for receiving distributions from an IRA. The age 70½ rule is changed to age 72.

A similar rule also applies to spouse beneficiaries and the special rules for more than 5% owners.

**Penalty-free withdrawals from retirement plans for individuals in case of birth of child or adoption.** Effective for distributions made after 2019, the 10% early withdrawal penalty does not apply to a distribution from an applicable eligible retirement plan if it is a qualified birth or adoption distribution. The aggregate amount

which may be treated as a qualified birth or adoption distribution cannot exceed \$5,000.

**Increase in credit limitation for small employer pension plan startup costs.** Small businesses are allowed a tax credit for up to three years for the costs associated with pension plan start-up costs.

Effective for tax years beginning after 2019, the new law increases the limitation.

**Small employer automatic enrollment credit.** The new law creates a new tax credit of up to \$500 per year to employers to defray startup costs for new section 401(k) plans and SIMPLE IRA plans that include automatic enrollment.

**Certain taxable non-tuition fellowship and stipend payments treated as compensation for IRA purposes.** Under prior law, stipends and non-tuition fellowship payments received by graduate and postdoctoral students were not treated as compensation and could not be used as the basis for IRA contributions. This was true even though such payments are includable in taxable income.

Effective for tax years beginning after 2019, the new law removes this obstacle to retirement savings by taking such amounts that are includable in income into account for IRA contribution purposes.

**Treating excluded difficulty of care payments as compensation for determining retirement contribution limitations.** Difficulty of care payments to home healthcare workers are exempt from taxation. Because such payments are not considered earned income, they are not considered compensation for purposes of the limitations on making contributions to defined contribution plans and IRAs.

Under the new law, nontaxable difficulty of care payments are treated as compensation for purposes of calculating the contribution limits to defined contribution plans and IRAs.

**Qualified cash or deferred arrangements must allow long-term part-time employees working more than 500 hours per year to participate.** Under prior law, employers generally could exclude part-time employees (employees who work less than 1,000 hours per year) when providing a defined contribution plan to their employees.

Under the new law, except in the case of collectively bargained plans, employers who maintain IRC section 401(k) plans must have a dual eligibility requirement under which an employee must complete either a one year of service requirement (with the 1,000-hour rule) or three consecutive years of service where the employee completes at least 500 hours of service per year.

**Multiple employer plans (MEPs).** MEPs allow small employers to band together to obtain more favorable pension

investment options. The new law makes MEPs more attractive by eliminating certain barriers to the use of MEPs and improving the quality of MEP service providers.

**Increase in 10% cap for automatic enrollment safe harbor after 1st plan year.** The 10% of employee pay cap for the automatic enrollment safe harbor provision that allows for automatic enrollment into a 401(k) plan to meet the nondiscrimination rules is increased to 15% of employee pay.

**Rules relating to election of safe harbor 401(k) status.** The legislation changes the non-elective contribution 401(k) safe harbor to provide greater flexibility, improve employee protection and facilitate plan adoption. The legislation eliminates the safe harbor notice requirement, but maintains the requirement to allow employees to make or change an election at least once per year. The bill also permits amendments to non-elective status at any time before the 30th day before the close of the plan year.

**Qualified employer plans prohibited from making loans through credit cards and other similar arrangements.** The new law prohibits qualified employer plans from making distributions of plan loans through credit cards or similar arrangements. The change is designed to ensure that plan loans are not used for routine or small purchases, thereby preserving retirement savings.

**Portability of lifetime income options.** Effective for tax years beginning after 2019, the new law permits qualified defined contribution plans, section 403(b) plans, or governmental section 457(b) plans to make a direct trustee-to-trustee transfer to another employer-sponsored retirement plan or IRA of lifetime income investments or distributions of a lifetime income investment in the form of a qualified plan distribution annuity, if a lifetime income investment is no longer authorized to be held as an investment option under the plan. The change permits participants to preserve their lifetime income investments and avoid surrender charges and fees.

**Treatment of custodial accounts on termination of section 403(b) plans.** Under the new law, not later than six months after December 20, 2019, the IRS must issue guidance under which if an employer terminates an IRC section 403(b) custodial account, the distribution needed to effectuate the plan termination may be the distribution of an individual custodial account in kind to a participant or beneficiary.

**Clarification of retirement income account rules relating to church-controlled organizations.** The new law clarifies individuals that may be covered by plans maintained by church-controlled organizations. Covered individuals 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.

**Special rules for minimum funding standards for community newspaper plans.** Community newspapers are generally family-owned, non-publicly traded, independent newspapers. The new law provides pension funding relief for community newspaper plan sponsors by increasing the interest rate to calculate those funding obligations to 8%. Additionally, the new law provides for a longer amortization period of 30 years from seven years. These two changes are designed to reduce the annual amount struggling community newspaper employers are required to contribute to their pension plan.

**Plan adopted by filing due date for year may be treated as in effect as of close of year.** The new law permits businesses to treat qualified retirement plans adopted before the due date (including extensions) of the tax return for the tax year to treat the plan as having been adopted as of the last day of the tax year. The additional time to establish a plan provides flexibility for employers that are considering adopting a plan and the opportunity for employees to receive contributions for that earlier year and begin to accumulate retirement savings.

**Combined annual report for group of plans.** The new law directs the IRS to effectuate the filing of a consolidated Form 5500 for similar plans.

**Disclosure regarding lifetime income.** The new law requires benefit statements provided to defined contribution plan participants to include a lifetime income disclosure at least once during any 12-month period.

**Fiduciary safe harbor for selection of lifetime income provider.** The new law provides certainty for plan sponsors in the selection of lifetime income providers, a fiduciary act under ERISA. Under the new law, fiduciaries are afforded an optional safe harbor to satisfy the prudence requirement with respect to the selection of insurers for a guaranteed retirement income contract and are protected from liability for any losses that may result to the participant or beneficiary due to an insurer's inability in the future to satisfy its financial obligations under the terms of the contract.

**Modification of non-discrimination rules to protect older, longer-service participants.** The new law modifies the nondiscrimination rules with respect to closed plans to permit existing participants to continue to accrue benefits. The modification is designed to protect the benefits for older, longer-service employees as they near retirement.

**Modification of PBGC premiums for CSEC plans.** In 2014, different funding rules were adopted for three types of pension plans: single-employer, multiemployer

and CSEC plans. The new law establishes individualized rules for calculating PBGC premiums. For CSEC plans, the new law specifies flat-rate premiums of \$19 per participant, and variable rate premiums of \$9 for each \$1,000 of unfunded vested benefits.

**Modification of required distribution rules for designated beneficiaries.** The new law modifies the required minimum distribution rules with respect to defined contribution plan and IRA balances upon the death of the account owner. Distributions to individuals other than the surviving spouse of the employee (or IRA owner), disabled or chronically ill individuals, individuals who are not more than 10 years younger than the employee (or IRA owner), or child of the employee (or IRA owner) who has not reached the age of majority are generally required to be distributed by the end of the tenth calendar year following the year of the employee or IRA owner's death.

### **Benefits Provided to Volunteer Firefighters and Emergency Medical Responders**

Effective for tax years beginning after 2007 and before 2011, for volunteers who performed services for a qualified volunteer emergency response organization, gross income did not include the following.

- Rebates or reductions of property or income taxes provided by a state or local government for providing services as a member of a qualified emergency response organization.
- Qualified payments made by a state or local government for providing services to the emergency response organization up to \$30 for each month the member performs such services.

The new law reinstates this provision for one year only for the 2020 tax year. The new law also increases the exclusion for qualified reimbursement payments from \$30 to \$50 for each month during which a volunteer performs services.

### **Expansion of Section 529 Plans**

Effective for distributions made after 2018, the new law expands 529 education savings accounts to cover costs (including required fees, books, supplies, and equipment) associated with registered apprenticeship programs and up to \$10,000 of principal or interest payments on any qualified education loan (including those for siblings).

### **Kiddie Tax**

TCJA attempted to simplify the Kiddie Tax by applying ordinary and capital gains rates applicable to trusts and estates to the net unearned income of a child rather than the marginal tax rate of the child's parents. The new law repeals this provision for tax years beginning after 2019. The law also allows a taxpayer to retroactively elect the repeal of this rule to apply for either or both

of the 2018 and 2019 tax years, thus effectively allowing taxpayers to use the old rules in effect prior to the changes made by TCJA.

## Revenue Provisions

To help pay for the cost of various tax provisions included in the new law, the following penalties are increased.

- Increase in penalty for failure to file.
- Increased penalties for failure to file retirement plan returns.
- Increase information sharing to administer excise taxes.

## Parking Lot Rule Repealed for Tax-Exempt Organizations

TCJA disallows a deduction for expenses associated with providing any qualified transportation fringe (QTF) to employees of the taxpayer. A business that owns an adjacent parking lot used by the general public and its employees may be required to allocate a portion of its costs as nondeductible under guidance issued by the IRS. Parking expenses are included in the definition of a nondeductible QTF.

TCJA also required tax-exempt organizations to pay tax on the corresponding increase in the amount of unrelated business taxable income (UBTI) that is attributable to the nondeductible parking expenses. Apparently this meant that a church, exempt from taxation as an IRC section 501(c)(3) organization would have had to pay UBTI on the value of parking spaces allocated to church employees. After complaints from members of the religious community, Congress decided to repeal this provision as if it was never included in TCJA.

## Repeal of Various ACA Provisions

The new law also repeals the following provisions under the Affordable Care Act (ACA).

**Medical device excise tax.** Effective for sales after 2019, the manufacturers excise tax on medical devices is repealed.

**Annual fee on health insurance providers.** Effective for calendar years after 2020, the fee on health insurance providers is repealed.

**Excise tax on high cost employer-sponsored health coverage.** Effective for tax years beginning after 2019, the excise tax on high cost employer-sponsored health coverage (Cadillac plans) is repealed.

## Disaster Tax Relief

The Further Consolidated Appropriations Act of 2020 also includes the Taxpayer Certainty and Disaster Tax Relief Act. This new law includes disaster tax relief for federally-declared disaster areas that generally occurred during 2018 and 2019. The disaster tax relief is essentially

the same as is regularly provided in the wake of major disasters like the various hurricane disaster tax relief provisions and the California wildfire disaster tax relief provisions that had been made available in prior years. However, unlike prior disaster tax relief provisions, the disaster relief included in this new law applies to all federally-declared disaster areas for which a major disaster occurred during the period beginning on January 1, 2018 and ending on January 19, 2020.

**Qualified disaster.** For purposes of the disaster tax relief provisions under the new law, the term “qualified disaster” means a disaster that occurred in a disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (federally-declared disaster area).

**Incident period.** For purposes of the disaster tax relief provisions under the new law, the term “incident period” means, with respect to any qualified disaster, the period specified by the Federal Emergency Management Agency as the period during which such disaster occurred, except that such period cannot begin before January 1, 2018, or end after January 19, 2020.

**No double benefit for the California wildfire disaster area.** The new law denies a double benefit for any disaster tax relief provisions that are available to a taxpayer under the Bipartisan Budget Act of 2018, which provided similar disaster relief for the California wildfires. Thus, taxpayers eligible for the California wildfire disaster tax relief provisions are not eligible for the disaster tax relief provisions in this new law.

**Qualified disaster distribution.** The term “qualified disaster distribution” means any distribution from an eligible retirement plan made:

- On or after the first day of the incident period of a qualified disaster and before June 17, 2020, and
- To an individual whose principal place of abode at any time during the above period of the qualified disaster is located in the qualified disaster area and who has sustained an economic loss by reason of the qualified disaster.

**10% early withdrawal penalty.** The 10% early withdrawal penalty does not apply to any qualified disaster distribution. For purposes of this penalty relief provision, a qualified disaster distribution for any tax year cannot exceed the excess of:

- \$100,000, over
- The aggregate amounts treated as qualified disaster distributions received for all prior tax years.

The above \$100,000 aggregate limitation applies separately to each qualified disaster.

**Repayment of qualified disaster distribution.** A qualified disaster distribution may, at any time during the 3-year period beginning on the day after the date the distribution is received, make one or more tax-free rollover contributions back into an eligible retirement plan of the taxpayer, provided the aggregate total of all rollovers does not exceed the amount of the qualified disaster distribution. The rollover contribution under this provision is treated as a direct trustee to trustee transfer.

**Income inclusion spread over 3-year period.** Any amount of a qualified disaster distribution that is required to be included in gross income for a tax year (because it is not rolled over) is included ratably over the 3-year period beginning with the year of distribution. The taxpayer can elect not to have this provision apply.

**Exemption from 20% withholding rules.** The mandatory 20% federal withholding rules for eligible rollover distributions from employer plans do not apply to qualified disaster distributions.

**Re-contributions of withdrawals for home purchases.** A taxpayer who receives a qualified distribution may re-contribute the amount back into an eligible retirement plan tax-free if it is re-contributed during the period beginning on the first day of the incident period of the qualified disaster and ending on June 17, 2020.

**Loans from qualified plans.** In general, taxpayers are allowed to take loans from their qualified retirement plans if the proceeds are used to purchase a main home, or repaid within five years. The maximum amount of the loan cannot exceed to the lesser of:

- \$50,000, or
- 50% of the present value (but not less than \$10,000) of the taxpayer's vested benefit under the plan.

In the case of any loan made to a qualified individual during the period beginning on December 20, 2019 and ending on June 17, 2020:

- The \$50,000 amount above is increased to \$100,000,
- The 50% of the vested benefit limit is increased to 100% of the vested benefit, and
- If the due date for any repayment period for any outstanding loans occurs during the period beginning on the first day of the incident period of such qualified disaster and ending on the date which is 180 days after the last day of such incident period, such due date shall be delayed by the later of 1 year, or June 17, 2020.

A qualified individual for purposes of the loan provisions means any individual whose principal place of abode is located in the qualified disaster area who has sustained an economic loss by reason of such qualified disaster.

**Employee Retention Credit.** Employers are eligible for an Employee Retention Credit equal to 40% of the qualified wages with respect to each eligible employee of the employer during the year. The credit is limited to \$6,000

per employee, reduced by the amount of qualified wages taken into account for any prior tax year.

**Qualified charitable contributions.** Special disaster relief provisions also apply to qualified contributions for disaster relief. The AGI limitations that generally apply to making deductible charitable contributions and the carryover of charitable contribution AGI limitation rules do not apply to qualified contributions.

Donations to IRC section 509(a)(3) organizations and donor advised funds do not qualify as qualified contributions.

**Qualified disaster-related personal casualty losses.** A net disaster loss means the excess of qualified disaster-related personal casualty losses over personal casualty gains. Qualified disaster-related personal casualty losses are losses which arise in a qualified disaster area on or after the first day of the incident period which are attributable to such qualified disaster.

Under the new law, the following rules apply to net disaster losses:

- Net disaster losses are not subject to the 10% of AGI limitation,
- Net disaster losses are deductible to the extent they exceed \$500 per casualty, and
- Net disaster losses may be added to the standard deduction if the taxpayer does not itemize deductions.

**Earned income special rule.** If the earned income of a qualified individual for the applicable tax year is less than the earned income for the preceding tax year, the qualified individual may elect to use the earned income for the preceding tax year as the earned income for the applicable tax year for purposes calculating the refundable portion of the Child Tax Credit and the Earned Income Credit.

## Other Tax Provisions

The new law also contains the following tax provisions:

- Automatic 60-day extension of filing certain deadlines in case of certain taxpayers affected by federally-declared disasters.
- Modifies the 2% rate to 1.39% for the excise tax on investment income of private foundations.
- Provides additional low-income housing credit allocations for qualified 2017 and 2018 California disaster areas.

## Not Included in the New Law

A provision that did not make it into the new law is a fix for the so-called retail glitch, where leasehold improvement property outside the 15-year recovery property category for depreciation purposes is subject to a 39-year recovery period.

