SUMMARY OF THE TAX PROVISIONS OF THE CONSOLIDATED APPROPRIATIONS ACT

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On December 21, 2020, Congress passed "The Consolidated Appropriations Act, 2021" (the "Act"), which President Trump signed into law on December 27, 2020. The Act is an omnibus spending and coronavirus relief package that includes over $900 billion for various coronavirus relief programs, $1.4 trillion in government funding, and a variety of tax provisions, including extensions of expiring tax provisions and extensions and expansions of certain pandemic tax relief provisions, among others. This alert provides a summary of many of the relevant tax provisions of the Act.[1]

1 The materials in this summary were prepared by Shutts & Bowen LLP for informational purposes only regarding major tax provisions of the Act and should not be construed as legal advice. This information is not intended to create, nor does receipt or review of it constitute or create an attorney-client relationship. Our lawyers would be happy to discuss the Act and provide individualized advice to clients upon request.

COVID-RELATED TAX RELIEF ACT OF 2020

- **Additional 2020 Recovery Rebates:** The COVID-related Tax Relief Act of 2020 (the "COVIDTRA") as part of the Act, provides for additional rebates for individuals. In general, each individual single filer is entitled to $600, while married couples that file jointly are entitled to $1,200. There is an additional $600 provided for each qualifying child. However, there is a phase out of the rebates for single filers with an adjusted gross income over $75,000 and joint filers with an adjusted gross income greater than $150,000. Different adjusted gross income limitations apply for those that file as head of household. The rebate is not available to nonresident aliens or dependents of other taxpayers.

- **Certain Deferred Payroll Taxes:** On August 8, 2020, President Trump issued a memorandum that: (i) allowed employers to defer withholding employees' share of social security taxes from September 1, 2020, through December 31, 2020; and (ii) required employers to increase withholding and pay the deferred unpaid tax amounts ratably from wages and compensation paid between January 1, 2021, and April 31, 2021. The COVIDTRA extends the repayment period through December 31, 2021, and provides that penalties and interest on deferred unpaid tax liabilities will not begin to accrue until January 1, 2022.

- **Educator Expense Tax Deduction:** The COVIDTRA requires the Secretary of the Treasury to issue regulations or other guidance by February 28, 2021, clarifying that personal protective equipment, disinfectant, and other supplies used for the prevention of the spread of COVID-19 are treated as eligible expenses for purposes of the educator expense deduction under Section 62(a)(2)(D)(ii). Such regulations or other guidance will apply retroactively to March 12, 2020.

- **Paycheck Protection Program Loans:** The COVIDTRA clarifies that: (i) a taxpayer's gross income excludes any amounts that would arise from the forgiveness of a Paycheck Protection Program ("PPP") loan; (ii) deductions are allowed for otherwise deductible expenses paid for with proceeds of a forgiven PPP loan; and (iii) tax basis and other attributes will not be reduced as a result of a forgiven PPP loan. This provision is effective as of the date of the enactment of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), and provides similar treatment for so-called "Second Draw PPP Loans" that were authorized under the Act.

- **Certain Loan Forgiveness and Other Business Financial Assistance:** The COVIDTRA clarifies that a taxpayer's gross income excludes the forgiveness of certain loans, emergency Economic Injury Disaster Loans ("EIDL") grants, and certain loan repayment assistance provided under the CARES Act. Furthermore, deductions that are allowed for otherwise deductible expenses paid with the amounts excluded from gross income, tax basis, and other attributes will not be reduced as a result of such amounts being excluded from gross income. This provision provides similar relief for other programs and is effective as of the date of the enactment of the CARES Act.

- **Retirement Distributions and Loans - Money Purchase Pension Plans:** Under the CARES Act, eligible taxpayers are permitted to take $100,000 of distributions from their qualified retirement accounts without incurring the 10% early withdrawal penalty on such distributions. The amount of a distribution will generally be included in income ratably over three years. For these purposes, an eligible taxpayer is an individual: (i) who has been diagnosed with COVID-19; (ii) whose spouse or dependent has been diagnosed with COVID-19; or (iii) who has experienced adverse financial consequences from being quarantined, furloughed, laid off, having work hours reduced, unable to work due to lack of child care, reduction of business hours, or other factors to be determined by Treasury. Taxpayers are also generally permitted to borrow up to $100,000 from their qualified retirement plans. In addition, the CARE Act waives required minimum distributions for certain retirement plans for 2020. The COVIDTRA clarifies that money purchase pension plans are included in the retirement plans qualifying under the CARES Act, and applies retroactively as if it was included in the enactment of the CARES Act.

- **Paid Sick Leave and Family Leave Credits:** The COVIDTRA extends the refundable payroll tax credits for paid sick and family leave enacted under the Families First Coronavirus Response Act (the "FFCRA") through March 31, 2021, as if the corresponding employer mandates were extended through that date. The COVIDTRA also makes certain technical changes that coordinate the definitions of qualified wages within the paid sick leave, paid family and medical leave, and the exclusion of such leave from employer Old-Age, Survivors, and Disability tax. This provision is effective as of the date of the enactment of the FFCRA.

TAXPAYER CERTAINTY AND DISASTER TAX RELIEF ACT OF 2020

- **Employee Retention Tax Credit:** The CARES Act provides for an employee retention tax credit ("ERTC") that is a refundable payroll tax credit, which is a maximum of $5,000 per employee (50% of a maximum of $10,000 of qualified wages, including allocable health plan expenses). The ERTC generally applies to a business that has suffered a significant decline in gross revenues (i.e., less than 50% of gross receipts from the same quarter in the prior year) or had business partially or completely suspended. For employers with more than 100 employees, the only wages that are eligible are those that the employer pays employees who are not providing services due to the suspension of the business or a drop in gross receipts as described above. However, for employers with 100 or fewer employees, all wages paid qualify. The Taxpayer Certainty and Disaster Tax Relief Act of 2020 (the "TCDTRA") extends, expands and provides technical corrections to the ERTC under the CARES Act as follows: (i) the ERTC rate is increased from 50% to 70% of qualified wages; (ii) the significant decline in gross receipts threshold is reduced from 50% to 20%; (iii) a safe harbor is created for employers to use prior quarter gross receipts to determine eligibility; (iv) the limit on creditable wages per employee is increased from $10,000 per year to $10,000 per quarter; (v) the employer qualified wage base is increased from 100 or fewer employees to 500 of fewer employees; (vi) certain governmental employers may claim the ERTC; (vii) businesses with 500 or fewer employees may advance the ERTC at any point during the quarter based on wages paid in the same quarter in the prior year; (viii) allows certain new employers that were not in existence during all or part of 2019 to be able to claim the ERTC. Furthermore, the TCDTRA retroactively applies to the ERTC under the CARES Act by: (i) clarifying the determination of certain gross receipts for tax-exempt organizations; (ii) clarifying that group health plan expenses can be considered qualified wage even when no other wages are paid to such employee (consistent with IRS guidance); and (iii) providing that employers receiving PPP loans may still qualify for the ERTC with respect to wages that are not paid for with proceeds from forgiven PPP loans.

- **Business Meals Deduction:** The TCDTRA increases the Section 274(n)(2) deduction for food and beverage business expenses incurred in 2021 and 2022 from 50% to 100%, so long as the food or beverages are provided by a restaurant (i.e., carry-out and delivery meals are generally included).

- **Charitable Deductions:** Under the CARES Act, taxpayers are permitted an "above the line" charitable deduction of up to $300. Taxpayers that itemize deductions would be permitted to deduct up to 100% of their adjusted gross income for 2020. The TCDTRA extends and modifies the "above the line" charitable deduction rules provided under the CARES Act to 2021 and increases the maximum amount that may be deduction a to $600 for married couples filing jointly. The TCDTRA also extends the corporate and itemized charitable deduction rules provided under the CARES Act to 2021.

- **Low-Income Housing Credit:** The TCDTRA makes permanent a 4% floor for calculating low-income housing tax credit rate under Section 42.

- **Certain Residential Rental Property:** The TCDTRA provides that a 30-year recovery period applies for residential rental property placed in service before January 1, 2018, that is held by an electing real property trade or business under Section 163(j)(7)(B).

- **Partial Plan Termination:** The TCDTRA modifies the current partial plan termination rules under Section 411(d)(3) to ensure that partial termination does not occur so long as the number of active participants as of March 31, 2021, is at least 80% of the number of active participants covered by the plan on March 13, 2020.

- **Determination of Earned Income:** The TCDTRA provides that taxpayers may look to earned income from the immediately preceding year for purposes of determining the Section 32 Earned Income Tax Credit and the Section 24(d) Additional Child Tax Credit for the 2020 tax year.

- **Permanent Extensions of Temporary Provisions:** The TCDTRA as part of the Act, makes permanent a number of provisions, including, but not limited to, the following:
  - Section 213(f) reduction in medical expense deduction floor, which allows taxpayers to claim an itemized deduction for unreimbursed medical expenses that exceed 7.5% of adjusted gross income instead of 10%;
  - Section 179D deduction for energy efficient improvements to commercial buildings, which contains prospective modifications relating to inflation adjustments and energy efficiency standards; and
  - Reduction of excise taxes and simplified record-keeping requirements for beer, wine, and distilled spirits.

- **Long-Term Extensions of Temporary Provisions:** The TCDTRA provides for five-year extensions (i.e., through 2025) to a number of provisions, including, but not limited to, the following:
  - Section 954(c)(6) look-thru rule for the treatment of dividends, interest, rents, and royalties received or accrued from related controlled foreign corporations under the foreign personal holding company rules;
  - Section 45D New Markets Tax Credit;
  - Section 51 Work Opportunity Tax Credit;
  - Section 108(a)(1)(E) gross income exclusion for the discharge of qualified principal residence indebtedness, which reduces the maximum amount that may be excluded from $2,000,000 to $750,000;
  - Section 1391(d) empowerment zone designation; and
  - Section 127(c)(1)(B) exclusion for certain student loan payments made by an employer on behalf of an employee.

- **Short-Term Extensions of Temporary Provisions:** The TCDTRA provides for one-year extensions (i.e., through 2021) to a number of provisions, including, but not limited to, the following:
  - Section 163(h) treatment of qualified mortgage insurance premiums as qualified residence interest for purposes of the mortgage interest deduction;
  - Section 35 72.5% health coverage tax credit; and
  - Section 168(e)(3)(A) three-year recovery period for racehorses two years old or younger placed in service through 2021.

- **Additional Extensions of Temporary Provisions:** The TCDTRA provides for two-year extensions to a number of provisions, including, but not limited to, the following:
  - Section 48 energy investment tax credit for certain solar and residential energy-efficient property through 2023; and
  - Section 25D credit for residential energy-efficient property, which includes qualified biomass fuel property expenditures through 2023.

If you would like additional information about any of the topics above, please contact Logan E. Gans, Esq. (LGans@shutts.com) or Eli R. Rodrigues, Esq. (ERodrigues@shutts.com).