# RECENT DEVELOPMENTS IN FEDERAL INCOME TAXATION

"Recent developments are just like ancient history, except they happened less long ago."

By

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On March 27, 2020, Congress passed and the President signed into law the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 ("CARES Act"). This $2 trillion economic-stimulus legislation enacted in response to the Coronavirus (COVID-19) pandemic provides, among other things, targeted tax relief for individuals and businesses including (i) a one-time rebate to taxpayers; (ii) modification of the tax treatment of certain retirement fund withdrawals and charitable contributions; (iii) a delay of employer payroll taxes and taxes paid by certain corporations; and (iv) other changes to the tax treatment of business income, interest deductions, and net operating losses. Another important aspect of the CARES Act is that it reverses or temporarily suspends certain of the more significant changes to the Code enacted by the 2017 Tax Cuts and Jobs Act.

**I. ACCOUNTING**

**II. BUSINESS INCOME AND DEDUCTIONS**

**A. Income**

**B. Deductible Expenses versus Capitalization**

**C. Reasonable Compensation**

**D. Miscellaneous Deductions**

**1. For now, some relief from the § 163(j) limitation on deducting business interest because Congress CARES!** The CARES Act, § 2306, redesignates Code § 163(j)(10) as subsection (11) and inserts a new Code § 163(j)(10) to increase the limit on deductions for business interest expense for 2019 and 2020. New Code § 163(j)(10) increases the § 163(j) limit for 2019 and 2020 in two ways. *First*, recall that Code § 163(j), as modified by 2017 Tax Cuts and Jobs Act, generally (but subject to significant exceptions) limits the deduction for business interest expense to the sum of: (1) business interest income, (2) 30 percent of "adjusted taxable income," and (3) floor plan financing interest. The term "adjusted taxable income" is defined essentially as earnings before interest, tax, depreciation and amortization (EBITDA) for 2018 through 2021, and then as earnings before interest and taxes (EBIT) for subsequent years. New Code § 163(j)(10), however, increases to 50 percent (instead of 30 percent) the "adjusted taxable income" component of the § 163(j) limitation for taxable years beginning in 2019 and 2020. Taxpayers are permitted to elect out of the increased percentage pursuant to procedures to be prescribed by the IRS. Second, new Code § 163(j)(10) permits eligible taxpayers to elect to substitute their 2019 "adjusted taxable income" for 2020 "adjusted taxable income" when determining the § 163(j) limitation for taxable years beginning in 2020. Special rules in new Code § 163(j)(10) apply to (i) the application of the business interest expense limitation to partnerships and partners for their 2019 and 2020 tax years and (ii) application of the limitation to short taxable years.

**E. Depreciation & Amortization**

**F. Credits**

**G. Natural Resources Deductions & Credits**

**H. Loss Transactions, Bad Debts, and NOLs**

**1. Those NOLs are not worth what they used to be (at least until 2026).** The 2017 Tax Cuts and Jobs Act, § 11012, amended § 461 by adding § 461(*l*), which disallows "excess business losses" for noncorporate taxpayers for taxable years beginning in 2018. Such "excess business losses" are determined after application of the passive loss rules of § 469. Essentially, as the authors read the statute, losses disallowed for a taxable year under § 461(*l)* are carried over to the next taxable year and become NOL carryforwards subject to revised § 172(a) (discussed below). Thus, the practical effect of § 461(*l*) appears to be a one-year deferral of "excess business losses." An "excess business loss" is defined as the amount by which a noncorporate taxpayer's aggregate trade or business deductions exceed aggregate gross income from those trades or businesses, plus $250,000 ($500,000 for joint filers). The term "aggregate trade or business deductions" apparently does not include § 172 carryforwards, so NOLs carried forward from 2017 and prior taxable years are not limited by new § 461(*l*). Such carryforwards are, however, limited by the changes made to § 172(a) (as discussed below). For partnerships and S corporations, new § 461(*l*) applies at the partner or shareholder level, and for farmers, the prior limitation on "excess farm losses" under § 461(j) is suspended so that only § 461(*l*) applies to limit such losses. After 2018, the cap on "excess business losses" is adjusted annually for inflation. Mercifully, new § 461(*l*) sunsets for taxable years beginning on or after January 1, 2026.

**a. Surely you jest . . . there's even more bad news for NOLs?** The 2017 Tax Cuts and Jobs Act, § 13302(a), amended § 172(b)(1) such that, for taxable years beginning in 2018, NOLs (except "farming losses" and NOLs of non-life insurance companies) no longer may be carried back two years, and any carried forward NOLs are capped at 80 percent of taxable income (computed without regard to NOLs). This change to § 172(a) is permanent.

**b. The good news: NOLs now are like BFFs; they stick with you until you die!** The 2017 Tax Cuts and Jobs Act, § 13302(b), amended § 172(b)(1)(A)(ii) so that NOLs may be carried forward indefinitely (except by non-life insurance companies) rather than being limited to 20 years as under pre-TCJA law. This change to § 172(b) is permanent.

**c. Wait for it . . . wait for it . . .** IR-2018-254 (12/18/18). Treasury and the IRS have yet to release any official administrative guidance concerning the above changes to the rules for NOLs. The only new information we have regarding the above-described changes is the foregoing news release.

**d. And . . . as the late, great "Emily Litella" (a/k/a Gilda Radner on SNL) once said . . . NEVERMIND! The CARES Act has allowed carrybacks of NOLs and suspended the limitation on excess business losses** The CARES Act modifies several of the rules for NOLs that were introduced into the Code by the 2017 Tax Cuts and Jobs Act. Section 2303(b) of the CARES Act amends Code § 172(b)(1) by adding a new subparagraph (D) to allow NOL carrybacks previously barred by the 2017 Tax Cuts and Jobs Act. Under new § 172(b)(1)(D), NOLs arising in taxable years beginning after December 31, 2017, but before January 1, 2021 (generally, 2018, 2019, and 2020), may be carried back to each of the five preceding taxable years. Special rules and limitations apply to REITs, life insurance companies, and taxpayers subject to § 965 (controlled foreign corporations). Further, the CARES Act, § 2303(a), amends Code § 172(a) such that, for taxable years beginning before January 1, 2021 (generally, 2019 and 2020), the 80 percent taxable income limitation on NOL carryforwards enacted by the 2017 Tax Cuts and Jobs Act does not apply. Last but not least, the CARES Act, § 2304, amends Code § 461(*l*) to repeal temporarily the rule, added by the 2017 Tax Cuts and Jobs Act, that disallows and carries forward "excess business losses" of noncorporate taxpayers attributable to taxable years beginning in 2018 and subsequent years. The temporary repeal applies to taxable years beginning before January 1, 2021. Thus, noncorporate taxpayers (including partners and subchapter S shareholders) whose 2018 and 2019 "excess business losses" were limited and carried forward by the prior version of § 461(*l*) will need to file amended returns to claim "excess business losses" that were disallowed and carried forward from those years.

### I. At-Risk and Passive Activity Losses

## III. INVESTMENT GAIN AND INCOME

### A. Gains and Losses

### B. Interest, Dividends, and Other Current Income

### C. Profit-Seeking Individual Deductions

### D. Section 121

### E. Section 1031

### F. Section 1033

### G. Section 1035

### H. Miscellaneous

## IV. COMPENSATION ISSUES

### A. Fringe Benefits

**1. Costs for over-the-counter medicine and other products may now be reimbursed by FSAs and HSAs!** Under Code § 223(d), organizations may create a U.S. trust as a "health savings account" (HSA) for the exclusive purpose of paying qualified medical expenses on behalf of the beneficiary. Qualified medical expenses are generally defined as amounts which are expended by the beneficiary for medical care of the beneficiary, his or her spouse, and any dependent as defined under § 52. Prior to the CARES Act, the last sentence of § 223(d)(2)(A) provided that qualified medical expenses included amounts paid for prescription medicines or drugs. Under the old rule, qualified medical expenses did not include so-called over-the-counter medicine or drugs which were not prescribed. As such, historically, there was no qualified reimbursement by the HSA for expenses associated with costs incurred for medicine or drugs that were not prescribed. The CARES Act, § 3702(a), amends the previous rules that apply to HSAs by removing the last sentence of § 223(d)(2)(A), which has the effect of including over-the-counter medicines and drugs that are not prescribed. The Act also replaces the original last sentence of § 223(d)(2)(A) by inserting, "[f]or purposes of this subparagraph, amounts paid for menstrual care products [as defined in new § 223(d)(2)(D)] shall be treated as paid for medical care." In general, the above changes allow all such expenses to be treated as qualified reimbursements by an HSA. The same rules also apply to reimbursements from flexible spending accounts, or FSAs. These changes apply to distributions from HSAs and reimbursements from FSAs after 2019.

### B. Qualified Deferred Compensation Plans

**1. Congress has made access to retirement plan funds easier for those affected by COVID-19.** The CARES Act, § 2202, provides special rules that apply to distributions from qualified employer plans and IRAs and to loans from qualified employer plans for those affected by the Coronavirus.

*Coronavirus-related distributions*. Section 2202(a) of the legislation provides four special rules for "coronavirus-related distributions." **First**, the legislation provides that coronavirus-related distributions up to an aggregate amount of $100,000 for each year are not subject to the normal 10-percent additional tax of § 72(t) that applies to distributions to a taxpayer who has not reached age 59-1/2. **Second**, the legislation provides that, unless the taxpayer elects otherwise, any income resulting from a coronavirus-related distribution is reported ratably over the three-year period beginning with the year of the distribution. **Third**, the legislation permits the recipient of a coronavirus-related distribution to contribute up to the amount of the distribution to a qualified employer plan or IRA that would be eligible to receive a rollover contribution of the distribution. The contribution need not be made to the same plan from which the distribution was received, and must be made during the three-year period beginning on the day after the date on which the distribution was received. If contributed within the required three-year period, the distribution and contribution are treated as made in a direct trustee-to-trustee transfer within 60 days of the distribution. The apparent intent of this rule is to permit the taxpayer to exclude the distribution from gross income to the extent it is recontributed within the required period. Because the recontribution might take place in a later tax year than the distribution, presumably a taxpayer would include the distribution in gross income in the year received and then file an amended return for the distribution year upon making the recontribution. **Fourth**, coronavirus-related distributions are not treated as eligible rollover distributions for purposes of the withholding rules, and therefore are not subject to the normal 20 percent withholding that applies to eligible rollover distributions under § 3405(c). A coronavirus-related distribution is defined as any distribution from an eligible retirement plan as defined in § 402(c)(8)(B) (which includes qualified employer plans and IRAs) that was made: (1) on or after January 1, 2020, and before December 31, 2020, (2) to an individual who is diagnosed (or whose spouse or dependent is diagnosed) with the virus under an approved test or "who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury (or the Secretary's delegate). "

*Loans*. For qualified individuals, section 2202(b) of the legislation increases the limit on loans from qualified employer plans and permits repayment over a longer period of time. Normally, under § 72(p), a loan from a qualified employer plan is treated as a distribution unless it meets certain requirements. One requirement is that the loan must not exceed the lesser of (1) $50,000 or (2) the greater of one-half of the present value of the employee's nonforfeitable accrued benefit or $10,000. A second requirement is that the loan must be repaid within five years. In the case of a loan made to a "qualified individual" during the period from March 27, 2020 (the date of enactment) through December 31, 2020), the legislation increases the limit on loans to the lesser of (1) $100,000 or (2) the greater of *all* of the present value of the employee's nonforfeitable accrued benefit or $10,000. The legislation also provides that, if a qualified individual has an outstanding plan loan on the first day of the incident period of a qualified disaster with a due date for any repayment occurring during the period beginning on the first day of the incident period and ending on the date which is 180 days after the last day of the incident period, then the due date is delayed for one year. If an individual takes advantage of this delay, then any subsequent repayments are adjusted to reflect the delay in payment and interest accruing during the delay. This appears to require reamortization of the loan. A *qualified individual* is defined as an individual who would be eligible for the distribution rules described above.

### C. Nonqualified Deferred Compensation, Section 83, and Stock Options

### D. Individual Retirement Accounts

## V. PERSONAL INCOME AND DEDUCTIONS

### A. Rates

### B. Miscellaneous Income

### C. Hobby Losses and § 280A Home Office and Vacation Homes

### D. Deductions and Credits for Personal Expenses

**1. Maybe Congress really does CARE. Recovery rebates or "credits" for individuals.** The CARES Act, § 2201, adds new Code § 6428, which provides for what the Treasury Department publicly refers to as "economic impact payments" and what the Code describes as an advance refund of a credit for which individuals may be eligible for 2020. Nonresident aliens, dependent children, and estates and trusts are not eligible for the credit. Treasury and the IRS announced on Monday, March 30, 2020, that many U.S. taxpayers will receive a distribution of funds pursuant to this statutory provision within the following three weeks. Distribution of the funds is to be automatic and, for most taxpayers who have previously filed a 2018 or 2019 tax return, there are no steps that need to be taken to receive a payment. The amount of the advance payment to which an individual is entitled is to be determined based on the individual's 2019 federal income tax return or, if the 2019 return has not filed, the individual's 2018 return. If an individual has filed neither a 2018 nor 2019 return, then the amount of the advance payment may be determined based on social security information (Form SSA-1099 or RRB-1099). In general, the advanced refunds are to be received in the form of a direct deposit into taxpayers' bank accounts. According to § 6428(f), such payments are, in effect, advance refunds of the amount to be allowed as a "recovery rebate" or tax credit on each recipient's 2020 federal income tax return. Generally, a taxpayer who is an eligible taxpayer will be treated as having made tax payments equal to the credit to which the taxpayer is entitled. Section 2201(d) of the CARES Act provides that advance payments of the credit are not subject to the reduction or offset set forth in specified provisions. The effect of this rule is to preclude the IRS from applying the advance payment of the credit to which a taxpayer is entitled to outstanding tax liabilities from other years.

*Amount of the credit.* According to Code § 6428(a), a taxpayer who filed an income tax return in 2018 or 2019 will receive an advance refund of the projected rebate or credit equal to $1,200 ($2,400 in the case of eligible individuals filing a joint return) plus an additional $500 for each qualifying child of the taxpayer if the taxpayer's adjusted gross income (AGI) is below a certain threshold amount. A qualifying child is a child with respect to whom the taxpayer would be entitled to the child tax credit provided by § 24. Pursuant to § 24(c), this means that the child must be a qualifying child of the taxpayer (as defined in § 152(c)) who has not attained age 17. The amount of the credit is phased out based on the taxpayer's AGI. Under § 6428(c), the amount of the projected credit (and therefore the advance refund amount sent to taxpayers) is reduced by 5 percent of the excess of the taxpayer's AGI over: $150,000 (in the case of a joint return), $112,500 (in the case of a head of household), and $75,000 in all other cases. The credit is completely phased out for taxpayers with no children who have AGI of: $198,000 (joint filers), $146,500 (head of household), and $99,000 (all others including single filers). According to § 6428(e)(2), with respect to joint returns, 50 percent of the credit is deemed to have been allowed to each spouse filing the return.

*Adjusting the credit on the 2020 return.* According to § 6428(a), a taxpayer who is eligible for the credit will be treated as having made an income tax payment for the 2020 taxable year in an amount equal to the amount of the credit to which he or she is entitled. An advance refund of the credit received by the taxpayer in 2020 reduces the credit to which he or she is entitled on the 2020 return. Thus, if a taxpayer's 2019 return is filed early enough in 2020 such that the IRS based the advance refund amount on the taxpayer's 2019 reported AGI, then the payment will be refunded (i.e., "advanced") for the first taxable year beginning in 2020 (et voilà, an advance refund electronic deposit is received by the taxpayer when most needed). However, because the advance refund amount is based upon the taxpayer's 2019 AGI, the amount of the credit may be adjusted up based upon the taxpayer's AGI as reported on his or her 2020 federal income tax return. Thus, for example, a taxpayer might receive an advance refund amount during 2020, based on his or her AGI as reported on a filed 2019 return, but the payment might have been partially phased out due to receiving a full year of wage income in 2019. Continuing with this example, the same taxpayer's AGI as reported on his or her 2020 return might be much lower due to loss of pay as a result of not being able to work during the pandemic. Such a taxpayer may then be entitled to a full (as opposed to a partial) credit based on his or her lower 2020 AGI. In such a case, when the taxpayer prepares his or her 2020 tax return, the full amount of the credit would only be partially offset by the lower advance refund payment (based on 2019 AGI). This, in turn, would allow for an additional refund of the difference. If a taxpayer receives an advance refund payment in 2020 which is more than the credit calculated on the taxpayer's 2020 tax return, there is no requirement for the taxpayer to pay back the excess advance refund.

*Requirement of a Social Security Number*. Section 6428(g) provides that no credit is allowed to taxpayers who do not include a "valid identification number" on the tax return for the taxpayer, the taxpayer's spouse, and qualifying children. The term "valid identification number is defined, by reference to § 24(h)(7), as a social security number issued before the due date of the return or an adoption taxpayer identification number in the case of a qualifying child who is adopted or placed for adoption. Thus, with respect to joint filers, both spouses must include their social security numbers on the return. However, a special rule applies to members of the armed forces under which only one spouse must include a valid social security number on the joint return.

### E. Divorce Tax Issues

### F. Education

**1. Want to get rid of that student loan? Get the boss to pay it tax-free!** Generally, Code § 127(a) excludes from the gross income of an employee up to $5,250 of employer-provided "educational assistance" as defined in § 127(c). The CARES Act, § 2206, amends Code § 127(c)(1) by redesignating subparagraph (B) as subparagraph (C) and adding a new subparagraph (B) that temporarily expands the definition of "educational assistance." New Code § 127(c)(1)(B) provides that, in the case of payments made before January 1, 2021, the term "educational assistance" within the meaning of § 127(c)(1) includes repayments of "qualified education loans" by an employer whether paid to the employee or to the lender. New Code § 127(c)(1)(B) is effective for payments made after March 27, 2020 (the date of enactment of the CARES Act).

### G. Alternative Minimum Tax

## VI. CORPORATIONS

### A. Entity and Formation

### B. Distributions and Redemptions

### C. Liquidations

### D. S Corporations

### E. Mergers, Acquisitions and Reorganizations

**F. Corporate Divisions**

**G. Affiliated Corporations and Consolidated Returns**

**H. Miscellaneous Corporate Issues**

## VII. PARTNERSHIPS

**A. Formation and Taxable Years**

**B. Allocations of Distributive Share, Partnership Debt, and Outside Basis**

**C. Distributions and Transactions Between the Partnership and Partners**

**D. Sales of Partnership Interests, Liquidations and Mergers**

**E. Inside Basis Adjustments**

**F. Partnership Audit Rules**

**G. Miscellaneous**

## VIII. TAX SHELTERS

## IX. EXEMPT ORGANIZATIONS AND CHARITABLE GIVING

**A. Exempt Organizations**

**B. Charitable Giving**

**1. Provisions of the CARES Act that affect charitable contributions.**

**a. "CARE" for a charitable panacea (at least in part) for a pandemic? A limited above-the-line deduction for contributions to public charities.** It took a pandemic, but Congress has reversed itself, at least partially, with respect to non-itemizers and charitable contributions. To wit, the CARES Act, § 2204, added new Code § 62(a)(22) which, for taxable years beginning in 2020, allows individual taxpayers who claim the standard deduction (i.e., non-itemizers) to deduct up to $300 in above-the-line "qualified charitable contributions." The legislation also adds new Code § 62(f), which defines "qualified charitable contributions" as donations of cash to organizations described in Code § 170(b)(1)(A)—primarily, so-called "public charities" such as churches, schools, hospitals, and publicly-supported nonprofits, but not non-operating private foundations, donor-advised funds, and Type III supporting organizations. New Code §§ 62(a)(22) and 62(f) are permanent and effective for taxable years beginning after 2019.

- This change for non-itemizers partially reverses a significant effect of the 2017 Tax Cuts and Jobs Act. Specifically, the 2017 Tax Cuts and Jobs Act substantially increased the standard deduction such that many taxpayers no longer needed to itemize deductions starting in 2018. In 2020, for instance, the standard deduction is $24,800 for joint returns and surviving spouses, $12,400 for unmarried individuals and married individuals filing separately, and $18,650 for heads of households. *See* Rev. Proc. 2019-44, 2019-47 I.R.B. 1093 (11/6/19). Many charities predicted that the increased standard deduction would lead to decreased charitable giving, and a study by Giving USA found this to be true for 2018. *See* Eisenberg, *Charitable Giving Took a Hit Due to Tax Reform*, Forbes (6/18/19) (*available online here*).

**b. Also new for 2020: You can elect to "CARE" less about charitable contribution limits on 2020 donations of cash to public charities.** The CARES Act, § 2205, an uncodified provision, temporarily suspends for 2020 the charitable contribution limits of Code § 170(b) for electing individual and corporate taxpayers. The legislation provides that "qualified contributions" by an individual are not subject to the normal limits, and instead are allowed, if the individual so elects, up to the amount by which the taxpayer's contribution base (generally, adjusted gross income) exceeds the other charitable contributions the taxpayer makes, i.e., those subject to the normal limits. In effect, this permits individual taxpayers to elect to deduct qualified contributions up to 100 percent of the taxpayer's contribution base (AGI) after taking into account other charitable contributions. A corporation may elect to deduct qualified contributions up to the amount by which 25 percent of its taxable income exceeds the corporation's other charitable contributions, i.e., the corporation can deduct qualified contributions up to 25 percent of taxable income after taking into account other charitable contributions. Qualified contributions by an individual or a corporation that exceed the relevant limit can be carried forward five years. A *qualified contribution* is defined as a contribution paid in cash during 2020 to an organization described in § 170(b)(1)(A) with respect to which the taxpayer elects to have the increased limits apply. As noted above, Code § 170(b)(1)(A) organizations primarily consist of so-called "public charities" such as churches, schools, hospitals, and publicly-supported nonprofits, but not non-operating private foundations, donor-advised funds, and Type III supporting organizations. Section 2205 of the CARES Act does not specify precisely how individuals and corporations elect into the temporary charitable contribution limits for donations of cash made in 2020. The legislation also temporarily increases from 15 percent to 25 percent the § 170(e)(3)(C) limit on contributions of food inventory made in 2020.

- *The individual limit already had been increased slightly.* Prior to the CARES Act, Congress, in the 2017 Tax Cuts and Jobs Act, had increased the limit on deducting charitable contributions for individual donations from its historical norm without requiring an election into the new rules. Under Code §§ 170(b)(1)(G) and (H), as amended by § 11023 of the 2017 Tax Cuts and Jobs Act, individuals can take a charitable contribution deduction of up to 60 percent of their contribution base for cash donations made to Code § 170(b)(1)(A) organizations in taxable years beginning after 2017 but before 2026. Beginning in 2026 and thereafter, the charitable contribution limit for individuals reverts to its historical norm of 50 percent of an individual's contribution base.

- *This is not a revolutionary idea.* Increasing charitable contribution deduction limits on an elective basis during times of crisis is not a new idea. For instance, Section 504(a) of the 2017 Disaster Relief Act increased the charitable contribution limits for donations that benefitted those affected by Hurricanes Harvey, Irma, or Maria for eligible and electing taxpayers. Similarly, the Bipartisan Budget Act of 2018, § 20104(a) of Division B, increased the limit on deductions for charitable contributions towards relief efforts in areas affected by the California wildfires for eligible and electing taxpayers. Most recently, a provision of the Taxpayer Certainty and Disaster Tax Relief Act of 2019, Division Q, Title II, § 204(a) of the 2020 Further Consolidated Appropriations Act, provided special rules for charitable contributions for relief efforts in qualified disaster areas.

## X. TAX PROCEDURE

### A. Interest, Penalties, and Prosecutions

### B. Discovery: Summonses and FOIA

### C. Litigation Costs

### D. Statutory Notice of Deficiency

### E. Statute of Limitations

### F. Liens and Collections

### G. Innocent Spouse

### H. Miscellaneous

## XI. WITHHOLDING AND EXCISE TAXES

### A. Employment Taxes

**1. Whether it's a good idea or not, no penalty will be imposed for failing to deposit the employer's share of employment taxes.** In general, employers must withhold taxes due under the Federal Insurance Contributions Act (FICA). FICA taxes are a combination of Social Security taxes and Medicare taxes which are deducted or withheld by an employer from an employee's pay. Such withheld funds are remitted by the employer to the IRS on behalf of the employee. Correspondingly, an employer is responsible for paying its share of FICA taxes to the IRS including

Social Security taxes and Medicare taxes. These employer payments generally are due to be remitted to the IRS on a semi-weekly or monthly basis by electronic funds transfer. The CARES Act, § 2302, provides that remittance of the employer's share of both the social security portion of FICA tax and of the social security portion of Railroad Retirement Act (RRTA) tax incurred in 2020 may be deferred. Thus, FICA payments previously due between March 27, 2020, and before January 1, 2021, may now be paid in two equal installments. The first half of the payment may be deferred until December 31, 2021, and payment of the second half of the liability may be deferred until December 31, 2022. It is important to note that this deferral is not available to employers that have had debt forgiven with respect to the loans made available through the Small Business Administration pursuant to the CARES Act.

### B. <u>Self-employment Taxes</u>

### C. <u>Excise Taxes</u>

## XII. TAX LEGISLATION

### A. <u>Enacted</u>