

# Recent Developments in Federal Income Taxation

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## **Consolidated Appropriations Act 2021 (Dec. 2020)** **Depreciation Changes** ***Outline: items E.1 and E.2, page 2***

1. All racehorses are classified as 3-year property regardless of age.  
Code § 168(e)(3)(A)(i)
  - Applies to racehorses placed in service before 2022.
2. Real property trades or businesses that elect out of the interest limitation of § 163(j) and must use ADS for nonresidential real property, residential rental property, and qualified improvement property use a 30-year recovery period (not 40 years)
  - Previously, this rule applied only to property placed in service after 2017.
  - The rule now applies to property placed in service before 2018 as well.
  - This is retroactive to tax years beginning after 12/31/17.

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**Consolidated Appropriations Act 2021 (Dec. 2020)**  
**Changes to Tax Credits**  
***Outline: items F.1 and F.2, page 3***

1. § 45L credit of \$2,000 or \$1,000 (depending on the projected level of fuel consumption) an eligible contractor can claim for each qualified new energy efficient home constructed
  - Was scheduled to expire for homes acquired after December 31, 2020
  - Now applies to homes acquired before January 1, 2022
2. § 45S credit extended through December 31, 2025
  - Available to an “eligible employer” that pays at least 50% of normal wages to “qualifying employees” during periods in which the employees are on family and medical leave.
  - Credit ranges from 12.5% to 25% of wages paid

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**Updated Life Expectancy Tables for Calculating RMDs**  
**85 F.R. 72472 (11/12/20)**  
***Outline: item A.1, page 4***

- Final regulations update existing life expectancy tables for determining required minimum distributions from qualified plans (including IRAs)
- Generally, the tables reflect longer life expectancies, which results in smaller RMDs.
- Apply to distribution calendar years beginning on or after January 1, 2022
  - For someone who reaches age 72 in 2021, the new tables would not apply to the distribution for 2021 (which must be made by April 1, 2022).
  - The new tables would apply to the distribution for 2022, which must be made by December 31, 2022.

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**American Rescue Plan 2021 (Mar. 2021)**  
**Employer-Provided Dependent Care Assistance**  
*Outline: items A.2, page 5*

- Section 9632 of the American Rescue Plan of 2021 amends Code § 129(a)(2) to provide that the limit on the exclusion for dependent care assistance provided by an employer to an employee is increased from \$5,000 to \$10,500.
- New § 129(a)(2) applies to taxable years beginning after December 31, 2020 and before January 1, 2022 (i.e., generally to the 2021 tax year).

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**American Rescue Plan 2021 (Mar. 2021)**  
**Cancellation of Student Loans**  
*Outline: items B.1, page 5*

- Section 9675 of the American Rescue Plan of 2021 amends Code § 108(f)(5) to provide that the cancellation of student loans is excluded from gross income.
- The definition of qualifying loans is broad enough to cover the vast majority of postsecondary educational loans.
- The exclusion does not apply if the lender is an educational organization or a private lender and the cancellation is on account of services performed for the lender.
- New § 108(f)(5) applies to discharges of loans that occur after December 31, 2020 and before January 1, 2026.

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**American Rescue Plan 2021 (Mar. 2021)**  
**Unemployment Compensation**  
***Outline: items B.2, page 6***

- Section 9042 of the American Rescue Plan of 2021 amends Code § 85(c) to provide that \$10,200 of unemployment compensation received during 2020 is excluded from gross income.
- The rule applies to unemployment compensation received by an individual whose AGI is below \$150,000.
- The \$10,200 exclusion applies to each spouse in the case of a married couple filing a joint return.
- The statute is not clear whether the \$150,000 AGI ceiling applies to a married couple filing jointly.
  - The better reading is that the \$150,000 AGI ceiling is doubled for joint filers.
- State conformity varies, so it is important to check state rules. <sup>7</sup>

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**Consolidated Appropriations Act 2021 (Dec. 2020)**  
**Use of Prior Year Earned Income**  
***Outline: items D.1, page 5***

- All individuals can elect to use prior-year earned income for purposes of determining the individual's earned income tax credit under § 32 and child tax credit under § 24.
  - Available for individuals whose earned income for the taxpayer's first taxable year beginning in 2020 is lower than their earned income for the preceding tax year.
  - For married couples filing a joint return, the earned income for the preceding year is the sum of the earned income in the preceding year of both spouses.

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**Deckard v. Commissioner,  
155 T.C. No. 8 (9/17/20)**

***Outline: item D.1, page 6***

- Mr. Deckard served as president and as one of three directors of a nonprofit, Kentucky corporation
  - He filed a subchapter S election for the corporation and deducted the corporation's losses on his federal income tax return.
- Issue: was Mr. Deckard a shareholder of the corporation for purposes of subchapter S?
- Held: No.
  - Nonprofit corporations generally do not have owners and are prohibited from issuing stock.
  - Mr. Deckard therefore cannot be treated as a shareholder of the corporation. A person is considered a shareholder of an S corporation if:
    - "the person ... would have to include in gross income dividends distributed with respect to the stock of the corporation (if the corporation were a C corporation" Reg. § 1.1361-1(e)(1)
  - The court declined to address whether S election was valid.

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**Consolidated Appropriations Act 2021 (Dec. 2020)**

**Changes to Charitable Contributions**

***Outline: item B.1.a, page 7***

- New § 62(a)(22): up to \$300 above-the-line deduction for individuals making "qualified charitable contributions."
  - New § 62(f): qualified charitable contributions are cash contributions to public charities
  - Effective for 2020 only
- For 2021, in the Taxpayer Certainty and Disaster Tax Relief Act of 2020, Congress provided a similar result in a different form
  - New § 170(p): provides a deduction of \$300 (\$600 for joint filers) to those who do not itemize for cash contributions to public charities.

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## **Consolidated Appropriations Act 2021 (Dec. 2020)**

### **Changes to Charitable Contributions**

#### ***Outline: item B.1.b, page 7***

- Increased limits on deducting “qualified contributions”
  - Individuals: up to 100% of contribution base (AGI)
  - Corporations: up to 25% of taxable income
  - Qualified contributions are cash contributions to public charities if taxpayer elects the new limit.
  - Effective for 2020-2021 only.

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## **Fowler v. Commissioner,**

### **155 T.C. No. 7 (9/9/20)**

#### ***Outline: item E.1, page 8***

- The taxpayer’s CPA e-filed the taxpayer’s return on Form 1040 but did not include in the return the taxpayer’s Identity Protection PIN (IP PIN).
  - The IRS rejected the e-filed return because of the lack of the IP PIN.
- Issue: did the rejected, e-filed return start the running of the § 6501(a) three-year limitations period for the IRS to assess tax?
- Held: Yes. The IRS is barred from assessing additional tax because the notice of deficiency was issued more than 3 years after the e-filed return was rejected.
  - The e-filed return was a required return and was properly filed.
  - Query: are only those returns rejected for lack of an IP PIN properly filed, or do all e-filed returns that are rejected start the running of the limitations period on assessment?

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**American Rescue Plan 2021 (Mar. 2021)**  
**Other Provisions**  
**[Not in outline]**

- Expansion of definition of covered employees to all employees among the taxpayer's five most highly compensated employees for purposes of deduction limitation of § 162(m) effective in 2027. (Code § 162(m)(3)(C)/Bill § 9708)
- Refundable tax credits for self-employed individuals for COVID-related sick leave and COVID-related family leave from April 1 through September 30, 2021. (Bill §§ 9642 and 9643.)
- Earned Income Credit Changes:
  - Expansion of eligibility for childless earned income credit in 2021 (reduced minimum age, no maximum age, amounts and phase-outs increased). (Code § 32(n)/Bill § 9621.)
  - Availability of earned income credit in 2021 to married taxpayers with a qualifying child who are separated and who live apart from their spouse. Code § 32(d)/Bill § 9623.

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**American Rescue Plan 2021 (Mar. 2021)**  
**Other Provisions**  
**[Not in outline]**

- Earned Income Credit Changes (cont'd):
  - Taxpayers with a qualifying child who do not claim the EIC with respect to the child because the child does not have a Social Security Number are eligible for the childless earned income credit beginning in 2021. (Code § 32(c)/Bill § 9622.)
- Child Tax Credit Changes
  - Increases child tax credit to \$3,600 (under 6) or \$3,000 (under 18) for 2021 only, but with much lower phase-outs for the increased credit. (Code § 24(i)/Bill § 9611.)
  - Advance periodic payments of 50% of the child tax credit. (Code § 7527A/Bill § 9611.)
- Expansion for 2021 of credit for dependent care expenses increased amounts up to \$8,000, credit is refundable, and phased out for taxpayers with AGI over \$400,000). (Code § 21(g)/Bill § 9631.)

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## **American Rescue Plan 2021 (Mar. 2021)**

### **Other Provisions**

#### **[Not in outline]**

- Earned Income Credit Changes (cont'd):
  - Taxpayers with a qualifying child who do not claim the EIC with respect to the child because the child does not have a Social Security Number are eligible for the childless earned income credit beginning in 2021. (Code § 32(c)/Bill § 9622.)
- Premium tax credit changes:
  - Increased amounts for 2021 and 2022. (Code § 36B(b)(3)(A)/Bill § 9661.)
  - No income limitation (was 400% of FPL) for 2020 on limitation of repayment of excess advance premium tax credit. (Code § 36B(f)(2)(B)/Bill § 9662)
  - Those who receive unemployment compensation in 2021 are eligible for advance premium tax credit payments. (Code § 36B(g)/Bill § 9663)
- Recovery rebate credits of \$1,400 per taxpayer and \$1,400 per dependent (not per qualifying child), phased out for taxpayers with AGI over \$75,000 (single/MFS), \$112,500 (HOH), \$150,000 (MFJ). Code § 6428B/Bill § 9601

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