Tax Changes 2019 –Disaster Relief and ObamaCare Tax Issues

Part of the "Further Consolidated Appropriations Act, 2020", signed into law on December 20, 2019, includes various tax changes. We previous have sent out emails on the Extenders and the Retirement & IRA issues. Other issues include the repeal of three ObamaCare items, one nonprofit unrelated business income tax issue, and Disaster Relief. Here are the sections of these issues that we feel will likely impact our readers:

OBAMACARE TAXES REPEALED

- The ObamaCare excise tax on sale of medical devices is now permanently repealed for sales after December 31, 2019.
- The ObamaCare annual fee required to be paid on health insurance providers under section 9010 is now repealed, effective for calendar years beginning after December 31, 2020.
- The ObamaCare excise tax on so called "Cadillac plans" is now repealed for taxable years beginning after December 31, 2019.

NONPROFIT FRINGE BENEFIT EXPENSE – The increase in UBTI for certain fringe benefit expenses of employees is repealed as if the repeal was part of the TCJA.

DISASTER RELIEF

These relief provisions are pretty much identical to the relief provisions provided for victims of Hurricanes Harvey, Irma, and Maria back in 2017. During 2018 Congress provided these relief provisions to taxpayers affected by certain California wildfires plus federally declared disasters taking place in 2016 but did not include other 2018 disasters. Now Congress has RETROACTIVELY provided these relief provisions for federal declared disaster areas due to qualifying disasters taking place from January 1, 2018 (yes, we said 2018) through February 18, 2020. And no, taxpayers who are affected by the California wildfires which were already provided these provisions do not get to double-dip and take advantage twice for the same disaster (i.e., can't take out two $100,000 retirement plan distributions). Here are the most common disaster relief provisions:

* Retirement Plan Distributions

- The 10% early withdrawal penalty does not apply to any qualified disaster distribution. A "qualified disaster distribution" is any distribution received by an individual whose principal place of abode is located in the applicable qualified disaster area and who has sustained an economic loss by such qualified disaster. The maximum amount of distributions exempt from the penalty under this provision is $100,000 total for all years combined, but is applied separately for each qualified disaster.

- The income from these qualified withdrawals is spread ratably over the 3-taxable year period beginning with the year of the distribution. Taxpayers can elect NOT to have this spread apply. If the taxpayer dies before the end of the spread years, any amounts not already reported as income are required to be reported as income in the year of the death.

- The taxpayer can do a rollover of any portion of these distributed amounts at any time before the end of the 3-taxable year period. For purposes of the one-in-a-year rollover limitations, these rollovers will NOT be considered to be a rollover.

- Certain retirement plan distributions received within 180 days before the first day of the qualifying disaster and ending on one the 30th day after the end of the qualifying disaster that were taken out specifically to purchase or construct a principal residence in the qualified disaster area, but which was not purchased or constructed on account of the applicable disaster can be rolled over during the period beginning on date the qualifying disaster began and ending on the 180th day after this law was signed, which we compute to come to June 17, 2020.

- Loans from a qualified employer retirement plan have the following changes:

During the period beginning on December 20, 2019, and ending on the 180th after this law was signed, which we compute to come to June 17, 2020. The maximum amount of the loans may be for:

- $100,000 (instead of the former $50,000), plus
- The present value of the nonforfeitable accrued benefits of the employee (instead of the former 50%).

Delay in repayment. If any loan from a qualified retirement plan has an outstanding balance on or after ending on the 180th after this law was signed, which we compute to come to June 17, 2020, is delayed for one year. Interest will continue to accrue during this period. The 5-year repayment period is adjusted so the taxpayer will have the full 5 years PLUS any delay due to this provision.

The payments after this delay will be adjusted to take into account the additional accrued interest and any payments made during the delay period. This could result in the remaining payments being adjusted upward (due to accrued interest) or downward (due to payments made during the delay period).

* Casualty Loss Deduction
Currently the base subtracted from unreimbursable personal casualty losses is generally $100 plus 10% of AGI. The base for a qualified disaster-related personal casualty loss is changed to $500 for qualified disasters. The “10% of AGI” portion of the base does not apply to these qualified disasters.

EXAMPLE – Amanda suffered a $25,000 unreimbursable personal casualty loss due to a qualified disaster loss. Her AGI for the year of the deduction is $150,000. Normally Amanda would have a deduction of $9,900 which is her $25,000 loss less the total of $100 and $15,000 ($150,000 AGI x 10%). Since this is a qualified disaster loss, her deduction is $24,500, her $25,000 loss less $500 base. That’s a $14,600 increase in the loss amount.

Normally a personal casualty loss is an itemized deduction. The Act permits these qualified losses to be deductible in addition to the standard deduction. This "additional standard deduction" is only allowed for the "net qualified disaster loss." This means the disaster-related personal casualty losses would have to be netted against any personal casualty gains to arrive at the "net disaster loss" that becomes the additional standard deduction.

For AMT purposes the "net disaster loss" claimed as additional standard deduction is NOT an add-back. However, the regular standard deduction remains an add-back for AMT purposes

* Charitable Contributions
The normal percentage limits of AGI do not apply to any qualified charitable contributions. A "qualified charitable contribution" is defined as any contribution paid during the period beginning on January 1, 2018, and ending on February 18, 2020, in cash to a qualified organization for relief efforts in the qualified disaster areas. A taxpayer can elect NOT to have this provision apply.

In the case of a C corporation, the normal percentage limit of 10% does not apply, but the deductible contributions cannot exceed the corporation's taxable income.

The taxpayer must obtain a contemporaneous written acknowledgment from the organization that the contribution was used (or is to be used) for these particular relief efforts.

These special rules do NOT apply to contribution to organizations that fall under Section 509(a)(3) (certain private foundations) or to a donor advised fund.

In the case of a partnership or S corporation, the application of this provision is made at the partner or shareholder level.

* Employment Relief
The Employee Retention Credit under Section 38 is renewed for employers affected by these qualifying disasters. This credit is similar to the Work Opportunity Credit. It is equal to 40% of qualified wages paid with respect to each eligible employee of eligible employers. The maximum amount of wages taken into account for this credit is $6,000.

* Earned Income Tax Credit
If a qualified individual has less earned income in the taxable year which includes the applicable date than the amount of earned income in the preceding taxable year, the credits allowed for the Additional Child Tax Credit and the Earned Income Tax Credit will be computed, at the election of the taxpayer, by using the preceding taxable year's earned income.

For purposes of a Married Filing Joint (MFJ) return, this provision applies if either spouse is a qualified individual. In the case of a MFJ return, the earned income of the preceding year shall be the sum of the preceding year's earned income for both spouses combined.

Any election to use this provision for either the Additional Child Tax Credit or the Earned Income Tax Credit will be an election to use this provision for BOTH. A taxpayer cannot make this election for one credit purpose and not for the other.

A copy of the entire Act can be found at congress.gov and clicking on Public Laws and then choosing the "Further Consolidated Appropriations Act, 2020 (Public Law 116-94)". The above Act provisions can be found in Divisions N and Q.

This text has been shared courtesy of: David & Mary Mellem, EAs & Ashwaubenon Tax Professionals, 920-496-1065.