2021 Tax Tracker

Issue	Description	Political Outlook
Employment-related Tax Policies		
Employee Retention Tax Credit	The Employee Retention Tax Credit (ERTC) is a refundable payroll tax credit created as part of the CARES Act. It was originally a credit for 50% of wages and qualified health care benefits paid by employers. The credit was available to employers who (1) were fully or partially suspended due to a COVID-19 related shut-down order or (2) where gross receipts declined by more than 50% when compared to the same quarter in the prior year. Total wages for each employee was capped at $10,000, including health benefits, resulting in a maximum credit of $5,000 per employee. The Consolidated Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA) extended the ERTC through July 1, 2021, and the amount of the credit was increased from 50% to 70% for wages paid in 2021. The limit per employee was also raised from $10,000 for the year to $10,000 each quarter. The definition of gross receipts for nonprofits was clarified based on section 6033 definitions. Finally, it retroactively allowed employers who receive Paycheck Protection Program funds to still qualify for the ERTC with respect to wages that are not paid for with forgiven PPP loan proceeds. Under the original CARES Act, public entities—including public universities—were excluded from taking the credit. The CRRSAA clarified that public universities could take the ERTC but could only do so prospectively.	The American Rescue Plan Act of 2021 (ARPA) extends the ERTC through the end of 2021. Every employer must withhold and pay both a Social Security (SS) tax (6.2%) and a Hospital Insurance (HI) tax (1.45%) on wages. Taken together, these are often called payroll taxes. Prior to enactment of the ARPA, the ERTC was refundable against payroll taxes (both Social Security and Medicare). Because the Byrd rule prohibits provisions that impact the Social Security Act, the ARPA dropped the Social Security offset and changed the credit to only be allowed as an offset against the Medicare portion of the payroll tax after June 30, 2021. While the limitation to Medicare payroll taxes could limit the amount of the ERTC available in any calendar quarter, any excess credit could become available later as a refund because the ERTC is fully refundable.
Paid family and medical leave	The Families First Coronavirus Response Act (FFCRA) created an emergency family and medical leave program in response to the coronavirus. Private sector employers with fewer than 500 workers and government entities would have to provide as many as 12 weeks of job-protected leave to employees at least two-thirds pay due to a recommendation or order by a public official or health care provider, to care for a family	ARPA extended the payroll tax credits through September 30, 2021. However, the credit would apply only to Medicare share of payroll taxes, not the Social Security component (because reconciliation bills may not affect Social Security). More broadly, Biden has expressed interest in a national mandate for paid family leave and childcare, not just related to the

	member with coronavirus, or to care for a child whose school or place of care is closed due to a public emergency. The Act provided payroll credit to private sector employers for family leave ($200 per day limit or an aggregate of $10,000) for wages through the end of 2020. CRRSAA allowed the mandate to lapse, but it continued the tax credits through March 2020 for private employers with fewer than 500 employees that opted to offer paid sick leave.	pandemic brought on my COVID-19. The President is expected to announce his next major initiative in his first address to a joint meeting of Congress in March.
Paid sick leave	FFCRA also created an emergency paid sick leave program. Private sector employers with fewer than 500 workers and government entities were required to provide paid sick leave of 80 hours for full-time employees and average hours for a two-week period for part-time employees due to coronavirus diagnosis, symptoms, or preventative care, or due to a recommendation or order by a public official or health care provider, to care for a family member with coronavirus, or to care for a child whose school or place of care is closed due to a public emergency. State and local governments, including public universities, were subject to the mandate. FFCRA also provided q payroll credit for required paid sick ($511 per day limit while the employee is caring for themselves and $200 per day limit for a family member or if a child's school is closed) for wages through the end of 2020. The credit was available only for private employers. CRRSAA allowed the mandate to provide paid leave to lapse, but it continued the tax credits through March 2020 for private employers that opt to offer paid leave.	ARPA extended the payroll tax credits through September 30, 2021. However, the credit would apply only to Medicare share of payroll taxes, not the Social Security component (because reconciliation bills may not affect Social Security). Public universities would be eligible for the payroll tax credit. The bill did not reinstate the mandate due to Byrd Rule issues.
Flexible spending accounts	CRRSAA allows taxpayers to rollover unused balances in flexible spending accounts for health care and dependent care from 2020 into 2021 and 2021 into 2022.	No further action expected.
Deferral of payroll taxes	In August 2020, President Trump gave employers the option of deferring the employer share of social security payroll taxes from September through December 2020. Employers were required to increase withholding to collect the payroll taxes by	No further action expected.

	April 31, 2021. The CRRSAA extended the repayment deadline to December 31, 2020.	
Tax Provisions Affecting Institutional Finances		
Advance refund tax-exempt bonds	The Tax Cuts and Jobs Act (TCJA) eliminated the ability to advance refund tax-exempt bonds. Prior to the TCJA, colleges and universities took advantage of lower interest rates on these types of bonds to reduce their debt service costs; this option was particularly helpful for teaching hospitals.	A second reconciliation package—which will focus on infrastructure and green energy initiatives—is expected in the summer. Democrats have shown interest in reinstituting advance refund bonds as part of this package to spur infrastructure investment.
Build America Bonds	The American Recovery and Reinvestment Act of 2009 created the Build America Bond program which allowed state and local governments to issue bonds with taxable interest instead of tax-exempt interest and receive a partial reimbursement for their interest expense. The program expired in 2010.	Democrats have shown interest in reinstituting Build American Bonds as part of the second reconciliation package to spur infrastructure investment.
Tax on Investment Income	The TCJA imposed a 1.4% excise tax on investment income at private institutions with at least 500 tuition-paying students and endowments worth at least $500,000 per student. While there is no definitive list of affected schools, about 40 colleges, universities, and freestanding medical schools are subject to the tax. In addition, the CRRSAA reduced the Higher Education Emergency Relief Fund (HEERF) allocations by 50% to institutions that paid the excise tax in 2019.	The colleges, universities, and medical schools subject to the excise tax are exploring opportunities to amend or repeal the tax in the second reconciliation package. The ARPA overrides the reduction in HEERF allocations.
Tax Provisions Affecting Charitable Giving		
Charitable deduction	The TCJA nearly doubled the standard deduction for all taxpayers—from $6,500 to $12,000 for individual filers, and from $13,000 to $24,000 for married couples. The result of this change reduced the number of taxpayers who choose to itemize their deductions, such as the charitable deduction. Think tanks estimate that the TCJA's change in marginal tax rates reduced charitable giving by 4 to 9%. The CARES Act allowed a temporary charitable deduction for non-itemizers. Individuals can deduct up to $300 of cash contributions to most charities in 2020 for those who do not itemize their deductions.	No further changes are expected at this time.

	The CRRSAA extended the above-the-line deduction for contributions made in 2021 and provided a $600 deduction for taxpayers filing a joint tax return. It also allowed taxpayers to claim deductions up to 100% of adjusted gross income (compared to the usual cap at 60% of adjusted gross income).	
IRA charitable rollover	The IRA Charitable Rollover permits individuals age 70½ and older to donate up to $100,000 from their IRAs and Roth IRAs to public charities, including colleges and universities, without having to count the distributions as taxable income. Many donations made through this provision to colleges and universities have gone to support student financial aid. The IRA Charitable Rollover is particularly beneficial to so-called "non-itemizers"–individuals who do not itemize tax deductions and cannot take advantage of the charitable deduction. Taxpayers in states that do not allow itemized deductions and follow federal income inclusion rules may save on their state taxes by making qualified charitable distributions from their IRAs.	Changes are not expected at this time.
Education-related Tax Provisions		
Lifetime Learning credit and deduction for qualified tuition and related expenses	The tuition and fees deduction previously allowed eligible taxpayers to deduct up to $4,000 in qualified higher education expenses for themselves, a spouse and dependent children as an above-the line exclusion from income. The deduction expired in 2017 but was extended to the end of 2020. In 2019 the Joint Tax Committee argued that some students were not maximizing their tax benefits due to confusion about tuition deductions and credits. The CRRSAA repealed the deduction and in its place increased the phase-out limits on the Lifetime Learning credit. The limits are now the same as the American Opportunity Tax Credit. Both credits begin phasing out at $80,000 for individuals and $160,000 for couples.	No further changes are expected.
Section 127 employer-provided educational assistance	Section 127 exempts from income tax up to $5,250 in employer-provided tuition assistance. The $5,250 cap is an annual limit. The limit is not adjusted for inflation and as a result has not been changed since the 1970s.	No further changes are expected.

	The CARES Act expanded Section 127 to cover up to $5,250 in employer payments for student loan repayment assistance, but the provision expired on December 31, 2020. The CRRSAA extended the provision through the end of 2025.	
Section 529 Education Savings Plans	Under Section 529 of the tax code, states are authorized to sponsor "Qualified Tuition Programs" that are tax-advantaged savings vehicles for qualified postsecondary education expenses, such as tuition, fees, books, required supplies and equipment, academic-related computer equipment and technology, and room and board. There are two types of 529 Plans: savings plans, which allow families to save for expenses, and pre-paid tuition programs, which generally allow families to make advance tuition payments to cover future attendance at a designated in-state public college or university system.	Changes are not expected.
Coverdell Education Savings Accounts	Under Section 530, individuals can contribute up to $2,000 annually tax-free to pay for the qualified education expenses of a designated beneficiary. Individuals remain eligible to contribute with income up to $110,000 ($220,000 for joint filers). Qualified education expenses are broadly defined to include tuition, fees, course materials, academic-related computer equipment and technology, as well as room and board.	Changes are not expected.
Student loan interest deduction	The Student Loan Interest Deduction (SLID) currently permits taxpayers with less than $85,000 of income ($170,000 for joint filers) to deduct up to $2,500 in federal student loan interest payments each year. Recent federal actions have increased borrowing costs for all student borrowers and eliminated the in-school interest exemption for graduate student borrowers. With these increased loan costs, SLID has become even more important. The current $2,500 interest limit has been in place since 1997.	Changes are not expected.
Tax liability for forgiven student loans	Under the income contingent repayment plans for federal student loans, the forgiven principal is considered taxable income. In contrast, forgiven principal is not considered taxable income under several federal and state loan forgiveness programs, including the Public Service Loan Forgiveness program for borrowers working in government and	ARPA excludes from taxable income the outstanding balances of student loans forgiven from January 1, 2021 through December 31, 2025.

	certain nonprofit jobs, the TEACH program to assist future teachers, and the National Health Services Corps Loan Repayment Program, which assists medical health professionals working in underserved areas of the country.	