COVID-19 Relief Bill Includes Provisions Affecting Exempt Organizations

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Overview
On the night of December 21, Congress passed the Consolidated Appropriations Act, 2021 (the Act), which included approximately $900 billion in COVID-19 relief measures. Certain of these measures will affect tax exempt organizations, including:

- **Expansion of Paycheck Protection Program:** The Act made a number of changes to the Paycheck Protection Program that was originally established by the Coronavirus Aid, Relief and Economic Security Act (The CARES Act), including providing an additional $284 billion for loans under such program (existing borrowers may also apply for a second loan if they meet certain criteria). In addition, the Act provides that section 501(c)(6) organizations (excluding professional sports leagues and organizations with the purpose of promoting or participating in a political campaign or other activity) will be eligible for the program if: the organization does not receive more than 15% of its receipts from lobbying activities; the lobbying activities of the organization do not comprise more than 15% of the total activities of the organization; the cost of the lobbying activities of the organization did not exceed $1 million during the most recent tax year of the organization that ended prior to February 15, 2020; and the organization employs not more than 300 employees.

- **Extension of Modified Limits on Charitable Contribution Deductions:** The CARES Act relaxed the percentage limitations on certain charitable contributions made by individuals and corporations in 2020 in order to encourage additional charitable contributions of cash and food to certain "qualified charitable organizations" (including charities, churches, hospitals and education organizations and not including contributions to private foundations, supporting organizations, or donor advised fund). This Act extends those relaxed limits to contributions made in 2021.

- **Qualified Disaster Relief Payments:** The Act further relaxes the percentage limitations on charitable contribution deductions in the context of qualified disaster relief payments made by a corporation. In particular, the percentage limitations for charitable contributions of qualified disaster relief payments made by a corporation are suspended for contributions paid during the period beginning on January 1, 2020, and ending 60 days after the date of enactment. To qualify, contributions must be paid in cash; must be made to qualified charitable organizations described above; must be made for relief efforts in one or more qualified disaster areas; and the taxpayer must receive contemporaneous written acknowledgment that such contribution was used (or is to be used) for such relief efforts.

- **Changes to Above-the-Line Charitable Contribution Deduction for Non-Itemizers:** The CARES Act allowed non-itemizing individual taxpayers to claim an "above-the-line" deduction of up to $300 for cash contributions to qualified charitable organizations. This Act increased the amount of the deduction up to $600 for married couples filing jointly beginning in 2021. The Act also provides for increased penalties in the case of a taxpayer that overstates an above-the-line charitable contribution deduction on their tax return.

- **Changes to Employee Retention Credits:** The employee retention tax credit established by the CARES Act would be extended through July 1, 2021. In addition, the Act includes a technical clarification to the manner in which gross receipts are measured for the purposes of determining whether a tax-exempt organization qualifies for the credit. The Act also expands an existing program for employee retention credits for employers affected by natural disasters by providing a payroll tax credit for tax-exempt organizations that otherwise would have been eligible if the activities of such organization were an active trade or business.