

MEAL DEDUCTION

With some exceptions, I.R.C. § 274(n)(1) provides that a deduction for any expense for food or beverages generally is limited to 50%. A temporary exception allows a 100% deduction for business meal food and beverage expenses, including any carryout or delivery meals, provided by a restaurant that are paid or incurred in 2021 and 2022.

Notice 2021-25, 2021-17 I.R.B. 1118, explains that the term *restaurant* means a business that prepares and sells food or beverages to retail customers for immediate consumption, regardless of whether the food or beverages are consumed on the business's premises. However, a restaurant does not include a business that primarily sells prepackaged food or beverages not for immediate consumption, such as a grocery store; specialty food store; beer, wine, or liquor store; drug store; convenience store; newsstand; or a vending machine or kiosk. In addition, it does not include any eating facility located on the business premises of the employer and used in furnishing meals excluded from an employee's gross income under section 119, or any employer-operated eating facility treated as a de minimis fringe under § 132(e)(2), even if such eating facility is operated by a third party under contract with the employer.

[Notice 2021-25, 2021-17 I.R.B. 1118; TCDTRA]

EMPLOYERS – PPP LOANS

COVIDTRA § 276 states that taxpayers whose PPP loans are forgiven do not have to include the forgiven amount in income. The taxpayer can deduct otherwise deductible expenses paid with the proceeds of a PPP loan, and the forgiveness will not preclude a basis increase or reduce other tax attributes.

Rev. Rul. 2021-2 obsoletes Notice 2020-32, 2020-21 I.R.B. 837; and Rev. Rul. 2020-27, 2050-50 I.R.B. 1552, relating to the deductibility of certain expenses paid for with proceeds from a Paycheck Protection Program loan, due to the enactment of section 276(a) of COVIDTRA.

[COVIDTRA § 276; Rev. Rul. 2021-2, 2021-4 I.R.B. 495]

CHILD TAX CREDIT

Under prior law, the child tax credit (CTC) was \$2,000 for each qualifying child. A qualifying child was under age 17, could be claimed as a dependent, and was a US citizen or national, or a US resident. The CTC was partially refundable.

For tax years beginning after December 31, 2020, and before January 1, 2022, if the taxpayer (or a spouse filing MFJ) has a principal place of abode in the United States for more than one-half of the tax year or is a bona fide resident of Puerto Rico for the tax year, the age limit is increased to include children who are 17 years old. The credit amount is increased from \$2,000 to \$3,000 per child (\$3,600 for a child who is under age 6).

The existing phaseout limits for the \$2,000 credit remain the same (beginning at \$400,000 MFJ and \$200,000 for all other filers). The expanded credit (\$1,000 per child or \$1,600 per child under age 6) begins to phase out for taxpayers with MAGI above \$150,000 for MFJ and QW, \$112,500 for HoH, and \$75,000 for other taxpayers. The expanded credit phases out by \$50 for each \$1,000 (or fraction thereof) above the threshold amount.

The credit is fully refundable. In July 2021, the IRS began making periodic advance payments of the CTC. The advance payment amount is 50% of the allowed credit, calculated with reference to the taxpayer's MAGI in the preceding tax year (the second preceding tax year if the taxpayer did not file a return in the preceding tax year) and the taxpayer's qualifying children in the preceding tax year (but using age in the current year).

The IRS established an online portal that allows taxpayers to elect not to receive advance payments, and to provide information to the IRS that would be relevant to a modification of the annual advance amount, including information regarding the following:

1. A change in the number of the taxpayer's qualifying children, including the birth of a child
2. A change in the taxpayer's marital status
3. A significant change in the taxpayer's income
4. Any other factor that the IRS may provide

[www.irs.gov/credits-deductions/ advance-child-tax-credit-payments-in-2021]

The advance payment is not subject to reduction or offset for certain liabilities or federal taxes.

Reconciliation

In January 2022, the IRS will send taxpayers Letter 6419 to provide the total amount of advance CTC payments that were disbursed in 2021. The advance credit must be reconciled with the allowed credit for the 2021 tax year. Any advance payment will reduce the allowed credit. If the advance payments exceed the allowed credit, the excess increases tax for 2021.

Repayment Protection

There is a safe harbor (repayment protection) that reduces the amount of the excess advance payment that must be repaid. The safe harbor amount begins to phase out if MAGI exceeds \$60,000 for MFJ or QW, \$50,000 HoH, and \$40,000 for other taxpayers. Repayment protection is fully phased out if MAGI equals or exceeds \$120,000 for MFJ or QW, \$100,000 HoH, and \$80,000 for other taxpayers. Repayment protection may be limited if the taxpayer's main home was not in the United States for more than one-half of 2021.

The full repayment protection amount is \$2,000, multiplied by the number of qualifying children that the IRS included in determining the IRS's initial estimate of the advance CTC payments, minus the number of qualifying children properly included in determining the allowed CTC on the 2021 tax return.

Example 15.1 Calculating the Repayment Protection

Bella Cohen properly claimed the CTC for three qualifying children on her 2020 tax return but claimed only one qualifying child on her 2021 tax return. The IRS estimated her advance CTC payment based on the three qualifying children. Her 2021 AGI is \$46,000 and she files as HoH. She can receive up to \$4,000 in repayment protection [$\$2,000 \times (3 - 1)$].

Example 15.2 Phaseout of Repayment Protection

Miguel and Carla Garcia filed a joint return in 2020 and properly claimed the CTC for three qualifying children. The IRS estimated their total advance CTC payment based on these qualifying children. In 2021, they had \$75,000 MAGI and claimed the CTC for only one qualifying child. Their \$75,000 MAGI exceeds the applicable \$60,000 MAGI threshold by 25%. Their \$4,000 potential full repayment is reduced by 25% to \$3,000.

[ARPA § 9611]

Child Tax Credit for those not otherwise required to file a tax return

Rev. Proc. 2021-24 provides two procedures for individuals who are not otherwise required to file 2020 federal income tax returns to file returns to receive advance child tax credit payments, 2020 recovery rebate credit payments, additional 2020 recovery rebate credit payments, and third-round economic impact payments. These individuals can file simplified returns. They can also file 2020 returns electronically even if they have zero adjusted gross income.

[Rev. Proc. 2021-24, 2021-29 I.R.B. 19]

EIC - No Qualifying Children

For any tax year beginning after December 31, 2020, and before January 1, 2022, the minimum age for the EIC for a taxpayer with no qualifying children is reduced from age 25 to age 19. For a specified student (other than a qualified former foster youth or a qualified homeless youth), the minimum age is reduced to age 24, and for a qualified former foster youth or a qualified homeless youth, it is reduced to age 18.

A specified student is an eligible student who meets the requirements of section 484(a)(1) of the Higher Education Act of 1965 and is carrying at least one-half the normal full-time workload for the course of study the student is pursuing during at least 5 calendar months of the year.

A qualified former foster youth is an individual who attained age 14, was in foster care provided under the supervision or administration of an entity administering (or eligible to administer) a plan under part B or part E of title IV of the Social Security Act (without regard to whether federal assistance was provided with respect to such child under such part E) and gives the administering entity consent to disclose information to the IRS about the status of the individual as a qualified former foster youth. A qualified homeless youth means an individual who certifies, in a manner specified by the IRS, that such individual is either an unaccompanied youth who is a homeless child or youth, or is unaccompanied, at risk of homelessness, and self-supporting. The maximum age for the credit (previously age 65) is eliminated.

The credit and phaseout percentages are increased to 15.3% (formerly 7.65%). The earned income and phaseout amounts are increased from \$4,220 to \$9,820 and from \$5,280 to \$11,610, unadjusted for inflation.

Employer – Provided Dependant Care

I.R.C. § 129 provides an exclusion from gross income of an employee for amounts paid or incurred by the employer for dependent care assistance benefits provided to the employee if the assistance is furnished pursuant to a dependent care assistance program. Section 129(a)(2) limits the benefits that may be excluded with respect to dependent care assistance services provided during the tax year. For 2020, the exclusion could not exceed \$5,000, or \$2,500 MFS. TCDA § 214(a) and (b) allow dependent care assistance plans (DCAPs) to carry over unused benefits from a plan year ending in 2020 to a plan year ending in 2021 and from a plan year ending in 2021 to a plan year ending in 2022. Alternatively, the plan can take a 12-month extension of its 2020 or 2021 claims period for unused benefits remaining in the DCAP.

This notice addresses the taxation of dependent care benefits, provided through a dependent care assistance program, available in tax years ending in 2021 and 2022 due to the application of either the carryover or the extension of a claims period under TCDRA § 214. The notice clarifies that if these dependent care benefits would have been excluded from income if used in the preceding tax year (2020 or 2021, as applicable), they will remain excludable from gross income and are not wages of the employee for the tax years ending in 2021 and 2022. In addition, the notice clarifies that these benefits will not be taken into account for purposes of the application of the limits under section 129 to other dependent care benefits available for tax years ending in 2021 and 2022.

[Notice 2021-26]

ARPA § 9632 I.R.C. § 129

ARPA increases the I.R.C. § 129 exclusion for employer provided dependent care assistance. For any tax year beginning after December 31, 2020, and before January 1, 2022, the \$2,500 limit (\$5,250 MFJ) is increased to \$5,000 (\$10,500 MFJ).

[ARPA § 9632]

Third Round Stimulus

ARPA authorized a third round of economic impact payments and inserts new I.R.C. § 6428B. Under ARPA, an eligible individual is allowed a credit for the first tax year beginning in 2021. The credit is \$1,400 (\$2,800 for MFJ) and \$1,400 for each dependent (as defined by I.R.C. § 152) of the taxpayer for that tax year. An eligible individual is any individual who is not a nonresident alien, not a dependent of another taxpayer, and not an estate or trust. The credit starts phasing out for a taxpayer whose AGI exceeds \$75,000 (\$112,500 HoH and \$150,000 MFJ) and is fully phased out over \$80,000 AGI (\$120,000 HoH and \$160,000 MFJ).

To claim the credit, the taxpayer must include a valid identification number for the taxpayer and any dependents on the return. If nonmilitary taxpayers file MFJ and include only one identification number, they can claim a \$1,400 credit. A valid identification number is a social security number issued on or before the due date for filing the return. For a dependent, a valid identification number also includes an adoption taxpayer identification number of such dependent.

The credit is refundable, and each taxpayer who was an eligible taxpayer for the 2019 tax year is treated as having made a tax payment equal to the advance refund amount (the amount that would have been allowed as a credit if the new law applied) for 2019 and the IRS is directed to immediately refund or credit any overpayment (with no interest) attributable to the credit. If the taxpayer has already filed a 2020 return and that return has been processed, then the credit is treated as an overpayment for the 2020 tax year. If the taxpayer has not filed a 2019 or 2020 tax return, the IRS is directed to use other available information to determine the amount of the advance refund.

The refund is not subject to reduction or offset for other certain debts or federal taxes owed that would otherwise be subject to levy or collection.

[ARPA § 9601]