House Budget Reconciliation Text Includes Significant Health, Paid Leave, and Retirement Provisions

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On September 15, the House Ways and Means and Energy and Commerce Committees advanced components of the Democrats' $3.5 trillion budget reconciliation package ("Budget Legislation" or "the Legislation"). The Legislation includes most of President Biden and Congressional Democrats' social and economic policy priorities, touching everything from green energy tax credits to Medicare expansion to free community college and universal preschool. In addition, the Legislation would undo many features of Republicans' *Tax Cuts and Jobs Act of 2017* ("TCJA") and raise tax revenues by approximately $3 trillion over 10 years.

Among the major tax changes contained in the Ways and Means title are:

- A return of the top individual tax rate to 39.6% from 37%;
- An increase in the top capital gains tax rate to 25% from 20% (28.8% when combined with the 3.8% net investment tax);
- A new 3% surtax on the income of certain high-income individuals and expansion of the net investment income tax;
- Changes to the tax treatment of carried interest of investment fund managers;
- Acceleration of the scheduled expiration of TCJA estate tax provisions;
- An increase in the corporate tax rate to 26.5% from 21% for businesses with gross income exceeding $5 million; and
- Various, significant international corporate tax increases.

The House Budget and Rules Committees will assemble the legislation passed by each House committee into a consolidated bill in time for a late September vote. The timeline in the House could slip, however, as leaders try to corral the necessary Democratic votes and overcome objections raised by members so far (*e.g.*, drug pricing reforms; providing relief from the TCJA SALT tax limitations).

The Senate is nearly certain to amend the Legislation to insert desired policies and to trim the package's cost to attract moderate votes. At this time, it appears that the entire reconciliation process could take a couple of months – and possibly until the end of the year – to play out as members of the Democratic caucus from both chambers try to reach consensus on the scope and contents of the legislation. In the meantime, Congressional lawmakers will need to pass a stop-gap continuing funding resolution to keep the federal government operating after September 30, as well as an increase to the federal debt limit later this fall.

Below, we summarize key provisions that are likely to be of interest to Groom clients.

I. Health Provisions

A. *Affordable Care Act ("ACA") Subsidies (Energy and Commerce Subtitle F, Ways and Means Subtitle H, Part 5)*

1. Expansion of Premium Tax Credits

The Legislation would make the following changes with respect to the Premium Tax Credit ("PTC"), some of which the *American Rescue Plan Act of 2021* (Pub. L. 117-2, "ARPA," Groom summary) included on a temporary basis. The changes would be effective beginning in 2022.

- The general 400% of federal poverty line income ceiling for PTC eligibility would not apply. Under the Energy and Commerce version, this provision would end at the end of 2024. Under the Ways and Means version, this provision would end the later of (1) the end of 2024 or (2) the date on which Health and Human Services ("HHS") fully implements the program closing the gap in Medicaid. (Note that the Ways and Means version appears to mistakenly have two provisions removing the 400% income ceiling – one provision appears to make this change permanent because it has no end date.)
- The Ways and Means version would permanently amend the "Applicable Percentage" used to calculate the PTC amounts available by making the formula more generous.
- The Ways and Means version would permanently lower the threshold for calculating whether a taxpayer has access to affordable coverage through an employer-sponsored plan to 8.5% from 9.5% of household income.
- The Ways and Means version would permanently exclude lump-sum Social Security benefit payments from household income for purposes of determining PTC eligibility.
- The Ways and Means version would amend the ACA employer "firewall" rules so that the PTC would be available to individuals whose income generally does not exceed 138% of the federal poverty line, regardless of whether the individual is offered affordable, minimum value employer-sponsored coverage. In addition, an employer would not be subject to an employer-made penalty with respect to such an individual. This provision would end the later of (1) the end of 2024 or (2) the date on which HHS fully implements the program closing the gap in Medicaid.

- Both versions of the Legislation would limit to $300 the amount of PTC advance payments that a taxpayer whose household income is less than 200% of the federal poverty line must repay. Additionally, taxpayers who would not otherwise be required to file a tax return but for reconciling an advance payment of the PTC, and whose income for the taxable year generally is not projected to exceed 138% of the federal poverty line, would not be required to file a tax return. Under the Energy and Commerce version, this provision would end at the end of 2024. Under the Ways and Means version, this provision would end the later of (1) the end of 2024 or (2) the date on which HHS fully implements the program closing the gap in Medicaid.
- The Ways and Means version modifies and extends the provision of ARPA that provides special PTC rules for individuals receiving unemployment compensation. If a taxpayer receives unemployment compensation for any week beginning during 2022 through 2025, he or she will not be treated as having received household income in excess of 150% of the federal poverty line.

2. Expanded Open Enrollment

The Legislation would expand the open enrollment period for 2022 through 2024 for individuals with household income less than 138% of the poverty line and who are not eligible for minimum essential coverage under certain government programs.

3. Establishment of a Health Insurance Affordability Fund

The Legislation would create a new health insurance affordability fund for states to allow states to: (i) provide reinsurance payments to health insurance issuers for individuals enrolled in most types of individual health insurance coverage (except for grandfathered plans, transitional plans, student health plans, and excepted benefits); or (ii) provide assistance to reduce out-of-pocket costs for individuals enrolled in qualified health plans through an Exchange and for individuals enrolled under standard health plans offered through a basic health program.

4. Expansion of the Health Coverage Tax Credit

The Ways and Means Legislation would additionally make the health coverage tax credit permanent and increase the qualified health insurance premium covered by the tax credit to 80% from 72.5% beginning in 2022.

5. Expansion of Non-Emergency Services

Additionally, the Legislation would expand the availability of non-emergency medical transportation services, as well as certain family planning services, in silver-level qualified health plans to individuals who have household income of less than 138% of the poverty line for 2024. The Legislation would provide government funds to issuers to pay for such services.

6. Expansion of Non-ACA Compliant Health Insurance Coverage

The Legislation would also expand the list of "non-ACA compliant health insurance coverage" to include association health plans and short-term limited duration insurance.

B. *Prescription Drug Pricing (Energy and Commerce Subtitle E, Ways and Means Subtitle J)*

As introduced, budget text from both Energy and Commerce and Ways and Means incorporated provisions from the *Elijah E. Cummings Lower Drug Costs Now Act* (H.R. 3), to address drug pricing. However, those provisions failed to advance in the Energy and Commerce Committee as three moderate Democrats opposed the provisions in favor of their own drug-pricing proposal. The Ways and Means Committee did advance the H.R. 3 provisions, as described below.

The Legislation requires the HHS Secretary to negotiate maximum drug prices for single-source, brand-name drugs that lack generic equivalents and that are among the 125 drugs that account for the greatest national spending or the highest Medicare spending. The negotiated maximum price for a selected drug, with respect to each plan year during a price applicability period, may not exceed 120% of the average price in Australia, Canada, France, Germany, Japan, and the United Kingdom. If that information is not available, the negotiated maximum price may not exceed 85% of the U.S. average manufacturer price. Drug manufacturers that fail to comply with negotiation requirements are subject to civil and tax penalties. Medicare must offer the negotiated prices to participants, while private insurers and group health plans may opt out of doing so.

C. *Medicare Expansion (Ways and Means Subtitle E, Part 4)*

The Budget Legislation expands Medicare to provide coverage for dental, hearing, and vision services. Vision coverage will begin in 2022, hearing coverage in 2023, and dental coverage, as the most expensive of the three, will be delayed until 2028.

Under the Legislation, Medicare will provide coverage for one routine eye exam every two years and one contact lens fitting exam every two years. Notably, the payment amount will not exceed $85 for glasses frames and $85 for lenses or $85 for a two-year supply of contact lenses. Coverage for vision services takes effect October 1, 2022.

The Legislation adds aural rehabilitation and treatment services, including hearing aids, to the list of services for which Medicare provides payment beginning October 1, 2023. To receive payment for hearing aids, a doctor must diagnose an individual with profound or severe hearing loss. Medicare will pay for hearing aids once every five years.

Finally, Medicare will cover "dental and oral health services" such as preventive and screening services, including oral exams, dental cleanings, and dental x-rays, and basic and major treatments, including tooth restorations, periodontal services, and dentures beginning in 2028. The Legislation limits the payment for dental services to an "applicable percent" of the actual amount charged by the provider or the amount determined by a fee schedule. The applicable percent for preventive and screening services and basic treatments is 80%. The applicable percent of major treatment starts at 10% in 2028. From 2028 to 2032, the applicable percent will increase by 10% each year, and beginning in 2032, the applicable percentage is 50% for major treatments.

D. *Medicaid Expansion (Energy and Commerce Subtitle F)*

For individuals living in the 12 states that did not expand Medicaid as part of the ACA, the Legislation creates a federal Medicaid program beginning in 2025. The program would provide benchmark or benchmark-equivalent coverage as required under Medicaid. To assist these individuals with coverage in 2022-2024 while the federal program is being established, the Legislation expands existing subsidies to allow these individuals to purchase affordable coverage on the Exchanges.

Specifically, the Budget Legislation would expand the availability of cost-sharing subsidies in 2023 and 2024 to families whose household income is less than 138% of the federal poverty line. Further, the Legislation would allow individuals with a household income of less than 100% to be eligible for cost-sharing subsidies for 2023 and 2024 and treat individuals with household income of more than 100% but less than 138% of the federal poverty line as having a household income equal to 100% of the federal poverty line for 2022 (and thus make the individuals eligible for more generous subsidies). The Legislation would also amend the cost-sharing provisions for 2023 and 2024 so that the qualified plan's share of cost sharing would be 99% of such costs for individuals with a household income below 138% of the poverty line. It also would provide government funds to issuers to pay the issuer's 12% of such costs.

The Legislation also requires states to offer continued eligibility for Medicaid coverage for pregnant women for twelve months following the birth of a child, regardless of the basis for the individual's eligibility for medical assistance.

II. Paid Leave (Ways and Means Subtitle A and Subtitle I, Part 5)

The Budget Legislation creates a new federal paid family and medical leave program by adding a new section to the *Social Security Act* entitled "Paid Family Leave and Medical Benefits." The new section entitles every person who: (1) files an application with the Secretary of the Treasury; (2) has or anticipates having four hours per week of "caregiving hours;" and (3) has wages or self-employment income during the four months before the individual's benefit period to a period of 12 weeks of paid leave. A "caregiving hour" means time in excess of one hour during which the individual is engaged in qualified caregiving. "Qualified caregiving" means any activity engaged in by the individual for any reason described in the *Family and Medical Leave Act* ("FMLA"). The FMLA entitles an eligible employee to unpaid leave for any of the following reasons:

- Because of the birth of a son or daughter of the employee and to care for such child;
- Because of the placement of a child with the employee for adoption or foster care;
- To care for the spouse, child, or parent of the employee as long as such spouse, child or parent has as a serious health condition;

- Because of a serious health condition making the employee unable to perform the functions of his position;
- Because of any qualifying exigency arising out of the fact that the spouse, child, or parent of the employee is on active duty in the Armed Forces.

See 29 U.S.C. § 2612(a).

Notably, the Legislation authorizes an individual to receive benefits for qualified caregiving on behalf of “qualified family members.” The Legislation broadly defines a qualified family member as the individual’s spouse (including a domestic partner in a civil union or other registered domestic partnership recognized by a State), a spouse’s parent, child and a child’s spouse, parent and a parent’s spouse, sibling and a sibling’s spouse, grandparent or grandchild and their spouses, as well as any other individual who is related by blood or affinity and whose association with the employee is equivalent of a family relationship (as determined under regulations issued by the Secretary of the Treasury). Thus, the Legislation expands the definition of “qualified family member” from that under FMLA because a “qualified family member” under the FMLA only applies to an employee’s children, his spouse, or his parents.

The amount of a person’s monthly benefit will depend on his weekly earnings before the period of leave and is based on the following formula: weekly benefit rate X (the number of caregiving hours credited to each week / the number of hours in a regular workweek). The individual’s weekly benefit rate is calculated as a percentage of his annual earnings based on the following chart:

1/52	$15,080	85%
1/52	$34,248	75%
1/52	$72,000	55%
1/52	$100,000	25%
1/52	$250,000	5%

For example, if a person earns $30,000 per year, he will receive 75% of $577. ($30,000 divided by 52 is $577). The proposed bill notes these wage amounts are indexed to the national wage index for years after 2024. Interestingly, the Legislation appropriates funds for this universal paid leave program "out of any funds in the Treasury not otherwise appropriated." This funding scheme is different from state paid leave laws, which typically assess payroll taxes on employers to fund the paid leave program. *See, e.g.* D.C. Code § 32-541.03 (requiring an employer to contribute a percentage of each employee's wages to the universal paid leave fund).

Additionally, the proposed bill creates a grant program for states with existing paid family leave programs, *i.e*. Legacy States, and employers with existing paid family leave programs. A Legacy State means a state that entitles employees in that state to at least 12 weeks of paid family and medical leave benefits. The following states currently operate paid leave programs providing at least 12 weeks of paid family leave: Connecticut, the District of Columbia, Massachusetts, New Jersey, New York, Oregon, Rhode Island, and Washington. The state must also agree to share information and data with the Secretary of the Treasury about persons who received paid leave benefits. If approved, the Legacy State will receive a grant in the amount equal to the total cost of the state paid family leave program. The Legislation does not address how, if at all, these grants will affect the amounts that employers may be required to pay to each state pursuant to a paid leave law.

Similarly, an employer may receive a grant in amount equal to 90% of paid leave benefits distributed to employees if the employer's program meets certain requirements. An employer must apply and receive approval from the agency, and the employer's paid leave program must provide benefits equal to or more generous than those provided under the proposed bill.

Finally, as a revenue-raising provision, the Budget Legislation shortens the time frame of the existing paid family and medical leave credit. 26 U.S.C. § 45S(a)(1). The credit currently expires after December 31, 2025; however, the Legislation changes the expiration date of the credit to December 31, 2023.

III. Retirement Provisions

A. *Automatic Contribution Plans (Ways and Means Subtitle B, Part 1)*

Generally, the Legislation requires employers that have more than five employees to provide access to a retirement plan that automatically enrolls employees by 2023. Governments and churches are exempt from the mandate. Employers would not be required to make contributions to the plan. Employees would be able to opt out and have the ability to change their investment election and deferral rate. The bill does *not* create a so-called "public option"—a federally facilitated automatic IRA or 401(k). It does, however, allow states to continue moving forward with auto IRA programs and does not preempt those programs. Employers that do not offer an automatic contribution plan or arrangement would be charged an excise tax of $10 per day per employee for non-compliance (with certain exceptions and adjusted for inflation). To offset costs for employers, the bill provides an enhanced employer plan startup credit.

The new rules would be effective for plan years beginning after December 31, 2022.

Below are the specifics of this section.

1. Automatic Contribution Plan and Arrangements Generally

As noted above, this Legislation requires almost all employers to offer an automatic contribution plan or arrangement ("ACPA"), which is defined as:

- A defined contribution plan that is a qualified retirement plan or 403(b) plan, includes a qualified cash or deferred arrangement or a salary reduction arrangement, and meets the requirements under the Legislation relating to notices, eligibility, contributions, investment, fees, and lifetime income set forth below;
- An automatic IRA meeting the eligibility, contributions, investment and fee requirements; or
- A SIMPLE IRA meeting the requirements regarding notices, contributions, investment, and fees.

Notably, the Legislation would grandfather in plans and arrangements that are established and maintained by an employer prior to the date of enactment that are qualified retirement plans, qualified annuity plans, 403(b) plans, SEPs and SIMPLE IRAs. Grandfathered plans are exempt from the requirements listed below.

The Legislation generally requires that ACPA's meet the following requirements:

Notice requirements

- Requires plans/arrangements to provide notice similar to that of an automatic enrollment section 401(k) safe harbor plan (a QACA notice).

Eligibility Requirements:

- Generally requires employers to allow all eligible employees to participate in the ACPA.
- Excludes those under 21 and other employees who do not meet minimum coverage test and/or service requirements.
- Controlled groups are treated as a single employer, and eligible employees within an employer need not be eligible to participate in the same automatic contribution plan or arrangement.

Contribution Requirements:

- Requires each employee eligible to participate in the ACPA to be treated as having elected to have the employer make elective contributions in an amount equal to the qualified percentage of compensation, unless the employee elects otherwise.
- Qualified percentage is defined under the terms of the plan, and must be at least 6% (not to exceed 10% in the initial year) upon automatic enrollment.
- Automatic escalation must be provided at the rate of at least 1% per year, up to 10%. Automatic escalation rates higher than that can be utilized by a plan, but would be subject to a 15% cap.

- For automatic IRA arrangements, the qualified percentage is equal to the minimum percentage applicable in a given plan year.

Investment Requirements:

- The provision requires an ACPA to use life-cycle or target date funds as the default investment.

Fee Requirements:

- For plans not subject to title I of ERISA, participants may not be charged unreasonable fees or expenses.

Lifetime Income Requirements:

- Generally, for plans other than SIMPLE IRAs and automatic IRAs, the plan must permit participants the option to elect to receive at least half of their vested balance in the form of a lifetime income feature.
- Participants with balances of less than $200,000 at the time of distribution are exempt from the requirement.

2. Automatic IRA Arrangements

Employers that choose to comply with the mandate via automatic IRAs are subject to different requirements. The Legislation defines automatic IRA arrangement as, with respect to an employer (and trustee or issuer designated by the employer), an arrangement facilitated by the employer that meets requirements regarding eligibility, investments, and fees. Employers must automatically enroll employees at the default rate, unless an employee opts out or alters the contribution rate. Automatic IRAs are subject to altered, but similar, employee notice requirements as above. Additionally, the Legislation requires that automatic IRA arrangements must offer the following as alternatives to the default option: 1) a class of assets or funds that is designed to protect the principal of the individual on an ongoing basis; 2) a balanced fund; and 3) any other class of assets or funds determined by the Secretary of Treasury. Other rules include certification of providers and investments, default use of paper notices, Roth, penalty-free withdrawals within 90 days, and an exemption from disqualification by reason of the fact that aggregate contributions exceed the IRA deductible. The guaranteed income requirement above does not apply. The Legislation would also establish an Automatic IRA Advisory Group to provide recommendations and assist with implementation of the Legislation.

3. State Automatic IRA and MEP Programs

This Legislation provides that state-facilitated automatic IRAs and MEPs (such as CalSavers or Illinois Secure Choice) passed prior to the passage of the bill fulfill the mandate on employers to offer an ACPA and are grandfathered in without having to meet the aforementioned requirements. However, new state-facilitated automatic enrollment arrangements must meet the ACPA requirements above in order to satisfy the mandate. The bill does not prohibit states from establishing these programs (or adding additional requirements that do not conflict with the federal requirements) going forward.

4. Deferral Only Arrangements

This Legislation establishes a new, deferral only arrangement under the existing 401(k) rules, and provides that such an arrangement will satisfy the actual deferral percentage ("ADP") test. Deferral-only arrangements must provide automatic enrollment and automatic escalation, as well as satisfy notice requirements, as described above. Further, only employee contributions can be made under this arrangement; employer contributions – matching or nonelective—are not allowed. Employee contributions are capped at IRA levels ($6,000 for 2021). Catch-up contributions of up to $1,000 are allowed and will be indexed for inflation. These plans are treated as passing top-heavy testing.

5. Employer Credits

The Legislation modifies the nonrefundable income tax credit for eligible employers establishing an automatic contribution plan. Eligible employers with fewer than 26 employees would receive a tax credit of up to 100% of qualified startup costs for up to five years; employers with 26-100 employees would receive a credit of up to 50% of qualified startup costs. Beginning in 2023, the credit would apply only to qualified ACPA plans. Eligible employers providing deferral only and automatic IRA arrangements would receive a more limited credit: $500 for the first four years, up to $2,000 total. Effective for taxable years beginning after December 31, 2021.

B. *Saver's Credit (Ways and Means Subtitle B, Part 2)*

Under the bill, the existing nonrefundable Saver's Credit would be changed to become a refundable tax credit that would be directly contributed to a tax-favored retirement account, effectively resulting in a match for saving. Households earning up to $50,000 could claim a credit of up to $500, with the credit phasing out at a household income of $70,000. Contributions to IRAs, qualified plans, and ABLE accounts are eligible for the credit. The Legislation also makes a corresponding change to the tax code to allow a tax refund directly deposited into an IRA to be treated as if it had been received by the end of the tax year for which the income tax filing was made.

The Saver's Credit changes would be effective for tax years beginning after December 31, 2024.

C. *Limitations on High-Income Taxpayers with Large Account Balances (Ways and Means Subtitle I, Part 3, Subpart A)*

Ways and Means Committee Chairman Richard Neal (D-MA) and Senate Finance Committee Chairman Ron Wyden (D-OR) have long expressed interest in correcting perceived unfairness in retirement savings tax benefits. The Budget Legislation prohibits taxpayers with taxable income above $400,000 per year ($450,000 for married filing jointly ("MFJ"), $425,000 for head of household ("HH")) from contributing further to a traditional or Roth IRA if that individual has more than $10 million combined in aggregate IRA and defined contribution retirement accounts. Any such contributions exceeding the limit would be subject to an annual 6% excise tax.

For individuals who meet the taxable income thresholds and whose account balances exceed $10 million, the Legislation creates a new Minimum Required Distribution of 50% of the amount in excess of $10 million. If an individual's aggregate account balances exceed $20 million, the Legislation requires the individual to first withdraw Roth account balances in either the amount necessary to reach $20 million or the balance of the Roth accounts, whichever is less. After the Roth withdrawals, the individual may choose how to reduce their balances to $10 million under the other rule. Special increased withholding rules also apply, and these amounts are eligible for distribution. Notably, it appears that pre-59½ distributions from Roth accounts would be immediately taxable (although distributions of excess amounts would not be subject to the 10% additional tax).

The Legislation also requires plan sponsors to report to the IRS and the employee information on such vested accounts with balances in excess of $2.5 million.

Effective for tax years (plan years for the reporting provision) beginning after December 31, 2021.

D. *Elimination of "Back-Door" Roth IRA Conversions and In-Plan Roth Conversions of After-Tax Amounts (Ways and Means Subtitle I, Part 3, Subpart B)*

Some savers who exceed the income limitation for contributing to a Roth IRA (currently $140,000) have saved in a Roth through the so-called "back-door" by contributing to a traditional IRA and then converting those funds into a Roth later. The Budget Legislation closes this loophole by prohibiting taxpayers with taxable income above $400,000 ($450,000 MFJ, $425,000 HH) from executing a Roth conversion for an IRA or employer-sponsored plan, effective after December 31, 2031. The Legislation also prohibits all Roth conversions for after-tax contributions within qualified plans and after-tax IRA contributions, effective after December 31, 2021.

E. *IRA Investment Restrictions & Other Provisions (Ways and Means Subtitle I, Part 3, Subpart B)*

The Legislation includes several significant restrictions on IRA investments. First, it prohibits IRA investments that require an investor to have a certain income or education level. The prohibition is broad and appears to capture both registered offerings and private placements, including private equity. For existing investments, IRA owners would have only two years to liquidate prohibited investments. Second, it amends the prohibition on IRA owners investing in entities they own. Currently, IRA owners are permitted to invest in assets in which they have less than 50 percent interest, but the Legislation would reduce that to 10. Finally, the Legislation would "clarify" that an IRA owners is always a disqualified person for purposes of applying the prohibited transaction rules and would extend the statute of limitations for certain IRA issues from three years to six years.

IV. Executive Compensation (*Ways and Means Subtitle I, Part 5*)

Under current law, publicly traded employers are prohibited from taking a deduction for executive compensation in excess of $1 million paid to the chief executive officer, chief financial officer, and the next three highest compensated employees. In addition, under current law each of these employees is subject to a rule colloquially expressed as "once a Covered Employee, always a Covered Employee." Further, the ARPA expanded this list to include the next five highest compensated employees beginning after December 31, 2026, although these employees are not subject to the "once in, always in" rule. *See* our previous summary linked above.

This Legislation would accelerate the ARPA provision expanding the list to include the next five highest compensated employees to begin after December 31, 2021, rather than December 31, 2026. In addition, the Legislation addresses a loophole identified in the preamble to the Final Regulations under Code section 162(m). Essentially, taxpayers previously argued that compensation received from a partnership in which the publicly traded company was a partner was excludible from the deduction limitation under Code section 162(m). Although the IRS rejected this argument, it noted that if a partnership is respected for Federal income tax purposes, Code section 162(m) would not apply to compensation paid to a publicly traded employer's covered employee by a corporate subsidiary of a partnership, because the corporate subsidiary would not be a member of the publicly traded employer's affiliated group. *See* our previous alert on the final regulations under Code section 162(m) here.

The following proposed changes appear to work in tandem to limit planning techniques (e.g., paying compensation with the corporate subsidiary of a partnership) to avoid the deduction limitation under Code section 162(m).

- New Aggregation Rule. The Legislation would create an "aggregation rule," analogous to the rule presently in place for health insurance providers, that would broaden the scope of when related entities are treated as a "single employer."
- Expanded Scope of Applicable Employee Remuneration. The Legislation would broaden the scope of applicable employee remuneration to include any remuneration "whether or not such remuneration is paid directly by the publicly held corporation." Further, the definition of applicable employee remuneration was clarified to include performance-based compensation, commissions, post-termination compensation, and beneficiary payments.

Finally, the Legislation also directs the IRS to prescribe additional regulations or other guidance to "prevent the avoidance" of the deduction limitation under Code section 162(m).

V. Other Miscellaneous Tax Provisions *(Ways and Means Subtitle H)*

The Legislation extends through 2025 the expanded child tax credit benefits currently being provided on a monthly basis through 2021 under ARPA.

It also makes permanent the ARPA expansions of the earned income tax credit and the child and dependent care tax credit.

In addition, the Legislation makes permanent and indexes to inflation the ARPA increase to $10,500 of the exclusion for employer-provided dependent care assistance.

If you have any questions, please do not hesitate to contact your regular Groom attorney or the authors listed below:

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