

Consolidated Appropriations Act, 2021

December 22, 2020

Highlights

- ✓ Second, But Reduced, Stimulus Payment
- ✓ Extension of Many Earlier COVID-19 Relief Provisions
- ✓ Extenders Included; New Expirations Vary

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SPECIAL REPORT

Congress Passes Year-End Agreement on Pandemic Relief, Stimulus, and Extenders

Late in the day on December 20, 2020, leaders in Congress announced that they had reached an agreement on a new round of relief for the ongoing COVID-19 pandemic and economic stimulus. The Consolidated Appropriations Act, 2021 finally took shape after several days of negotiations between the Democrats and GOP on Capitol Hill. The passage of the bill, as well as the negotiations, were closely tied to passage of an omnibus appropriations bill for the federal government for the 2021 fiscal year. Congress passed several short-term extensions of the appropriations bill to avoid a shutdown as the COVID-19 stimulus package was negotiated. The bill was approved in the House on December 21 by a vote of 327 to 85 and later passed in the Senate by a vote of 92-6. The President is expected to sign the bill into law.

The act includes several extensions of popular provisions of earlier COVID relief and stimulus acts passed in 2020. This includes additional loans under the Paycheck Protection Program (PPP) (including the allowance of a second round of loans for certain small businesses), relief for the hard-hit transportation industry, additional funding for programs related to vaccines and virus testing, and further expansion of federal unemployment assistance (providing \$300 a week in unemployment payments, half of the amount received under the acts passed in the spring).

 **COMMENT.** *Both sides gave up priorities in coming to the agreement, with Democrats withdrawing demands to provide aid to state and local governments struggling due to lost sales tax revenue resulting from a reduction in economic activity and the GOP not including COVID-related liability protection for employers. Senate Majority Leader Mitch McConnell, R-Ky. pointed out in his weekly press conference on December 15th, “We can live to fight another day on what we disagree on, but we ought to agree to go forward on what we can agree on.”*


 **COMMENT.** *President-Elect Joe Biden has described the agreement as a “down payment” on relief and stimulus he will seek after he is inaugurated on January 20, 2021; a sentiment that Democratic lawmakers have echoed. Several GOP leaders in Congress have indicated their disagreement with that outlook.*



From a tax standpoint, there are not many new provisions providing new forms of stimulus and relief. However, several small changes are made to provisions of the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, while also extending them beyond their initial expiration date. It does include another round of direct payments to taxpayers, extensions of the charitable contribution provisions and employee retention tax credit, relief for lower

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income taxpayers on tax credits, and a clarification of the treatment of business expenses for small businesses with forgiven PPP loans. The act also includes an extension of popular individual and business tax breaks scheduled to expire at the end of 2020.

 **COMMENT.** *The act is massive, reportedly the second largest bill (by page count) ever considered by Congress. This Wolters Kluwer Tax Briefing will be limited to the highlights of the act. You can find additional details of the legislation on CCH®AnswerConnect.*

DIRECT STIMULUS PAYMENTS

Just as with the CARES Act in March, the act includes a direct payment to taxpayers in an effort to stimulate a flagging economy. The provision was a late addition to the package, in response to demands from several lawmakers on both sides of the aisle.

Unlike the Economic Impact Payments (also known as Recovery Rebate Credits) provided in the CARES Act, these payments are only \$600 per individual, where the earlier round in the spring provided a \$1,200 payment per individual. However, families can claim the full \$600 amount for child dependents, where the credit was limited to \$500 for children in the previous round of payments.

Otherwise, the direct payments are generally structured exactly as they were in the spring. The payment is actually a credit against 2020 taxes, and begins to phase out for individuals with adjusted gross income in 2019 in excess of \$75,000 (\$150,000 for joint filers).

CAUTION. *The phaseout of the \$1,200 direct payments under the CARES Act was also calculated based on 2019 income. However, because that provision came into effect well before the extended July 15 filing deadline for 2019 taxes, the calculation could instead be based on 2018 returns where 2019 return information was not yet available. This new \$600 payment does not make a similar concession. Thus, a taxpayer whose income increased from 2018 to 2019 may not be eligible for a proportionally similar payment of the second credit.*

This new direct payment has an impact on joint filers where one of the married persons is a nonresident alien; taxpayers left out of the direct payment under the CARES Act. A provision makes such taxpayers eligible for the direct payments under this act, but also makes them retroactively eligible for payments under the CARES Act.

EXTENSION AND MODIFICATION OF COVID RELIEF

Several other earlier relief provisions have been extended, some with modifications.

Deferred Payroll Taxes

Pursuant to a memorandum issued by President Trump on August 8, employers were allowed to defer their employee’s share of payroll taxes from the period beginning September 1, 2020 through December 31, 2020, paying them ratably after the deferral period through April 31, 2021. The act extends the “payback period” to December 31, 2021. Penalties and interest will begin to accrue on the deferred taxes on January 1, 2022.

Teacher Expenses

The act requires that the Treasury issues regulations providing that personal protective equipment and other supplies used to prevent the spread of COVID-19 qualify for the above-the-line educator expense deduction.

PPP and Business Expenses

The act includes a clarification of the treatment of business expenses by businesses that received PPP loans that were subsequently forgiven. In Notice 2020-32, the IRS determined that any business expenses paid with the proceeds of a forgiven PPP loan cannot be deducted. This is because the Code and Regulations prohibit the deduction of business expenses allocable to tax-exempt income, and a forgiven PPP loan is excluded from income (normally, a forgiven loan gives rise to taxable cancellation of debt

income). However, the act expressly provides that the intent of the original legislation was that such expenses can give rise to a deduction.

Exclusions of Grants and Loan Forgiveness

The act clarifies that certain financial aid received by college students under the CARES Act, as well forgiveness of Economic Injury Disaster Loans (EIDL) granted to small businesses under the CARES Act are excluded from income.

Tax Credits

The employer credit for paid sick and family leave, originally part of the Families First Coronavirus Response Act, is extended. The credit was originally set to expire at the end of 2020, but the covered period is extended to March 31, 2021.

The act extends the employee retention tax credit to apply to compensation paid to a covered employee through June 30, 2021. The credit, originally part of the CARES Act, was set to expire with respect to compensation paid after December 31, 2020.

The act also makes a temporary change in the calculation of the earned income tax credit and the child tax credit. Under the provision, lower-income taxpayers can instead calculate the credits for the 2020 tax year using income information for the 2019 tax year. The calculation of both credits can result in a lower credit amount in a year where there is a reduction in income. The provision allows lower-income taxpayers who may have seen a reduction in wages in 2020 due to the pandemic to use 2019 income amounts (if higher) to calculate the amount of the credits for 2020.

CHARITABLE CONTRIBUTIONS

The CARES Act included temporary changes to the limitation on charitable contributions in order to encourage taxpayers to support charities, hopefully lessening the impact of the pandemic on those in need. For individuals, the limitation on charitable contributions was increased from 60 percent of the contribution base to 100 percent for 2020. Also, individual taxpayers can claim a \$300 above-the-line charitable contribution on 2020 tax returns.

Meanwhile, the CARES Act increased the percentage limitation on charitable contribution deductions for corporations from 10 percent to 25 percent for qualified cash contributions made in 2020. A corporation may carry forward for five years any qualifying contribution that exceeds the 25-percent limit. The deduction limitation for contributions of food inventory from any trade or business

is also temporarily increased from 15 percent to 25 percent for donations of food inventories made during 2020.

All of these provisions are extended to 2021 under the act.

EXTENDERS

The act also extends many popular tax breaks for individuals and businesses. These provisions, commonly known as “extenders” are generally extended every year or two for one or two years, and were scheduled to expire at the end of 2020. Many of these provisions, such as the new markets tax credit, the exclusion from gross income of the discharge of qualified principal residence debt, and the employer credit for paid family and medical leave, are extended through 2025.

However, several of the provisions have been made permanent. For example, the 7.5 percent floor on the deduction of medical expenses is made permanent. Still other extenders are extended, or made permanent, with some modifications. The deduction of tuition and fees is not extended beyond 2020 in lieu of an expansion of availability for education credits.

Additionally, many other provisions are only extended through 2021. These include the deduction for mortgage insurance premiums, as well as several energy credits.

DISASTER TAX RELIEF AND MISCELLANEOUS PROVISIONS

The act also includes disaster tax relief for federally declared disaster areas during 2020. The relief includes the forgiveness of early-withdrawal penalties under Code Sec. 72(t) for qualified disaster distributions, the recontribution of amounts withdrawn for home purchases, and an increase in the amount of loans from qualified plans. An employee retention credit is also allowed for employers in affected areas, as well as special casualty loss rules for affected individuals.

The package of disaster tax relief is essentially the same as was historically provided in the wake of major disasters like hurricanes or wildfires. However, unlike the disaster-by-disaster approach that was taken in the past, this relief generally applies to all declared disasters during the period beginning January 1, 2020, and ending 60 days after the date of enactment of the act.

Finally, in an effort to shore up the dining industry, the act includes a temporary return of the business deduction for meals. The deduction, originally eliminated by the Tax Reform Act of 1986, allows for businesses to deduct the full amount of meals, including beverages, provided at a restaurant. The deduction is allowed for 2021 and 2022 only.