

Consolidated Appropriations Act, 2021

December 28, 2020

Highlights

- ✓ Trump Signs Bill After Voicing Displeasure With Content
- ✓ Second, But Reduced, Stimulus Payment
- ✓ Extension of Many Earlier COVID-19 Relief Provisions
- ✓ Extenders Included; New Expirations Vary

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SPECIAL REPORT

President Signs 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. While Congress was finishing business on the omnibus package, it passed another short-term appropriations bill, extending the deadline to avoid a shutdown to December 28.

The White House, on December 21, indicated that President Trump was expected to sign the appropriations bill. However, Trump voiced his displeasure with the bill the following day, indicating he may not sign it into law. Due to the size of the legislation, it took some time to “present” the bill to the President for signature as required by the Constitution. The President finally received the bill on Christmas Day, and showed no sign he intended to sign the bill. Over the long holiday weekend, members of Congress on both sides of the aisle urged the President to sign the bill. Finally, late on December 27, he relented, and signed the bill into law. It is unclear what prompted the President to change his mind.

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.*

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There are numerous tax provisions in the omnibus act, generally contained within one of four named acts contained within the massive legislation: the COVID-19-Related Tax Relief Act, the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, the No Surprises Act, and the Taxpayer Certainty and Disaster Tax Relief Act of 2020. 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 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.

COVID-19-RELATED TAX RELIEF ACT


The COVID-19-Related Tax Relief Act includes the extensions and expansions of tax-relief contained in the Families First Coronavirus Response Act and the CARES Act. It also includes some new provisions aimed at providing tax relief to taxpayers suffering medical and economic hardships due to the ongoing COVID-19 pandemic

Recovery Rebates/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 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). The amounts do phase out faster than the earlier payment, so fewer taxpayers will receive direct payments this time around

 **COMMENT.** *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. Some other modifications were made in an effort to make the payments more widely inclusive.

 **COMMENT.** *This seemed to be the provision that had drawn the ire of President Trump more than any other, as he spent the week after the bill passed demanding that the payments be \$2,000 rather than \$600. Democrats in the House attempted to pass a bill increasing the amount by unanimous consent (a great majority of House members had left for the holiday), but it was blocked. A White House statement issued in conjunction with the signing stated that, “Much more*

money is coming.” However, leaders have not indicated a forthcoming vote to increase the stimulus amount.

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.

Coronavirus-Related Distributions from Retirement Plans

Under the CARES Act, the 10-percent additional tax under Code Sec. 72(t) is waived for any qualified coronavirus-related distributions from a retirement plan. Eligible individuals who take such distributions can include them in gross income over a three-year span and have three years to repay the amount. The act clarifies that in the case of a money-purchase pension plan, a coronavirus-related distribution that is an in-service withdrawal will be treated as a qualified distribution.

Farming Losses


Under the CARES Act, net operating losses (NOLs) arising in tax years beginning in 2018, 2019, and 2020 have a five-year carryback period and an unlimited carryforward period. The provision limiting an NOL deduction attributable to NOLs arising in tax years beginning after 2017 to 80 percent of taxable income does not apply during these years. A technical correction concerning taxpayers with a 2017/2018 fiscal year clarifies that the elimination of the former two-year carryback period applies to tax years beginning after 2017 and not to tax years ending after 2017. The act allows taxpayers to waive the application of these rules to farming losses.

Employers Covering Future Retiree Costs

The act allows employers maintaining plans that made a qualified future transfer may elect to terminate the transfer, effective for any tax year after the election is made. The election must be made no later than December 31, 2021.

ECONOMIC AID TO HARD-HIT SMALL BUSINESSES, NONPROFITS, AND VENUES ACT

The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act is largely related to the extension and enhancement of the popular Paycheck Protection Program. The significant majority of this section of the act does not have a direct tax effect. However, because the PPP does provide for the exclusion from income of forgiven PPP loans, it does have a tangential effect, and is worth noting the existence of the extension. However, the PPP itself is beyond the scope of this Wolters Kluwer Briefing.

 **COMMENT.** *This section of the act does not contain the allowance of a business expense deduction where the expenses were paid for with forgiven PPP loans. That was contained in the COVID-19-Related Tax Relief Act, and is discussed above.*

NO SURPRISES ACT

The omnibus package also includes the No Surprises Act, the highlight of which is a prohibition on surprise medical bills, where a patient receives a separate, and sizable, medical bill from an out-of-network health provider while receiving treatment at an in-network facility. Due to the peculiarities of health care-related legislation, largely due to the Affordable Care Act, many changes are made to the Internal Revenue Code, but the breadth of actual tax impact is narrow, and in most cases nonexistent.

TAXPAYER CERTAINTY AND DISASTER TAX RELIEF ACT OF 2020

Charitable Contribution Extensions

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 new law.

Tax 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 most were scheduled to expire at the end of 2020. Unlike previous years, the extensions are not uniform, some are extended to 2021 only, others to 2025, while others have been made permanent. A table of these extended provisions can be found below.

Disaster Tax Relief

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.

Business Meals Deduction

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 more than thirty years ago, 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.

Provisions Extended by the Taxpayer Certainty and Disaster Tax Relief Act of 2020



Code Sec.	General Description of Provision	Description of Modification
213(a)	7.5 percent of AGI floor for medical and dental expense deduction	Permanent extension
179D	Energy efficient commercial buildings deduction	Permanent extension (with modifications)
139B	Exclusion from gross income of benefits provided to volunteer firefighters and emergency medical responders	Permanent extension
222 (repealed)	Above the line deduction for qualified tuition and related expenses	Not extended, expires after 2020
45G	Railroad track maintenance credit	Permanent extension (with modifications)
263A(f); 5001(c); 5041; 5051(a); 5212; and 5414(b)	Miscellaneous provisions related to beer, wine and distilled spirits	Permanent extension (with modifications)
954(c)(6)(C)	Look-thru rule for related controlled foreign corporations	Extended through 2025
45D(f)(1)	New markets tax credit	Extended through 2025
51(c)(4)	Work opportunity credit	Extended through 2025
108(a)(1)(E)	Exclusion from gross income of discharge of qualified principal residence indebtedness	Extended through 2025 (with modifications)
168(i)(15)(D)	7-year recovery period for motorsports entertainment complexes	Extended through 2025
181(g)	Special expensing rules for certain productions	Extended through 2025
4611(f)(2)	Oil spill liability trust fund financing rate	Extended through 2025
1391(d)(1)(A)(i)	Empowerment zone tax incentives	Extended through 2025 (with modifications)
45S(i)	Credit for paid family and medical leave	Extended through 2025
127(c)(1)(B)	Exclusion from gross income of certain employer payments of student loans	Extended through 2025
45Q(d)(1)	Carbon oxide sequestration credit (scheduled expiration after 2024)	Extended through 2025
45(d) and 48(a)(5)(C)(ii)	Credit for electricity produced from certain renewable sources	Extended through 2021
163(h)(3)(E)(iv)(I)	Mortgage insurance premiums treated as qualified residence interest	Extended through 2021
35(b)(1)(B)	Credit for health insurance costs of eligible individuals	Extended through 2021
45A(f)	Indian employment tax credit	Extended through 2021
45N(e)	Mine rescue team training credit	Extended through 2021
168(e)(3)(A)(i)	Classification of certain race horses as 3-year property	Extended through 2021
168(j)(9)	Accelerated depreciation for business property on an Indian reservation	Extended through 2021
Tax Relief and Health Care Act	American Samoa economic development credit	Extended through 2021
40(b)(6)(j)(i)	Second generation biofuel producer credit	Extended through 2021
25C(g)(2)	Credit for nonbusiness energy property	Extended through 2021
30B(k)(1)	Credit for new qualified fuel cell motor vehicles	Extended through 2021
30C(g)	Credit for alternative fuel vehicle refueling property	Extended through 2021
30D(g)(3)(E)(ii)	Credit for 2-wheeled plug-in electric vehicles	Extended through 2021
45(e)(10)(A)	Production credit for Indian coal facilities	Extended through 2021
45L(g)	Credit for energy-efficient new homes	Extended through 2021
6426(d)(5); 6426(e)(3); 6427(e)(6)(C)	Excise tax credits relating to alternative fuels	Extended through 2021
25D(h)	Residential Energy Efficient Property Credit	Extended through 2022
4121(e)(2)(A)	Black lung liability trust fund excise tax	Extended through 2021