

January 6, 2021

COVID-19 Update: Consolidated Appropriations Act, 2021

With the COVID-19 pandemic continuing to cause significant economic damage, Congress passed H.R. 133 (the “bill”) providing additional COVID-19 relief as part of a larger appropriations bill. On December 27, 2020, President Trump signed the bill into law.

From a COVID-19 perspective, the bill provides significant relief to taxpayers, including clarification that business expenses paid with proceeds from loans received under the Paycheck Protection Program are deductible, an extension of the Employee Retention Tax Credit through June 30, 2021 along with modifications, an extension of the refundable credits for paid sick and family leave through March 31, 2021 along with modifications, and refundable tax credit payments direct to individuals, among others.

Additionally, the bill extends dozens of temporary tax provisions, often referred to as “tax extenders.” The tax extenders received varying treatment; some were extended permanently while others were extended for varying terms. Also included in the bill are miscellaneous other tax provisions, such as an expansion of certain Section 48 energy credits, favorable new rules for unused health and dependent care flexible spending arrangements, and a fix to the alternative depreciation system period over which residential rental property placed in service prior to 2018 can be depreciated when making a real property trade or business election, among others.

Notably, provisions for aid to state and local governments and business liability protections related to COVID-19 were not included in this bill.

COVID-19 Tax Relief Measures

Paycheck Protection Program (“PPP”) – Loans to Small Businesses

The bill clarified that taxpayers are entitled to tax deductions for business expenses paid with the loan proceeds received through the PPP even where the loan is forgiven. This reverses prior Internal Revenue Service guidance that such expenses could not be deducted and applies to loans pursuant to both the PPP under the CARES Act and the extended PPP loan program. The provision also includes that tax basis and other attributes of the borrower’s assets are not reduced as a result of the loan forgiveness.

Employee Retention Tax Credits (“ERTC”)

The Employee Retention Tax Credit included in the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was expanded and extended through June 30, 2021. Among other expanded provisions, the bill increases both the amount of the refundable credit from 50% to 70% of qualified wages paid and the per employee limitation from \$10,000 per year to \$10,000 per quarter, effective for calendar quarters after December 31, 2020. Additionally, the employers eligible for the credit were expanded and the gross receipts threshold was decreased.

Individual Refundable Tax Credits

Refundable tax credits will be available to individual taxpayers in the amount of \$600 for single taxpayers and \$1,200 for married filing jointly taxpayers, in addition to \$600 per qualifying child. The refundable tax credits begin to phase out for taxpayers with 2019 modified adjusted gross income of \$75,000 for single taxpayers (\$112,500 for heads of household; \$150,000 for married filing jointly).

The bill provides for the Department of Treasury to issue the refundable tax credits as advance payments based upon 2019 tax returns.

Credits for Paid Sick and Family Leave

The Families First Coronavirus Response Act provided for refundable payroll tax credits for paid sick and family leave. The availability of these credits would be extended through March 31, 2021.

Charitable Deductions

The CARES Act provided an above-the-line charitable deduction of \$300 for individuals who take the standard deduction for the 2020 tax year. For individuals who itemize deductions, the CARES Act removed the 50% limitation on adjusted gross income (“AGI”) for charitable cash contributions incurred for the tax year 2020. For corporations, the limitation on deductibility of charitable contributions to 10% of taxable income was suspended for tax year 2020 with a provision allowing deductions up to 25% of taxable income, subject to certain limitations.

This bill provides for an extension of the expanded charitable deduction provisions through December 31, 2021. Additionally, married filing jointly taxpayers that do not itemize for the 2021 tax year are eligible for a \$600 above-the-line deduction.

Other Provisions

The bill includes several other COVID-19 tax relief provisions, including:

- An extension of time to repay certain deferred employee payroll taxes through December 31, 2021.

- Clarification that gross income does not include cancellation of debt income from the forgiveness of certain loans under the CARES Act (Economic Injury Disaster Loans and others).
- Authority for the Secretary of the Treasury to issue guidance or regulations providing that PPE and other COVID-19 related supplies qualify as eligible expenses for purposes of the \$250 teacher expense deduction.
- Certain emergency financial aid grants under the CARES Act are excluded from gross income for college and university students.
- An extension through December 31, 2025 for the exclusion of certain employer payments towards student loans enacted under the CARES Act.
- A temporary allowance, from January 1, 2021 through December 31, 2022, of a 100% deduction of the cost of business meals provided by employers for food or beverages from a restaurant.

Tax Extenders

Dozens of expiring tax provisions were extended for varying periods of time including some provisions being made permanent. This is a notable change from laws enacted in the past that would generally extend these tax provisions for one-year at a time.

Permanently extended provisions:

- Decrease in the adjusted gross income floor for deductibility of medical expenses (as itemized deductions) from 10% to 7.5%
- Repeal of the deduction for qualified tuition and related expenses along with an increased income limitation under the Lifetime Learning Credit
- Deduction for energy efficient commercial buildings
- Exclusion from gross income for certain benefits provided to volunteer firefighters and emergency medical responders
- Credit for railroad track maintenance with a rate reduction from 50% to 40%
- Decreased excise tax rates related to beer, wine, and distilled spirits along with additional rules

Provisions extended through December 31, 2025:

- “Look-thru” rule for related controlled foreign corporations
- Exclusion from gross income of discharge of qualified principal residence indebtedness, along with a reduction in the maximum acquisition indebtedness amount from \$2 million to \$750,000
- Expensing rules for certain qualified film, television, and live theatrical productions
- Employer credit for paid family and medical leave
- Exclusion for certain employer payments of student loans
- New Markets Tax Credit
- Work Opportunity Credit

- Seven-year cost recovery period for motorsports entertainment complexes
- Oil spill liability trust fund rate
- Empowerment Zone tax incentives
- Extension of carbon oxide sequestration credit

Provisions extended through December 31, 2023:

- Energy Credits with phase-out modifications
- Residential Energy-Efficient Property Credit

Provisions extended through December 31, 2021:

- Renewable energy credits
- Treatment of mortgage insurance premiums as qualified residence interest
- Credit for health insurance costs of eligible individuals
- Energy Efficient Homes Credit
- Second Generation Biofuel Producer Credit
- Nonbusiness Energy Property Credit
- Credit for qualified fuel cell motor vehicles
- Alternative Fuel Refueling Property Credit
- 2-Wheeled Plug-In Electric Vehicle Credit
- Indian Employment Credit
- Mine Rescue Team Training Credit
- Classification of certain racehorses as 3-year property
- Accelerated depreciation for business property on Indian reservations
- American Samoa Economic Development Credit
- Production Credit for Indian coal facilities
- Excise tax credits relating to alternative fuels
- Excise tax on coal for the Black Lung Disability Trust Fund

Other Tax Provisions

The bill includes additional other tax provisions modifications. These modifications include, among others:

- A 4% floor in calculating the low-income housing tax credit for certain building projects.
- Allowance for a 30-year alternative depreciation system cost recovery period related to residential rental property placed in service before January 1, 2018 and held by an electing real property trade or business.
- Inclusion of waste energy recovery property for purposes of the Section 48 Energy Credit.
- Inclusion of qualified offshore wind facilities for purposes of the Section 48 Energy Credit.
- Temporary special rules for health and dependent care flexible spending arrangements, including the ability for taxpayers to rollover unused amounts to future years.

Contacts

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