Consolidated Appropriations Act, 2021

On December 27, 2020 President Trump signed into law the Consolidated Appropriations Act. The act includes several extensions of 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 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).

The majority of the tax changes within the omnibus act are contained within one of 2 named acts

1. The COVID-19-Related Tax Relief Act
2. The Taxpayer Certainty and Disaster Tax Relief Act of 2020

The COVID-19-Related Tax Relief Act:

Direct payment to taxpayers - In an effort to stimulate the economy. Unlike the Economic Impact Payments (also known as Recovery Rebate Credits) provided in the CARES Act, these payments are $600 per individual, where the earlier round in the spring provided a $1,200 payment per indi-vidual. 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).

This round of payments will be based on the 2019 tax return unlike the previous payments where 2018 was used if the 2019 tax return was not yet filed.

Deferred Payroll Taxes - Pursuant to a memorandum issued by President Trump on August 8, employers were allowed to defer their em-ployee'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 issue 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 that expenses paid with PPP funds are deductible. This was a clarification needed after the IRS determined that any business expenses paid with the proceeds of a forgiven PPP loan cannot be deducted.

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 ex-tended. 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.

Net Operating 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 tax-able income does not apply during these years.

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.

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. 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.

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 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.

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.

Business Meals Deduction - The act includes a temporary return of the business deduction for meals. The deduction, 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.

Second Round of PPP Loans

The CAA provides $284 billion to the U.S. Small Business Association (SBA) for first and second PPP loans. This new round of PPP funding is subject to new eligibility restrictions; however, the framework of the earlier PPP funding mostly remains in place. The covered period for PPP loans runs through March 31, 2021, subject to availability of funds. The following is a high-level view of the PPP provisions.

Eligibility

New PPP loans will be available to first-time qualified borrowers and, for the first time, to businesses that previously received a PPP loan. Specifically, previous PPP recipients may apply for another loan of up to $2 million, provided they:

- Have 300 or fewer employees
- Have used or will use the full amount of their first PPP loan
- Can show a 25% gross revenue decline in any 2020 quarter compared with the same quarter in 2019

The CAA aims to support very small businesses and, therefore, dedicates funding to first- and second-time PPP borrowers with 10 or fewer employees, first-time PPP borrowers that have recently been made eligible, and for loans made by community lenders. Sec. 501(c)(6) organizations (business leagues, chambers of commerce, visitors' bureaus, etc.) and "destination marketing organizations" (as defined in the CAA) are now eligible for PPP funding, provided they have 300 or fewer employees and do not receive more than 15% of receipts from lobbying. Eligibility also is extended to housing cooperatives with not more than 300 employees.

Borrowers from the following groups are still eligible for the program even if they didn't take out a loan in the first round:

- Businesses with 500 or fewer employees that are eligible for other SBA 7(a) loans
- Sole proprietors, independent contractors, and eligible self-employed individuals
- Not-for-Profits, including churches
- Accommodation and food services operations (those with North American Industry Classification System (NAICS) codes starting with 72) with fewer than 300 employees per physical location

PPP Loan Terms

As with earlier PPP funding, the costs eligible for loan forgiveness in the new PPP funding include payroll, rent, covered mortgage interest, and utilities. The new PPP funding also makes the following potentially forgivable:

- Covered worker protection and facility modification expenditures, including personal protective equipment, to comply with COVID-19 federal health and safety guidelines
- Expenditures to suppliers that are essential at the time of purchase to the recipient's current operations
- Covered operating costs such as software and cloud computing services and accounting needs
- Covered property damage cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation

To be eligible for full loan forgiveness, PPP borrowers will have to spend no less than 60% of the funds on payroll over a covered period of either 8 or 24 weeks — the same parameters earlier PPP funding had when it stopped accepting applications in August 2020.

PPP borrowers may receive a loan amount of up to 2.5 times their average monthly payroll costs in the year prior to the loan or the calendar year, the same as with earlier PPP funding, but the maximum loan amount is limited to $2 million maximum. PPP borrowers with NAICS codes starting with 72 (hotels and restaurants) can get up to 3.5 times their average monthly payroll costs, again subject to a $2 million maximum.

PPP Loan Forgiveness

The CAA creates a simplified forgiveness application process for loans of $150,000 or less. Specifically, a borrower will receive forgiveness if a borrower signs and submits to the lender a certification that is not more than one page in length, includes a description of the number of employees the borrower was able to retain because of the loan, the estimated total amount of the loan spent on payroll costs, and the total loan amount. Borrowers are required to retain relevant records related to employment for four years and other records for three years, as the SBA may review and audit these loans to check for fraud.

Additionally, the CAA repeals the requirement that PPP borrowers deduct the amount of any EIDL advance from their PPP forgiveness amount.

Other Funding Provisions

The CAA allocates $20 billion to provide Economic Injury Disaster Loan (EIDL) grants to businesses in low-income communities. In addition, shuttered live venues, independent movie theaters, and cultural institutions will have access to $15 billion in dedicated funding while $12 billion will be set aside to help business in low-income and minority communities.