

CORONAVIRUS INFORMATION & UPDATES

December 23, 2020

Phase 4 Stimulus Package—Highlight of Certain Key Tax-Related Provisions in the Phase 4 Stimulus Package

The Act has been passed by both the House of Representatives and the Senate.

On December 21, 2020, a bipartisan agreement was reached on the Consolidated Appropriations Act 2021 (Phase 4 Stimulus), in furtherance of the fourth phase of the federal government’s response to the COVID-19 crisis. (The bill was passed on December 21, 2020 by both the House of Representatives and the Senate.) The full text of the bill is published [here](#). The key tax provisions of the Phase 4 Stimulus are summarized in this Alert, and include an expansion of the employee retention credit, an additional deferral of payroll taxes, additional economic impact payments for individuals, and a second round of the Paycheck Protection Program (PPP).

Phase	Legislation Name	Cost ¹
Phase 1	Coronavirus Preparedness and Response Supplemental Appropriations Act	\$8.3 billion
Phase 2	Families First Coronavirus Response Act (FFCRA) (See Ropes & Gray Alert on the FFCRA .)	\$192 billion
Phase 3	Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (See Ropes & Gray Alert on the CARES Act .)	\$1.72 trillion
Phase 3.5	Paycheck Protection Program and Health Care Enhancement Act (PPP Expansion)	\$483 billion
House Proposed Phase 4	Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act) (See Ropes & Gray Alert on the tax sections of the never-finalized HEROES Act .)	\$3 trillion (estimated)
Senate Proposed Phase 4	Health, Economic Assistance, Liability Protection and Schools Act (HEALS Act) (See Ropes & Gray Alert on the tax sections of the never-finalized HEALS Act .)	\$1 trillion (estimated)
Phase 4 Stimulus	House Amendment of December 21, 2020	\$900 billion
Total		\$3.3 trillion ²

Key amongst its relief provisions, the bipartisan Phase 4 Stimulus will:

- Give a second round of recovery rebates/economic impact payments for individuals in the amount of \$600 (\$1,200 for joint filers), plus \$600 per qualifying child.
- With the CARES Act Employee Retention Credit (ERC) expiring December 31, 2020, create a new, more taxpayer-friendly ERC that applies after December 31, 2020 through July 1, 2021. The new ERC is increased by (i) changing the percentage of the credit to 70% of qualified wages (from 50%) and (ii) changing the amount of qualified wages to \$10,000 per employee per quarter (from \$10,000 per employee for all quarters).

¹ According to CBO’s “The Budgetary Effects of Laws Enacted in Response to the 2020 Coronavirus Pandemic, March and April 2020” (<https://www.cbo.gov/system/files/2020-06/56403-CBO-covid-legislation.pdf>)

² Total excludes amount from HEROES Act and HEALS Act.

CORONAVIRUS INFORMATION & UPDATES

- Extend availability of the FFCRA credit for paid sick and family leave to March 31, 2021.
- Codify and extend the deferral of employee payroll taxes previously deferred by Presidential Memorandum. Payroll tax obligations related to wages paid during the period beginning September 1, 2020 and ending December 31, 2020 are now deferred until the period beginning May 1, 2021 and ending December 31, 2021.
- Create a second round of the PPP, more limited and constrained than the first round of the PPP. Confirm that PPP loans that are forgiven do not give rise to taxable income, consistent with CARES Act. Also amend CARES Act to allow deductibility of expenses giving rise to PPP loan forgiveness.

Certain key highlighted tax-related provisions of the Phase 4 Stimulus are summarized below, with more detailed descriptions:

Key Tax Provisions	Summary
Division N—Additional Coronavirus Response and Relief	
<p>Creates Second Round of 2020 Recovery Rebate/Economic Impact Payments for Individuals</p>	<p><u>CARES Act History:</u> The CARES Act added Section 6428 to the Internal Revenue Code of 1986 (the Code), which provides for direct payments to individuals via an advance “recovery rebate” tax credit. The credit authorized by the CARES Act was the sum of \$1,200 (\$2,400 for joint filers) plus \$500 per qualifying child.</p> <p><u>Phase 4 Stimulus Provision:</u> Adds a new Section 6428A to the Code, replicating the CARES Act formula, including the 2020 tax credit concept. The new Section provides for direct payments via advance of credits in the amount of \$600 (\$1,200 for joint filers) plus \$600 per qualifying child. This full credit is limited to individuals making below \$75,000 (\$112,500 for heads of household, \$150,000 for joint filers). Similar to the CARES Act recovery rebate, the recovery rebate phases out for those earning between \$75,000 and \$99,000 (\$112,500 and \$124,500 for heads of household, \$150,000 and \$174,000 for joint filers). (See Div. N § 272.)</p>
<p>Extends the Deferment of Certain Payroll Taxes</p>	<p><u>History:</u> Pursuant to a Presidential Memorandum dated August 8, 2020, IRS Notice 2020-65 deferred the withholding (and therefore deposit) of certain payroll tax obligations. Under the Presidential Memorandum, payroll tax obligations related to wages paid during the period beginning September 1, 2020 and ending December 31, 2020 were deferred until the four-month period beginning January 1, 2021 and ending April 30, 2021. Deferred taxes were to be paid ratably from wages paid over this four-month period.</p> <p><u>Phase 4 Stimulus Provision:</u> Codifies the Presidential Memorandum and pushes back the date of payment of deferred taxes (under the Presidential Memorandum) until the eight-month period beginning May 1, 2021 and ending December 31, 2021. This deferred payment period is now eight months, instead of the previous four months, allowing the deferred taxes to be withheld and deposited over a longer time period. (See Div. N § 274.)</p>

CORONAVIRUS INFORMATION & UPDATES

Key Tax Provisions	Summary
<p>Clarifies Tax Treatment of PPP Loan Forgiveness</p>	<p><u>CARES Act History:</u> The CARES Act created the PPP, which authorizes forgivable loans to certain businesses.</p> <p><u>Phase 4 Stimulus Provisions:</u> Creates a second round of the PPP, which is more limited and constrained than the first round of the PPP. (See Div. N § 311.)</p> <p>Amends the CARES Act to provide that wages taken into account for the ERC or the credit allowed under Phase 4 Section 303, each discussed below, shall not be taken into account for the PPP. (See Div. EE § 206.)</p> <p>Provides that no amount shall be included in gross income for reason of forgiveness of PPP loans. (See Div. N §§ 276 & 278.)</p> <p>Provides that you can take deductions for expenses that are covered by the forgiven loans. (See Div. N §§ 276 & 278.)</p>
<p>Division EE—Taxpayer Certainty and Disaster Tax Relief Act of 2020</p>	
<p>Extends FFCRA Paid Sick and Family Leave</p>	<p><u>FFCRA History:</u> FFCRA Sections 7001–7004 provided for tax credits for employers and self-employed individuals for paid sick and family leave for certain COVID-related reasons.</p> <p><u>Phase 4 Stimulus Provisions:</u> Extends FFCRA paid sick and family leave from December 31, 2020 to March 31, 2020, and also extends corresponding tax credit. Does not, however, create an additional obligation for employers to provide additional FFCRA paid sick and family leave. (See Div. N § 286.)</p> <p>Changes to FFCRA paid sick and family leave are retroactive as if included in the FFCRA. (See Div. N § 286.)</p> <p>Allows self-employed individuals to elect to use prior year net earnings to determine their average daily self-employment income for purposes of the tax credits for FFCRA paid sick and family leave authorized by the FFCRA. (See Div. N § 287.)</p>

CORONAVIRUS INFORMATION & UPDATES

Key Tax Provisions	Summary
<p>Extends and Increases the CARES Act Employee Retention Credit (ERC)</p>	<p><u>CARES Act History:</u> Section 2301 of the CARES Act created the <u>Employee Retention Credit, which provides a credit against employment taxes with respect to qualified wages paid by eligible employers.</u></p> <p><u>Phase 4 Stimulus Provisions:</u> Creates a new ERC based on that created by CARES Act Section 2301, which is more taxpayer-friendly and applies to calendar quarters beginning after December 31, 2020 (See Div. EE § 207):</p> <ul style="list-style-type: none"> • Extends the ERC by making the credit apply to qualified wages paid before July 1, 2021, instead of being paid before January 1, 2021. • Increases the credit percentage to 70%, from 50%. The percentage is the amount of qualified wages that are paid as a credit. • Increases the per employee limitation for qualified wages to \$10,000 quarterly, rather than for all quarters. • Increases the threshold for determining whether wages of all employees or only eligible employees count towards qualified wages from 100 to 500 employees. • If qualifying for the ERC based on a reduction in gross receipts, changes the reduction in gross receipts required for eligibility to 20% reduction, from 50% reduction. • Authorizes advance payments only to employers employing fewer than 500 employees. <p>For calendar quarters beginning after December 31, 2020, amends CARES Act Section 2301 to add an election for an employer to not take into account certain wages for purposes of the ERC. (See Div. EE § 206.)</p>
<p>Creates Credit for Health Insurance Costs of Eligible Trade Adjustment Assistance (TAA) and Pension Benefit Guaranty Corporation (PBGC) Pension Recipients</p>	<p><u>Phase 4 Stimulus Provision:</u> Extends the termination date of eligibility for the credit for health insurance costs of eligible TAA allowance and PBGC pension recipients from January 1, 2021 to January 1, 2022. (See Div. EE § 134.)</p>
<p>Temporarily Allows Full Deduction for Business Meals</p>	<p><u>Phase 4 Stimulus Provision:</u> Allows for a 100% deduction for business meal expenses paid or incurred before January 1, 2023 and after December 31, 2020. (See Div. EE § 210.)</p>

CORONAVIRUS INFORMATION & UPDATES

Key Tax Provisions	Summary
<p>Modifies Deduction and Limitations on Charitable Contributions</p>	<p><u>Phase 4 Stimulus Provisions:</u> Provides for penalties for overstatement of qualified charitable contributions taken above the line. (See Div. EE § 212.)</p> <p>Extends CARES Act modification of limitations on charitable contributions to charitable contributions made in calendar year 2021. (See Div. EE § 213.)</p>
<p>Creates Disaster-Related Tax Relief Provisions</p>	<p><u>Phase 4 Stimulus Provisions:</u> For eligible employers affected by certain qualified disasters (as defined in Section 139 of the Code), creates an additional employee retention credit in the amount of 40% of qualified disaster wages. The maximum amount of qualified disaster wages is \$6,000. Qualified disaster wages do not include wages taken into account for the purposes of CARES Act ERCs. (See Div. EE § 303)</p> <p>Eligible tax-exempt organizations also receive a credit of 40% of qualified disaster wages paid to all employees in a calendar quarter. For tax-exempt organizations, the maximum amount of qualified disaster wages is also \$6,000. (See Div. EE § 303.)</p> <p>Provides for extended limitations on charitable contributions that are qualified disaster relief contributions. (See Div. EE § 304.)</p> <p>Provides for an increase to the standard deduction in the amount of qualified disaster-related personal casualty losses. (See Div. EE § 304.)</p>
<p>Extends Certain Code Provisions Through 2025</p>	<p><u>Phase 4 Stimulus Provisions:</u> Extends application of the following provisions through January 1, 2026:</p> <ul style="list-style-type: none"> • Controlled foreign corporation (CFC) look-through rule under Code Section 954(c)(6). (See Div. EE § 111.) • New Markets Tax Credit under Code Section 45D. (See Div. EE § 112.) • Work Opportunity Credit under Code Section 51. (See Div. EE § 113.) • Exclusion from gross income of discharge of qualified principal residence indebtedness under Code Section 108. Maximum indebtedness taken into account reduced to \$750,000, from \$2,000,000. (See Div. EE § 114.) <p>Empowerment Zone Tax Incentives under Code Section 1391: Amends Code Section 1397A to terminate increase of Code Section 179 expensing and nonrecognition of gain on rollover of Empowerment Zone investments for taxable years beginning after December 31, 2020. (See Div. EE § 118.)</p>