

TAX NEWS & VIEWS



The latest COVID-19 legislative news

Deloitte's Jon Traub discusses the latest legislative news and updates related to COVID-19. He provides updates on the CARES Act, including the chances of changes to the net operating losses provision in future legislation and what parts of the House's HEROES Act might survive. Jon also discusses potential timing and content of a phase four bill.

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IAN: Welcome to the Tax News & Views podcast from Deloitte Tax. On this series, we'll be talking to specialists from Deloitte Tax about some of the business issues and developments related to COVID-19. I'm Ian Solomon, and I'll be your host. Joining me today for a legislative update is Jon Traub. Jon is the leader of Deloitte Tax's Policy Group. He has extensive experience in the legislative arena, and before joining Deloitte in 2012, Jon was the staff director for the Committee on Ways and Means of the US House of Representatives. In that role, he was responsible for developing legislative policies and strategy on issues in the committee's jurisdiction, including taxes, health care, and trade.

Jon, welcome back to the podcast. Always great to have you on.

JON: Good to hear from you as well, Ian.

IAN: So, Jon, I'd like to start with the CARES Act, obviously passed about two and a half months ago. Any updates there—changes or clarifications?

JON: Well, we saw Congress pass a bill about two weeks ago now to modify some of the rules around the PPP program—that's the forgivable small business loan program called the Paycheck Protection Program—clarifying and lowering the amount of money that companies have to spend on payroll, as opposed to other expenses like rent or utilities. It also gives companies additional time to spend the money from the loan. We also expect sometime soon for legislation to be considered that would allow PPP loans that are forgiven to give rise to deductible business expenses.

The IRS, about a month ago, issued a notice. It said that if you have a loan forgiven, the

amount of the loan proceeds used for business expenses can't be deducted from your tax, which sort of gives with one hand but takes away with the other. We do expect Congress to pass legislation that would clarify that the intent was to allow PPP proceeds to give rise to deductible expenses, and so we expect that to happen next, in a little bit of time, I believe.

IAN: So now, let's go over to the HEROES Act—passed a few weeks ago by the House, wasn't taken up by the Senate. Is there anything that was in the HEROES Act that you think could live on in future legislation?

JON: So there are a lot of flash points between what the House did in the HEROES Act and what we expect to come out of the Senate. But there are certainly pieces of the HEROES Act that will remain in, I think, whatever gets ultimately signed into law. For example, the House package has a very generous package of assistance for state and local governments. And while we've seen some pushback from Republicans on that, I expect some iteration of state and local assistance to make it through. The House bill will extend expanded unemployment benefits, and we've seen pushback on that from Republicans who are concerned that the benefits are so rich that for some people in some states, they get paid more to not work than to go back to their old jobs. And anecdotally, there's some evidence that employers are having trouble getting people to go back to reopened work sites. So we can expect a compromise there that extends benefits for the millions of Americans unable to work, but also includes some kind of back-to-work bonus or back-to-work incentive for those who are eligible for UI, but actually do leave it to go back to their workforces.

On the tax side, one of the things that's in the HEROES Act, which I do think has a chance of getting included in the final package, is an expansion of the employee retention tax credits. Those are refundable tax credits for employers who have seen their businesses closed or have had to see a substantial decline in revenue caused by the coronavirus pandemic. And the House bill includes a substantial expansion of ERTC, and I would expect something on that to make it to an eventual law passed as a phase four relief package.

There are some tax changes from the HEROES Act I don't think will make it into law. I don't think the changes in net operating loss carryback rules, which were enacted in the CARES Act and that the House would undo in HEROES, I don't think those actions are due. The CARES Act provisions will make it into a phase four bill coming out of the Senate. I also don't think that we'll see a temporary repeal of the cap on state local tax deductibility. Again, it's the thing from the HEROES Act in the House bill that I don't think will be included by the Senate in what they do.

IAN: So what do you think is the current position of sort of the three main players in any future legislation? The Senate Republicans, House Democrats, and the White House—where are they at right now, and where do you think they want legislation to go?

JON: Well, I think there's a general sense right now that the next coronavirus bill is likely to be the last one before the election. It seems like the initial bipartisanship we saw around the first three-and-a-half bills, if you count the PPP plus up bill, is starting to erode, and we're getting a little bit more of a partisan edge to people's approaches. The House seems pretty supportive of where it came out, right? A big package, \$3 trillion-plus, lots of money for state, local, lots of money for federal assistance, extended unemployment benefits, and mostly taxpayer-favorable tax changes, although, as I noted, they do have some unfavorable rules of net operating losses.

The Senate, by contrast, Ian, is taking a slightly different approach. They seem intent on doing a smaller package. On June 5th, we saw the May jobs report came out, and that's a net gain

of jobs in the economy, which was a surprise to many. A lot of folks out there thought we'd have further net job reductions in the month of May, with a possible uptick starting in June. The fact we saw an uptick in jobs in May suggested to many Republicans that we should tap the brakes on both the size and timing of a phase four bill, although we did see, in testimony before the Congress this week, Secretary of the Treasury Mnuchin confirmed the administration believes another bill is necessary. They still do want more money to help the economy. So I don't think phase four is going to stop, but I do think some Republicans are looking for a smaller package in scope and timing. And then they also really are adamant among Senate Republicans that we fix the UI problem I mentioned a minute ago, and also that we deal with the issue of liability protection for employers.

I don't think Senate Republicans want a blanket waiver of lawsuits against employers if workers or customers get sick. What they do want, though, is some kind of protections for employers who follow prescribed safety rules and yet still have a customer or an employee get sick. And so I think that's been a sticking point with Democrats who have sort of said, "Well, look, the best way to keep people safe is to have employers intended to provide the maximum possible protections, and we shouldn't water down the incentive

for employers to give the maximum safety consideration for their workers and their customers." So that's a real flash point as we see things emerging.

And then the White House is sort of giving some mixed signals on a number of items. The president has said he does think we need another package, as Secretary Mnuchin confirms in congressional testimony, but exactly what they want in this package is sort of a mystery. The president's talked a lot about payroll tax cuts, although that seems to have not gotten much traction in either chamber. He's talked about capital gains tax cuts, although Secretary Mnuchin this week sort of downplayed the idea of cutting capital gains rates. The president talked about tax incentives for encouraging people to travel domestically. And he's talked about a further cut in the corporate tax rate from .1 percent to something lower. These ideas all are in the mix, although it's unclear at this point how many of those we'll really insist and go to the wall on and demand be part of a final package. So it's a little bit of a standoff, as well, as parties sort of negotiate this landscape, and I think expectations for a bill to happen relatively quickly as phase four have now really evaporated. And I think we're looking at something in late July, or maybe even early August, before we get to a conclusion on these phase four discussions.



IAN: And I'm assuming any additional news on the economy—when it comes to jobs reports, things like that—will definitely impact what eventually passes?

JON: I think that's right, although, you know, one thing to me is that the April jobs report that came out in May—and that was a huge, eye-popping large number—it didn't really change the dynamic all that much in terms of the urgency with which Congress approached a phase four bill. So obviously, bad news from the economy, which would tend to speed things up, and good news has shown it might slow things down. But I think the it would be easy to overread how much influence short-term economic news changes will have on the trajectory of this bill.

IAN: So the legislation that's passed to date, as well as what may pass in phase four, comes

with a significant price tag. Where is Congress at in terms of the impact to the deficit and what they may or may not be willing to do going forward, keeping that in mind?

JON: Well, pre-pandemic, the projections from the Congressional Budget Office were that the deficit would reach a trillion dollars this year. As a result of both additional spending and tax cuts in the first three and a half phases of the Coronavirus response, as well as general economic slowdown resulting in lower tax receipts, the projected deficit for fiscal year 2020 for the federal government—and it ends at the end of September—is \$3.7 trillion, which is an incredibly large number. And so anything Congress does, in addition to what they've already done, obviously, would add that 3.7 trillion, although really most of the costs might be reflected in fiscal year '21. And that deficit is already going to be over \$2 trillion.

And so, combined with the decent jobs report we saw come out on June 5th, you're starting to hear more members talk about the need to slow down, either because the economy is healing itself and/or because we can't afford to pile on trillions of dollars of additional deficit. So it does have an impact on the debate. I don't think, again, it will kill the prospects for a phase four bill, but I do think it is a pressure point that is pushing the final size and scope of the package to be smaller rather than larger.

IAN: Jon, it's always great to catch up, and look forward to continuing the conversation over the summer as the news warrants.

JON: Great. Thanks very much, Ian.

IAN: Thanks again for listening to the Tax News & Views podcast from Deloitte Tax.

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