

TAX NEWS & VIEWS



Senate Republicans release Phase 4 COVID-19 proposal

Deloitte's Jon Traub takes a look at the Senate Republicans' recently released phase four COVID relief legislation. He also discusses what House Democrats will be looking for during negotiations, and the chances of the parties going with a short-term package instead.

Host: Ian Solomon,
Senior Manager, Deloitte
Guest: Jonathan Traub, Leader - Tax
Policy Group, Washington National Tax,
Deloitte Tax LLP

IAN: Jon, Welcome back to the pod always great to have you on especially this week with so much happening in the news.

JON: Nice talking with you, Ian

IAN: So, let's start from the beginning here. Earlier this week, the Republican leadership in the senate released the **main points of its Phase 4 COVID-19 relief** bill. Let's just start by hearing some of the details and some of the things that are in that proposal.

JON: Well, let's start with one basic observation Ian, and that is the package unveiled Monday night will not be voted on by the US Senate. It is abundantly clear that the package would lack the 60 votes necessary to clear a filibuster. And most likely doesn't have even close to 50 votes as a substantial internal Republican disagreement about the shape and size of the package.

Overall though, not surprisingly, it is smaller than the \$3 trillion HEROS Act passed by the House in May. Also, not surprisingly, it is not as tax-focused as the CARES Act, which we saw enacted in March.

On the business tax side, it does expand the employee retention tax credit. It creates a new category of workers eligible for WOTC, who have been unemployed this year. It does do some fixes to the PPP program and expands it, but it does not change the IRS's notice, which says that expenses paid with a forgiven PPP loan are not deductible business expenses.

It does create a new tax regime to encourage companies to do Production of personal protective equipment here in the US,

combining both an investment tax credit for moving the plants and equipment here in the US and a provision allowing tax free repatriation of affiliated intellectual property. There's a new provision allowing a full deductibility for the rest of this year for business meals.

And some changes on the taxation of remote workers, people who are in one state, now that's different than their usual office space given the necessities, the pandemic.

And on the tax side is also another round of refund checks to individuals.

But most notably, the bill contains a protection against certain lawsuits from businesses who follow prescribed safety rules. That is, if an employee or a customer comes down with coronavirus businesses who follow prescribed safety rules and don't engage in gross negligence or a willful neglect are protected from lawsuits. And there is not in the package a substantial increase in funding for state and local governments which Democrats in the House have said is critical to them.

There's also Ian, as last point, a reduction in the weekly unemployment checks if you recall, we've talked about in the past the CARES Act temporarily raised unemployment checks by \$600 a week per person. That bonus in UI benefits expires at the end of this week. House Democrats have called for extending it Senate Republicans believe that in some cases that bonus is so high that workers are being paid more money not to go back to work, than to go back to work. In other words, they're getting paid more to be unemployed than to go back to their old jobs. And employers anecdotally

are having a difficult time getting employees to come back to their old jobs. Republicans want to reduce that \$600 and peg it to an employee's former wages. That so far has met resistance from the Democrats who don't like that proposal.

I would point out it does not include the President's long fought for proposal to cut payroll taxes. That did not make it out of the cutting room floor on this one.

IAN: So, if there's not even enough votes for this to get out of the Senate, which means there's not enough Senate Republicans willing to support this. Where, where is the negotiation today? So, if the Senate Republicans aren't agreeing with each other, how are they going to work with the, the Democrats on this?

JON: So Senate GOP Leader Mitch McConnell has said to the White House, which is being represented here by Treasury Secretary Mnuchin and Chief of Staff Mark Meadows, "You guys go talk to Pelosi and find a deal that everybody can live within and come back to me and I'll see if I can sell it to the Senate."

So as I said that the Senate package was never intended to be voted on, it's really an opening bid for negotiations and the hope is now that this triangle discussion between the White House, Democrats, and Republicans can produce a bill that can pass both chambers in the coming days.

IAN: I'm also hearing that, in addition to this large package that we're discussing that the White House has been talking about sort of a scaled back Plan B proposal which would split up this larger phase for legislation, a bit to provide some short-term relief. What are some of the details there and do you think that's an option?

JON: There are a couple of different versions of Plan B. The one that has gotten the most attention so far is a White House offer to Democrats to pass just an extension of unemployment benefits and liability reform and do just that and then let the members go home for the August campaign recess period. Congressional Democrats responded very negatively to the idea. If you give the Republicans the thing they want most -

liability fixes - and the thing they most need even if they won't admit it, which is unemployment benefits, and that's because if the unemployment benefits expire and the economy really suffers as a result, it would probably hurt President Trump more than anybody else.

According to Democrats, if you gave the Republicans those two items, what's the incentive for them to come back again in September and negotiate on things like State and local tax payments or assistance to states to vote by mail or other needed items Democrats think are critically important.

There is another idea floating around, which I have to admit I've been thinking about for some time and is starting to get at least some discussion, is the idea of just doing a short term unemployment bill, say for six or eight weeks to allow Congress to recess for August in the political conventions and the campaign season. And to get out of DC, which is unbearably hot and humid and oppressive in the month of August. And then come back and revisit both unemployment and the other issues, back when they come back in September. It's an idea I've been talking about quietly with friends for some time. It's not yet received enough currency to be in the category of likely

to happen, but I think it is something that is possible can happen if the sides don't get closer together on a broader deal in the coming days.

IAN: So, I've seen in the press lately that as many as potentially half the Republicans will vote no to essentially any Phase 4 package. Is that what you're hearing, and if so, does that mean that the Democrats have a little more sway in the negotiations.

JON: So, there have been some members of the Senate quoted as saying that more than half of Senate Republicans might vote against this package. That's far from definitive and let's wait and see what negotiators come up with assuming they come up with a deal that President Trump blesses and urges Congress to pass. I'm going to guess that some of those reluctant Republicans will end up voting for this package.

But the thrust of your question, I think, is correct and that is the more Republicans say we don't like this, the more votes Mitch McConnell will have to get from Democrats to pass a package which theoretically gives Chuck Schumer and Nancy Pelosi more leveraged to dictate the final outcome of a product



IAN: So, one thing specifically, I want to get into is the NOL changes that were in the CARES Act. Now the House Democrats passed legislation in May, that would undo some of that. Do you think there's a chance that that gets undone or when we get through all these negotiations and those NOL changes from the CARES Act stick?

JON: So, when the house passed the HEROES Act, the reaction from Senate Republicans was pretty immediate and pretty clear. We're not going to go back and undo those changes in past, what would that to them amount to a retroactive tax increase.

The bill that came out from Senate Republicans on Monday night did not go back and undo the CARES Act changes to allow NOL carrybacks. And I would expect that a deal that eventually emerges from Congress will maintain current law, and therefore not include the House HEROES Act provisions to scale back the NOL pieces from the CARES Act.

IAN: So, what should your corporate tax departments be paying attention to right now, as these negotiations are going on?

JON: Well, I think one of the issues we've heard from tax departments that they're interested in is a proposal which is not in the Senate package to allow monetization or refunds of general business credits. That's an item I think is worth keeping an eye on as something that could potentially sneak in the back door at the

last minute here, hasn't happened yet. And it also ultimately, of course, may not happen, But it's certainly possible.

Overall though I think corporate tax departments should notice the changes being done to the employee retention tax credits, the expansion of WOTC to include unemployed workers. Those are the biggest things I think most tax departments will pay attention to what we think will be in an eventual phase four Bill.

IAN: Alright Jon last question for you to get out the crystal ball. Where's this thing going?

JON: Wow. Ha-ha.

So, it seems to me like it's in everybody's interest for different reasons to get a deal done here, but the contours of a deal that seem acceptable right now or hard to square, given the sharp lines in the sand being drawn by Democrats and Republicans on various issues.

So I'm going to say and I, you can hold me this on a future pod Ian, I'm going to say Congress ultimately passes a very skinny package, maybe with unemployment benefits and one or two other small things This month or early in August and then comes back and does the rest of it in September. It doesn't seem to me like we're seeing the necessary movement to get a deal done in the next few days.

Now having said that, negotiations in Congress, often take a familiar pattern which is lots of table pounding about how my position is right and your position is wrong, and you have to give up ground here and I'm not giving up any ground because I have the political imperative to get done what I want to get done. And that precedes the eventual real deal making that's necessary.

And so well, so far, we've seen this play to script in terms of the we're still on the table pounding process portion in which each side of search that it has red lines and the other side is being unreasonable.

Usually you can see evidence that that's going to end and that and we're going to move into the serious negotiating portion of the of the festivities. And at this point, we don't see that. Could it happen later today or tomorrow, of course. But so far, the transition from table pounding to deal making seems at this point over the horizon.

IAN: Jon always great to talk to you. Fascinating. Following along with this. Thanks again for your help, helping us understand all this.

JON: Glad to do it and take care, please.

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