



In this issue:

House OKs coronavirus economic stimulus bill with business tax credits; more tax relief expected in subsequent package [UPDATED]..... 1

House OKs coronavirus economic stimulus bill with business tax credits; more tax relief expected in subsequent package [UPDATED]

The House of Representatives has approved a multibillion dollar tax-and-spending package aimed at beginning to address the economic implications of the global coronavirus outbreak; meanwhile, congressional leaders and White House officials have already begun discussing the contours of a potential second stimulus bill that could include additional tax relief.

This special edition of *Tax News & Views* updates our report from March 14 with a link to the official version of the legislation as approved in the House, additional details on the measure’s tax credits for paid sick leave and paid family leave, and clarifications regarding their effective date.

As of press time, the Senate is still waiting to receive the bill from the House. The measure the House sends over is expected to have various technical and conforming corrections to tax and nontax provisions. We will provide details on those changes as they become available.

Credits for paid sick leave, family leave

The Families First Coronavirus Response Act (H.R. 6201) cleared the House by a vote of 363-40 (with one member voting “present”) early on March 14. Passage came just hours after House Speaker Nancy Pelosi, D-Calif., and

Treasury Secretary Steven Mnuchin finalized an agreement to incorporate revisions that address objections raised by congressional Republicans and the White House when the measure was unveiled on March 11.

URL: http://newsletters.usdbriefs.com/2020/Tax/TNV/200316_1_suppA.pdf

H.R. 6201 was approved under an expedited process known as “suspension of the rules,” which requires a two-thirds vote for passage.

President Trump, who on March 13 declared the coronavirus pandemic a national emergency, announced his support for the bill in a statement posted on Twitter, which likely will improve its chances for passage in the Republican-controlled Senate in the coming days.

On the tax side, the measure includes two credits to help businesses absorb the cost of a requirement to provide paid sick leave and paid family and medical leave to employees affected by the coronavirus. The mandates generally apply to businesses with fewer than 500 employees.

Credit for paid sick leave: The bill would provide a refundable tax credit designed to compensate employers for the cost of providing paid coronavirus-related sick leave to employees as separately required under the Emergency Paid Sick Leave Act (Division E of H.R. 6201).

- The credit for qualified sick leave wages paid with respect to employees who must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation with respect to coronavirus, is capped at \$511 per day per employee. The credit for amounts paid to employees caring for a family member or for a child whose school or place of child care has been closed is capped at \$200 per day per employee.
- The aggregate number of days taken into account per employee for any calendar quarter may not exceed the excess (if any) of 10 days over the aggregate number of days taken into account for all preceding calendar quarters.
- On a quarterly basis, the credit is limited to (and allowed against) the total taxes imposed on the employer under section 3111(a) (that is, the employer portion of the Social Security payroll tax), with any excess being refundable to the employer.

Credit for paid family and medical leave: H.R. 6201 also includes a refundable tax credit – not to exceed \$10,000 of qualified family leave wages paid by the employer per employee – designed to compensate employers for the cost of providing paid coronavirus-related family leave to employees as separately required under the Emergency Family and Medical Leave Expansion Act (Division C of H.R.6201).

Similar to the paid sick leave credit discussed above, the family leave credit would also be limited to (and allowed against) the total Social Security payroll taxes imposed on the employer, on a quarterly basis, with any excess refundable to the employer.

Details common to both credits: In the case of both credits, the bill would prevent any double benefit (for example, claiming both a deduction for sick leave and/or family leave wages paid as well as the associated credit(s)) by requiring the gross income of any employer claiming the credit(s) to be increased by the amount of the credit(s). Employers may elect to not have either of these tax credits apply. In addition, no credit is allowed with respect to wages for which a credit is allowed under section 45S, the employer credit for paid family medical leave, enacted as part of the tax overhaul bill known informally as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97).

URL: <https://www.irs.gov/newsroom/section-45s-employer-credit-for-paid-family-and-medical-leave-faqs>

Both credits also include related language extending the credits’ benefits to self-employed individuals as well as “mirror provisions” that would make them applicable in US territories.

The bill further provides that any revenue loss to the Social Security trust fund on account of these credits be backfilled by transfers from the federal government’s general fund. Both credits provide Treasury broad authority to issue regulations necessary to carry out the purposes of the section, including regulations and guidance related to avoidance, compliance and record-keeping relief, and benefit recapture.

Effective date: Both credits would apply only to qualified sick and family leave wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury (or the Secretary’s delegate) which is during the 15-day

period beginning on the date of the enactment of this bill, *and ending on December 31, 2020*. (An earlier version of the legislation indicated that the credits would be in effect for qualified wages paid within one year of enactment.)

Nontax provisions

In addition to mandating 14 paid sick days for most employees and three months of paid emergency family and medical leave (covering at least two-thirds of an employee's wages) throughout the coronavirus crisis, the approved bill also funds an increase in state unemployment insurance programs, provides more than \$1 billion in nutrition aid, allows closed schools to continue providing free and reduced-cost meals to eligible students, adds flexibility for the food stamps program, increases the portion of Medicaid spending paid by the federal government (as opposed to the states), enhances unemployment insurance, and guarantees free coronavirus testing to anyone whose doctor has said needs a test.

The legislation reflects GOP-requested changes to many of these provisions, as well. A House Republican aide told the *Wall Street Journal* on March 13 that the economic relief measures in the bill were amended to be specifically limited to the duration of the coronavirus threat. In addition, the federal medical assistance percentages, or match of federal funds to state funds, would be increased to 6.2 percent, lower than the 8 percent match Democrats sought. The emergency leave provisions are also written to expire in one year and provide exemptions for smaller businesses.

No offsets

The bill was designated as emergency spending and does not include tax or spending offsets. An estimate of revenue and spending changes was not available at press time.

Senate vote expected this week

The Senate is expected to take up H.R. 6201 quickly after it is sent over from the House. That could happen as early as March 16, but the timing will depend on how quickly the House can finalize an enrolling resolution to make technical and other changes to the text it approved late last week.

If all senators support the measure, it could be immediately approved under expedited "unanimous consent" rules and sent on to the White House for the president's signature. Without unanimous consent, the process for moving the bill through the Senate will presumably take longer. No decision on whether Senate leaders will be able to reach a unanimous consent agreement had been announced at press time.

Future relief could include payroll tax cut, tax filing extension

Lawmakers are also considering additional tax relief proposals to include in a future stimulus package that could move through Congress in the coming weeks or months, depending on the trajectory of the coronavirus and its impact on the economy. Among the provisions that have been mentioned by the congressional leadership and President Trump are:

- A temporary reduction in payroll taxes;
- An extension of the upcoming April 15 filing deadline for certain taxpayers (though some have suggested this could be accomplished administratively through Treasury without action by Congress);
- A fix to the so-called "retail glitch" in the TCJA that would clarify the cost recovery period for qualified improvement property;
- A revision of the TCJA provision prohibiting companies from carrying back net operating losses against prior tax years;
- Some form of "employee retention credit" designed to encourage employers to maintain headcounts even if employees cannot report to work because of issues related to the coronavirus; and
- Excise tax relief (or other relief) targeted at particular affected industries (for example, relaxing excise taxes airlines pay into the Federal Aviation Administration trust fund or providing loan guarantees).

Lawmakers also may push to include any number of other tax proposals in the next stimulus package, which could challenge congressional leaders to distinguish between those that are truly responsive to the economic impact of the

coronavirus and those that are simply long-standing legislative priorities that are being rebranded as economic stimulus.

It remains too early to tell which, if any, of these proposals could gain traction in Congress. That will likely be determined in large part by how broadly the virus spreads within the US over the coming days, weeks, and months and the effect it has on the economy. We will provide additional details as proposals are introduced.

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36 USC 220506