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The House on March 16 approved by unanimous consent a series of technical, conforming, and substantive changes to the Families First Coronavirus Response Act (H.R. 6201), the multibillion dollar tax-and-spending package it passed just two days earlier to begin to address the economic implications of the global coronavirus outbreak. The revised legislation now heads to the Senate, where it is expected to be brought up for consideration as early as March 17.
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200317_1_suppA.pdf
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200313_1_suppA.pdf

Paid sick leave, family leave credits available to certain employers

The legislation includes two refundable tax credits that generally would help certain employers absorb the cost of included mandates to provide paid sick leave and paid family and medical leave to certain employees affected by the coronavirus.

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.

The Joint Committee on Taxation (JCT) staff estimates that the credits would reduce federal receipts by nearly $104.9 billion between 2020 and 2030. The JCT has also released a technical explanation of the credit provisions.
URL: https://www.jct.gov/publications.html?func=startdown&id=5250

URL: https://www.jct.gov/publications.html?func=startdown&id=5251

It is worth noting, though, that the provisions under H.R. 6201 (including both the mandatory paid sick and family leave and the accompanying tax credits) do not apply to all employers:

- The paid family leave provided under Division C applies to employers with fewer than 500 employees, with possible exemptions for certain health care providers and first responders and businesses with fewer than 50 employees.
- The paid sick leave provided under Division E applies to (1) a private entity or individual which employs fewer than 500 employees and (2) a public agency (*e.g.*, government) and any other entity that is not a private entity or individual with more than one employee.

Assuming the legislation is enacted into law in its current form, details around which employers are subject to the paid-leave mandates and which employers are eligible for the tax credits likely will become clearer once the Treasury Department issues regulations. (See this alert from Deloitte Tax LLP for additional discussion.)
URL: http://newsletters.usdbriefs.com/2020/Tax/TNV/200317_1_suppB.pdf

Modifications

The House-adopted corrections package would modify the tax credits in three significant ways.

RRTA taxes included in sick/family leave credit limitations: H.R. 6201 as originally approved authorized separate tax credits for coronavirus-related paid sick and family leave 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). The corrections legislation cleared by the House on March 16 would add so-called "Tier 1" Railroad Retirement Tax Act (RRTA) taxes paid under section 3221(a) in such limitations. As with the section 3111(a) limitation, the paid sick and family leave credits would be refundable to the employer to extent they exceed section 3221(a) taxes imposed on the employer on a quarterly basis.

Credits allowed for certain tax-excluded health benefits: The original version of H.R. 6201 based the sick and family leave credits on the amount of coronavirus-related "qualified sick leave wages" and "qualified family leave wages" paid to employees. By contrast, the corrections legislation also would incorporate any "qualified health plan expenses" – defined as "amounts paid or incurred by the employer to provide and maintain a group health plan (as defined in section 5000(b)(1)…, but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a)…" – allocable to the qualified sick and/or family leave wages in the bases of the two credits. Importantly, even after inclusion of certain tax-excluded health benefits in the credit bases, both credits would remain subject to separate limitations that limit their maximum value. For example, the paid family leave credit is limited to $10,000 per employee.

The bill would provide a general rule for how such health expenses should be allocated to leave wages, but also would grant the Treasury Secretary authority to prescribe alternative allocation rules.

Increased credit(s) for Medicare Hospital Insurance taxes paid on sick/family leave wages: The corrections legislation would allow employers to increase their sick and/or family leave credits for taxes imposed by section 3111(b) – that is, payroll taxes dedicated to the Medicare Hospital Insurance trust fund – on the qualified sick and family leave wages on which the credits are allowed.

On to the Senate

The revised legislation is set to be taken up by the Senate as early as March 17. It is not yet clear when it will be brought to the floor for a vote on final passage and whether it can clear that chamber quickly by unanimous consent or if additional time and procedural votes will be necessary. Also unclear is whether the chamber will pass the House bill as is or amend it, as some senators have indicated they hope to do. (An amended bill would have to be sent back to the House for additional consideration.)

Discussions are ongoing between Senate Republicans and the Trump administration on the next phase of legislative options related to economic stimulus and response during the crisis, and Senate Majority Leader Mitch McConnell, R-

Ky., said on the Senate floor March 17 that "it is my intention that the Senate will not adjourn until we have passed significant and bold new steps above and beyond what the House has passed."

We will provide details on Senate action on H.R. 6201 and the possible contours of the next stimulus package as they become available.

Mnuchin floats delay in tax payments

In other developments, Treasury Secretary Steven Mnuchin at a March 17 White House press briefing proposed a 90-day extension of tax payment deadlines as part of an upcoming economic stimulus package that the administration intends to pursue with Senate Republicans. According to Mnuchin, individuals would be able to defer up to $1 million and corporations up to $10 million in tax payments, without interest or penalties.

As of press time, neither the Internal Revenue Service nor the Treasury Department has made any official announcement of a deadline extension with respect to taxes owed or filing deadlines. As a result, Mnuchin's comments should not be relied on for tax planning purposes.

We will provide additional details if and when the Treasury Department or IRS releases an official statement on tax payment deadlines.

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