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Senate Republicans unveil 'Phase III' coronavirus stimulus proposal with significant business tax relief

Senate Majority Leader Mitch McConnell, R-Ky., unveiled a "Phase III" coronavirus economic stimulus proposal on March 19 that, among other things, calls for temporarily reinstating the net operating loss carryback, relaxing current-law restrictions on the deduction for business interest, and making long-sought technical corrections to several provisions in the 2017 tax code overhaul.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act also would provide relief to individual taxpayers through provisions such as direct cash payments, delayed tax filing deadlines, penalty-free access to retirement account savings to address virus-related financial hardships, and an expanded deduction for charitable contributions.
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200319_1_suppA.pdf

On the spending side, the proposal calls for financial aid to distressed sectors of the economy; emergency loans, loan guarantees, and grants to small businesses; and a slew of health care provisions to address drug and medical product supply shortages, testing and preventive services, and support for health care providers.

Although no revenue estimate is currently available, the CARES Act could by some accounts increase the deficit by upwards of $1 trillion. Because it is designated as emergency spending, it includes no tax or spending offsets. Its release comes just one day after President Trump signed into law the unpaid-for Families First Coronavirus Response Act (H.R. 6201), which provides nearly $105 billion in refundable tax credits to help certain employers absorb the cost of complying with a requirement to provide paid sick leave and paid family and medical leave to employees affected by

the coronavirus (along with various spending provisions, such as expanded unemployment insurance and food stamps for which there are no official cost estimates).
URL: https://www.congress.gov/bill/116th-congress/house-bill/6201/text

This special edition of *Tax News & Views* takes a high-level look at the tax provisions in the just-released proposal.

Business provisions

The CARES Act contains several provisions aimed at allowing business taxpayers to increase liquidity by deferring tax payments, carrying back tax losses to offset prior-year taxable income or otherwise increasing current deductions, and correcting glitches in the 2017 code overhaul known informally as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97).

Delay of estimated tax payments: Consistent with the general theme of IRS guidance (Notice 2020-17) released March 18, the CARES Act would allow corporations to delay making estimated tax payments (without limitation) due after enactment of the bill until October 15, 2020. This would actually be a more generous approach than the one just announced by the IRS, which grants a deferral on certain corporate payments of up to $10 million until July 15, 2020.
URL: https://www.irs.gov/pub/irs-drop/n-20-17.pdf

Delay of employer payroll tax payments: The proposal would allow employers (and self-employed individuals) to defer payment of the 6.2 percent employer-side Social Security payroll tax – imposed on wages paid between the date of enactment and December 31, 2020 – with payment ultimately due in equal parts on December 31, 2021 and December 31, 2022. It would grant similar relief to Railroad Retirement Tax Act (RRTA) taxes and would backfill associated shortfalls in the Social Security and Disability Insurance trust funds by way of general fund transfers.

Net operating loss carryback allowed: Under the proposal, taxpayers would be allowed to carry back net operating losses (NOLs) incurred in 2018, 2019, and 2020 to the five prior tax years. NOLs incurred in these years could fully offset prior-year taxable income. This would represent a relaxation of changes made as part of the TCJA, which generally eliminated all carrybacks and provided that the NOLs arising in years after December 31, 2017, are deductible against only 80 percent of taxable income under section 172. Other technical corrections are included in this provision.

Enhanced interest deductibility: The TCJA generally limited the deduction for business interest expense to business interest income plus a threshold equivalent to 30 percent of "adjusted taxable income" (a defined term). For 2019 and 2020, the CARES Act would increase the percentage of adjusted taxable income threshold from 30 percent to 50 percent. The provision would also allow businesses to use their taxable income from 2019 in tax year 2020 (rather than their 2020 income) for purposes of applying the 50 percent limitation.

Relaxation of excess business loss rule: Pursuant to the TCJA, section 461(l) – the so-called "excess business loss" rule – generally limits certain current losses attributable to trades or businesses for noncorporate taxpayers to $250,000 ($500,000 in the case of joint filers), indexed for inflation annually. The CARES Act would generally suspend the limitation under section 461(l) through December 31, 2020. Such owners would also benefit from the proposal's temporary NOL carryback allowance under section 172. Other technical corrections are included in this provision.

Enhanced refundability of previously generated AMT credits: The TCJA repealed the corporate alternative minimum tax (AMT) but, through new section 53(e), enabled corporations to recover previously generated AMT credits against regular tax (or, if in excess of regular tax, as refundable credits) after 2017 and before 2022. The CARES Act would enable corporations to accelerate any remaining AMT credits they have not yet utilized into the current tax year.

TJCA technical corrections for qualified improvement property, NOLs, repatriation tax, and downward attribution: The CARES Act would make technical corrections to fix a number of drafting errors in the TCJA – glitches that Democrats have long opposed addressing without significant policy concessions from congressional Republicans. Among the proposal's more notable technical corrections are provisions that would:

- Treat qualified improvement property as 15-year property under MACRS, and eligible for bonus depreciation;
- Clarify the effective date of net operating loss carryback rules;

- Amend section 965(h) to allow taxpayers to elect to treat claims for refunds or credits separately from their installments of the repatriation tax; and
- Clarify the application of attribution rules under the subpart F controlled foreign corporation provisions.

Aviation excise taxes: The CARES Act would temporarily repeal federal excise taxes collected in relation to commercial aviation. Excise taxes applied to the transportation of persons (the ticket tax), the transportation of property (cargo tax), and aviation fuel would be repealed from the date of enactment through December 31, 2020.

Tax relief for individuals

The CARES Act would provide direct cash relief to individual taxpayers in the form of "recovery rebate" checks issued through the IRS with base amounts of $1,200 for single taxpayers and $2,400 for joint filers. Those amounts would increase by $500 for every child.

Relief amounts would begin to phase out when adjusted gross income (AGI) exceeds $75,000 for single taxpayers and $150,000 for joint filers. Payments would be reduced by $5 for each $100 by which a taxpayer's AGI exceeds the phase-out threshold, and relief would phase out completely when a taxpayer's AGI exceeds $99,000 (for single filers) or $198,000 (for joint returns).

AGI would be determined based on a taxpayer's 2018 federal income tax return.

Taxpayers who have little or no income tax liability, but at least $2,500 of qualifying income, would be eligible for a minimum rebate check of $600 ($1,200 joint). Qualifying income would include earned income, as well as Social Security retirement benefits and certain compensation and pension benefits paid to veterans.

Delayed tax filing deadlines: The Senate GOP proposal would extend the April 15 deadline for filing 2019 tax returns to July 15, 2020, to take into account limitations caused by the COVID-19 emergency. This would align the filing date with the extended due date for certain federal income tax payments and federal estimated payments already announced by the IRS in Notice 2020-17.

Individuals also would be allowed to postpone estimated tax payments due from the date of enactment until October 15, 2020, effectively extending the payment date issued in Notice 2020-17. No cap would apply on the amount of tax payments postponed, and any individual required to make estimated tax payments could take advantage of the postponement.

Increased access to retirement funds: The CARES Act would make it easier for individuals to gain emergency access to funds in qualified retirement plans by waiving the 10 percent early withdrawal penalty for distributions of up to $100,000 related to the coronavirus. Income tax on the distributions would be payable over three years, and withdrawn amounts could be recontributed within three years without regard to that year's contribution cap. The proposal also would relax the rules for loans from retirement plans for qualified relief.

The CARES Act defines a coronavirus-related distribution as a distribution made to an individual who:

- Is diagnosed with COVID-19;
- Has a spouse or dependent who is diagnosed with COVID-19; or
- Experiences financial hardship as a result of being quarantined, furloughed, or laid off; a reduction in work hours; inability to work due to lack of child care due to COVID-19; the closing or reduction in hours of a business owned or operated by the individual due to COVID-19; or other factors as determined by the Treasury Secretary.

Expanded rules for charitable deductions: The proposal would suspend or increase the current-law limitations on deductions for charitable contributions by individuals who itemize, as well as corporations. For individuals, the 50 percent of AGI limitation would be suspended for 2020. For corporations, the 10 percent limitation would be increased to 25 percent of taxable income.

The limitation on deductions for contributions of food inventory would be increased from 15 percent to 25 percent.

The proposal also would permit a partial above-the-line deduction of up to $300 for nonitemizers who make charitable contributions in 2020.

Health care-related tax provisions: The proposal would expand the flexibility of various tax-preferred health care savings vehicles that are linked to high-deductible insurance plans by:

- Providing that a high-deductible health plan would not lose its qualified status solely because it does not offer telehealth services;
- Treating payments for menstrual care products as eligible expenses under the rules governing health savings accounts (HSAs), medical savings accounts, and similar arrangements;
- Providing that individuals eligible for an HSA would not lose their eligibility solely because they participate in a Direct Primary Care (DPC) arrangement; and
- Permitting DPC provider fees to be paid for out of an HSA.

Next step: The negotiations begin

Speaking on the Senate floor March 19, Majority Leader McConnell called for bipartisan cooperation as Republican leaders begin the process of negotiating with Democrats to move the bill through the chamber. (McConnell will need some buy-in from Democrats to reach the 60-vote threshold required to overcome Senate procedural hurdles that can prevent legislation from advancing.)

"Just yesterday, by an overwhelming vote, the Senate passed bipartisan legislation that originated with the Democratic House of Representatives, so I hope this bold new proposal will find a similar degree of bipartisan respect and mutual urgency on the other side of the aisle and across the Capitol," McConnell said.

McConnell asked the lead Republican drafters and their Democratic counterparts to begin discussions March 20, adding that administration officials such as Treasury Secretary Steven Mnuchin and National Economic Council Director Larry Kudlow will also participate.

"These are urgent discussions," McConnell said. "They need to happen at a member level, and they need to happen starting right now."

McConnell also noted that he has asked all Republican senators to stay in Washington so that they can act quickly once there is an agreement to move forward.

In a joint statement issued shortly after the legislation was unveiled, House Speaker Nancy Pelosi, D-Calif., and Senate Democratic Leader Charles Schumer of New York said they "look forward to working in a bipartisan way to deliver for the American people as soon as humanly possible." However, it was clear they will also be looking for changes to the Senate proposal in their negotiations with the GOP.

"To earn Democratic support in the Congress, any economic stimulus proposal must include new, strong, and strict provisions that prioritize and protect workers, such as banning the recipient companies from buying back stock, rewarding executives, and laying off workers," Pelosi and Schumer said.

House Ways and Means Committee Chairman Richard Neal, D-Mass., was more direct in expressing his dissatisfaction with the proposal.

"This inadequate bill is the result of Leader McConnell and Senate Republicans going at it alone," he said in a statement. "We cannot waste time putting forward partisan proposals during this unprecedented crisis. …We need to do everything we can to put money in the pockets of Americans and there are ways to use the tax code to deliver meaningful relief, but this bill misses the mark. Any legislation that gives the least to those who need assistance the most is deeply flawed."

And Senate Finance Committee ranking Democrat Ron Wyden of Oregon took a similar tone, stating in a March 19 news release that the GOP proposal "seem[s] to be prioritizing the corporate tax wish list over the economic well-being of people who are losing their livelihoods at this very moment."

These statements strongly suggest that while leaders in both parties view action on a Phase III bill as urgent, the negotiations to produce a bill that can pass both the House and Senate and win the president's signature will not be easy and could result in substantial changes to the Senate-introduced measure.

The House recessed March 14, and House leaders have decided that members should remain in their districts until the Senate passes legislation on which the House needs to vote. In a letter to House members March 19, House Majority Leader Steny Hoyer, D-Md., said the chamber will "adjust" its method of voting as needed to protect people's health and is considering all options. This came a day after two members – Reps. Mario Diaz-Balart, R-Fla., and Ben McAdams, D-Utah – tested positive for COVID-19 and a number of others announced they were self-quarantining.

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