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Senate Republicans and Democrats failed to reach agreement this week on targeted legislation to quickly expand elements of the recent Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136), with the GOP seeking more money for the newly created Paycheck Protection Program (PPP) for small businesses impacted by COVID-19 and Democrats insisting that the measure also include increased funding for hospitals and local governments.

In an April 9 pro forma session (usually a brief session with no business conducted), Senate Majority Leader Mitch McConnell, R-Ky., hoped to pass by unanimous consent a bill adding \$251 billion to the PPP – originally a \$349 billion fund included in the CARES Act providing forgivable loans (under certain conditions) to small businesses to be used for payroll, rent, and utilities expenses. Although the proposal would add more money to the PPP, it would not extend the program’s scheduled expiration date of June 30, 2020. But Maryland Democratic Sens. Ben Cardin and Chris Van Hollen objected and blocked the proposal from advancing. (Under Senate rules a request for unanimous consent is rejected if a single senator raises an objection.)

In a counterproposal, Van Hollen introduced an amendment that would require some of the additional PPP funds to go to small community-based lenders (again without extending the expiration date) and also provide another \$250 billion for grants to health care providers, fiscal relief for states and localities, and additional nutrition assistance. That proposal, however, met with an objection from McConnell. With neither side able to pass its provision by unanimous consent, McConnell gaveled the Senate back out until its next pro forma session on April 13.

McConnell argued that while he might eventually agree to the Democrats' proposal, additional funding for PPP was the only truly urgent matter Congress needed to address this week since the initial \$350 billion in the program is being disbursed quickly and could run out by April 13. He urged Democrats not to "block emergency aid you don't even oppose just because you want something more."

Weighing in on behalf of House Democrats, Speaker Nancy Pelosi, D-Calif., told *The Washington Post* April 8 that the House would not approve the PPP increase pushed by Republicans without the changes Democrats were seeking, and she called for negotiations to continue.

"What they are proposing will not get unanimous consent in the House," she said. "There is no reason why they cannot come to the table and see the value of what we are offering. You cannot expect us to ossify inequality in access to capital as we try to fight the coronavirus."

Treasury Secretary Steven Mnuchin expressed support for McConnell's proposal during an April 9 interview on CNBC April 9 before the Senate's pro forma session.

"We need more money for small business," Mnuchin said. "The president has been very clear – he's happy to talk about other issues such as hospitals and states in the next bill, but we wanted to go and get money for the small business program, which has enormous bipartisan support."

Mnuchin also said that the Trump administration was willing to consider Van Hollen's spending proposals as part of a larger future package but wanted only the plus-up for the PPP in the immediate term.

Until it reconvenes, Congress is unable to send legislation to President Trump for his signature except by using the unanimous consent process, which can be thwarted by any single member. The Senate and House are currently scheduled to return for regular business the week of April 20, but it remains unclear whether that schedule will hold, given the current health risks involved for members and staff to return to Washington and meet in person.

Eyeing 'Phase 4'

In addition to the focus on what they consider immediate needs, congressional Democrats are also refining their list of what they'd like to see in the next significant package addressing the economic and public health effects of the coronavirus pandemic – something Speaker Pelosi said she'd like to bring to the House floor soon after Congress comes back into session. Republican leaders, however, continue to talk about a longer timeline for considering the next substantial bill, saying the first three tranches of tax and spending relief should be allowed to begin working first.

Democrats scale down wish list: For now, Pelosi appears to have put on hold some recent proposals, including a repeal or suspension of the \$10,000 cap on the state and local tax (SALT) deduction and a major infrastructure package that would fund broadband, water systems, and public transit in addition to roads. Instead, she said April 3 that the next big relief bill should build on the CARES Act – for example, by providing more direct payments to individuals, extending the availability of unemployment insurance benefits, and directing more money to hospitals and health care workers.

"We've had three bills that have been bipartisan," she said in a CNBC interview. "I think right now we need a fourth bipartisan bill. And I think the bill could be very much like the bill we just passed."

White House still backs infrastructure: President Trump has also called for an even larger infrastructure plan than Democrats envision, but that has not been echoed by many congressional Republicans at this point.

"With interest rates for the United States being at ZERO, this is the time to do our decades long awaited Infrastructure Bill," President Trump wrote on Twitter March 31. "It should be VERY BIG & BOLD, Two Trillion Dollars, and be focused solely on jobs and rebuilding the once great infrastructure of our Country! Phase 4."

Partisan split over vote-by-mail funding: Democrats have also indicated they want to include money in the next big legislative package to fund state vote-by-mail efforts, pointing out that in-person voting could be challenging or impossible this fall due to the health risk coronavirus poses. Republicans have pushed back hard, though, arguing that this should be dealt with by the states rather than the federal government and that mail-in voting is ripe for corruption.

House Republican Leader Kevin McCarthy of California told reporters April 9 that the issue is not relevant to the current health crisis.

President Trump signaled his own opposition April 8, urging Republicans on Twitter to “fight very hard when it comes to statewide mail-in voting.”

During the CARES Act negotiations, Democrats originally requested \$4 billion in funding for election assistance to the states, but the final bill included just \$400 million.

Talks continue: On April 6, Treasury Secretary Mnuchin reportedly had a lengthy phone call with Pelosi and several House committee chairs, including Rep. Richard Neal, D-Mass., who leads the Ways and Means panel, to discuss the implementation of the CARES Act and potential tweaks to various provisions, as well as future relief measures that might be needed.

Vice President Mike Pence was also scheduled to hold four separate calls this week with House Democrats, House Republicans, Senate Democrats and Senate Republicans to discuss the rollout of the CARES Act and to take questions from lawmakers.

New IRS releases provide filing and other tax relief

On the regulatory front, the Treasury Department and Internal Revenue Service this week announced additional filing relief for taxpayers affected by the coronavirus and issued guidance providing tax relief under the CARES Act for taxpayers with net operating losses (NOLs), AMT refundable credits and BBA partnerships.

Filing deadline extensions: Notice 2020-23 expands prior guidance which provided that taxpayers affected by the coronavirus generally have until July 15, 2020, to file and pay federal income taxes originally due on April 15, and will not be subject to a late-filing penalty, late-payment penalty, or interest.

URL: <https://www.irs.gov/pub/irs-drop/n-20-23.pdf>

Specifically, Notice 2020-23 provides that these extensions *now* generally apply to all affected taxpayers (as defined in the notice) that have a filing or payment deadline falling on or after April 1, 2020, and before July 15, 2020. The relief applies to individuals, trusts, estates, partnerships, corporations, REITs, nonprofits and other tax filers. Additionally, the relief also applies to an investment at the election of a taxpayer due to be made during the 180-day period described in section 1400Z-2(a)(1)(A) of the code. Relief is also provided to taxpayers currently under examination.

NOLs: Newly published relief under the CARES Act addressing taxpayers with NOLs includes:

- Rev. Proc. 2020-24, which provides guidance to individual and corporate taxpayers with NOLs that are carried back under the CARES Act through procedures for (1) waiving the carryback period in the case of an NOL arising in a taxable year beginning after December 31, 2017, and before January 1, 2020; (2) excluding from the carryback period for an NOL arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, any taxable year in which the taxpayer has a section 965(a) inclusion, and (3) waiving a carryback period, reducing a carryback period, or revoking an election to waive a carryback period for a taxable year that began before January 1, 2018, and ended after December 31, 2017.
URL: <https://www.irs.gov/pub/irs-drop/rp-20-24.pdf>
- Notice 2020-26, which grants a six-month extension of time to file Form 1045 or Form 1139, as applicable, with respect to the carryback of an NOL that arose in any taxable year that began during calendar year 2018 and that ended on or before June 30, 2019. This extension of time is limited to requesting a tentative refund to carry back an NOL and does not extend the time to carry back any other item. Individuals, trusts, and estates would file Form 1045, and corporations would file Form 1139. Additionally, for a taxpayer who is a corporation, special rules apply for filing for a refund claim for both the NOL carryback and the minimum tax credit at the same time.
URL: <https://www.irs.gov/pub/irs-drop/n-20-26.pdf>
- Rev. Proc. 2020-23, which allows an eligible partnership that is subject to the centralized partnership audit regime (also known as a BBA partnership) to file an amended Form 1065 and issue amended Schedules K-1 to its partners for taxable years beginning in 2018 and 2019 as an alternative option to filing an administrative adjustment request.
URL: <https://www.irs.gov/pub/irs-drop/rp-20-23.pdf>

Expanded stimulus bill resource list available

In other developments, Deloitte Tax LLP has released an expanded list of key materials available from Congress, the Treasury Department, and the IRS describing the tax and selected nontax provisions in recently enacted coronavirus stimulus legislation. (For prior coverage, see *Tax News & Views*, Vol. 21, No. 20, Apr. 3, 2020.) Updates include:

URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200410_1_supplA.pdf

URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200403_1.html

- Government materials and Deloitte Tax resources explaining the federally mandated paid-leave programs in Families First Coronavirus Response Act (P.L. 116-127, enacted on March 18) and the related tax credits for employers;
- New IRS guidance on expanded tax filing relief and relief for taxpayers with NOLs (discussed above) plus a just-released FAQ list from the IRS addressing the CARES Act's provisions allowing employers to defer deposits of certain employment taxes;
URL: <https://www.irs.gov/newsroom/deferral-of-employment-tax-deposits-and-payments-through-december-31-2020>
- New reports from the Congressional Research Service discussing specific CARES Act tax provisions such as the modified net operating loss rules and the changes to the limitation on business interest; and
- A new alert from Deloitte Tax's Multistate Tax Group discussing IRS tax filing due date relief related to the coronavirus (Notice 2020-18) and the state-level filing relief programs that have been announced to date.

We will continue to update this list as new materials are released.

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