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Stalemate continues over additional funds for Paycheck Protection Program

Even as both chambers of Congress announced this week that they will not return to Washington until at least May 4 (unless roll call votes are called), the recently established Payroll Protection Program (PPP) providing loans for cash-strapped small businesses exhausted its initial funding allocation while Republicans and Democrats remained at loggerheads on a path to plus it up – much less to provide any near-term additional federal relief during the COVID-19 pandemic.

The PPP, which was enacted as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) late last month and is administered by the Small Business Administration (SBA), is authorized to provide up to $349 billion in forgivable loans (under certain conditions) to small businesses to be used largely for payroll, along with rent, utilities, and certain other expenses.

14 years' worth of loans in 14 days

Treasury Secretary Steven Mnuchin and Small Business Administration (SBA) Administrator Jovita Carranza issued a joint statement April 15 urging Congress to appropriate additional funds for the PPP, saying the SBA has processed "more than 14 years' worth of loans in less than 14 days."

"By law, the SBA will not be able to issue new loan approvals once the programs experience a lapse in appropriations," they said, foreshadowing the news that the original $349 billion in funding had been allocated mid-morning April 16. At that time, the SBA reported that more than 1,637,000 loan applications had been approved.

During an April 9 pro forma session (usually a brief session with no business conducted), Senate Majority Leader Mitch McConnell, R-Ky., introduced a bill to add $251 billion to the PPP (without extending the program's scheduled expiration date of June 30, 2020) and proposed that it be passed by unanimous consent while most senators remain away from Washington. However, two Maryland Democrats, Sens. Ben Cardin and Chris Van Hollen, objected, and Van Hollen proposed an alternative that would add funds to the PPP but also earmark some of the funding for community banks (which serve women- and minority-owned businesses) as well as appropriate additional money for hospitals and state and local governments. McConnell objected to that proposal, leaving the two parties at a stalemate. Under Senate rules a request for unanimous consent is rejected if a single senator raises an objection. (For prior coverage, see *Tax News & Views*, Vol. 21, No. 21, Apr. 10, 2020.)
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200410_1.html

Across the Capitol, meanwhile, House Speaker Nancy Pelosi, D-Calif., has insisted that McConnell's PPP-only proposal cannot get through her chamber.

There reportedly have been ongoing discussions between Mnuchin and congressional Democratic leaders in recent days on a possible compromise, but no agreement has yet been reached, and neither party has signaled that it will back down from its position. The Senate held brief pro forma sessions on April 13 and April 16, but there was no legislative businesses undertaken during either.

In the meantime, the banking industry has suggested that the proposed $251 billion addition to the PPP that both parties have said they agree on will not be nearly enough to meet the needs of would-be borrowers seeking money for payroll and other qualified expenses during the COVID-19 crisis.

"We think at the end of the day we're going to need upwards of $1 trillion in order to satisfy the demand of America's small businesses," Consumer Bankers Association President and CEO Richard Hunt said April 15.

What's next?

The next possible chance for legislative action will come on April 20, when the Senate holds its next scheduled pro-forma session.

Leaders in both chambers announced this week that members will not be asked to return to Washington for full sessions until at least May 4, thus officially scrapping what had been tentative plans to reconvene the week of April 20. As long as members remain away from the Capitol, legislation can pass the Senate only by unanimous consent and can pass the House only by unanimous consent or voice vote (though either could be defeated by a single member objecting, forcing a quorum of members – 50 percent of current House members plus 1 – to be present).

Leaders in both chambers also have said lawmakers could come back to Capitol Hill sooner if roll call votes are necessary.

CBO releases CARES Act revenue estimate

In other developments this week, the nonpartisan Congressional Budget Office (CBO), along with the Joint Committee on Taxation (JCT), on April 16 released a preliminary estimate of the budgetary effects of the CARES Act. The report notes that a more thorough analysis of the legislation will be published later this year in conjunction with the agency's updated outlook of federal spending and revenue over the next decade – the so-called "baseline."
URL: https://www.cbo.gov/system/files/2020-04/hr748.pdf

In total, CBO projects that the CARES Act will increase budget deficits by about $1.8 trillion over the next 10 years – the combined effect of $988 billion in new mandatory spending (the two largest items relating to SBA-led lending programs and temporary changes to unemployment insurance benefits, totaling $377 billion and $268 billion, respectively), $326 billion in new discretionary outlays from the so-called "emergency supplemental" component of the bill, and $446 billion in reduced revenues.

The report's analysis of the CARES Act's revenue provisions is largely consistent with an earlier estimate (JCX-11-20) released on March 26 by the JCT – although this week's CBO report classifies roughly half of the costs of the individual "recovery rebate" payments, and a small portion of the employee retention credit, as mandatory spending rather than a reduction in revenue.
URL: https://www.jct.gov/publications.html?func=startdown&id=5252

The estimates released by CBO this week – which the agency cautions are inherently uncertain given the largely unknowable extent to which the pandemic will continue to spread or be contained – come in a bit lower than the $2.2 trillion cost often cited up until now in press reports and other summaries of the legislation, a dynamic that appears to be mainly attributable to assistance offered in the form of loan guarantees, which the CBO sees as having zero net effect on the deficit.

"In particular, the act authorizes the Secretary of the Treasury to provide up to $454 billion to fund emergency lending facilities…," the report states. "Because the income and costs stemming from that lending are expected to roughly offset each other, CBO estimates no deficit effect from that provision."

Additional coronavirus guidance, resource materials available

This week also saw the release of additional guidance and other resource materials addressing issues related to the CARES Act and the coronavirus pandemic generally.

Qualified improvement property: The IRS on April 17 released Rev. Proc. 2020-25, providing guidance allowing a taxpayer to change its depreciation under section 168 for qualified improvement property placed in service by the taxpayer after December 31, 2017, in its taxable year ending in 2018, 2019, or 2020. This revenue procedure also allows a taxpayer to make a late election, or to revoke or withdraw an election, under section 168(g)(7), (k)(5), (k)(7), or (k)(10) for the taxpayer's 2018 taxable year, 2019 taxable year, or 2020 taxable year.
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200417_1_suppC.pdf

Temporary fax procedures for certain CARES Act quick-refund claims: The IRS released an FAQ document announcing that it has implemented temporary procedures for digital transmission of Form 1139, Corporation Application for Tentative Refund, and Form 1045, Application for Tentative Refund, for taxpayers who wish to claim to quick refunds of the credit for prior-year minimum tax liability of corporations and net operating loss deductions (NOLs). The new temporary procedures take effect on April 17, 2020, and will remain in place until further notice. Only claims allowed under CARES Act section 2303 (addressing changes to the NOL rules) or CARES Act section 2305 (addressing changes to the credit for prior-year minimum tax liability of corporations) that are made on Form 1139 or Form 1045 are eligible refund claims under these temporary procedures.
URL: https://www.irs.gov/newsroom/temporary-procedures-to-fax-certain-forms-1139-and-1045-due-to-covid-19

The FAQs also address issues around preparing 2018 Form 1139 and Form 8827, Credit for Prior-Year Minimum Tax – Corporations, to claim tentative refunds for refundable prior-year minimum tax credits, and provide guidance on preparing the application for a tentative refund to claim both the NOL carryback and 100 percent refundable minimum tax credit on the same 2018 Form 1139, including the documents needed to be attached.

Paycheck Protection Program: The Treasury Department released an interim final rule under the Paycheck Protection Program (CARES Act section 1102) that provides guidance for individuals with self-employment income who file a Form 1040, Schedule C and addresses partners "payroll costs" in partnerships.
URL: https://home.treasury.gov/system/files/136/Interim-Final-Rule-Additional-Eligibility-Criteria-and-Requirements-for-Certain-Pledges-of-Loans.pdf

Employment taxes: An alert from Deloitte Tax LLP looks at the payroll tax relief provisions in the CARES Act (the employee retention credit and deferral in deposit of payroll taxes) and guidance issued to-date, and provides observations on the impact to employers.
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200417_1_suppA.pdf

State tax conformity issues: A Multistate Tax Alert from Deloitte Tax LLP examines the state tax implications of the CARES Act's changes to the net operating loss rules, limitation on business interest, and the depreciation of qualified improvement property.
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200417_1_suppB.pdf

State tax filing deadlines: A Multistate Tax Alert from Deloitte Tax LLP looks at the filing deadline relief offered by the IRS in Notices 2020-18 and 2020-23 and discusses various state and local government responses.
URL: https://www2.deloitte.com/us/en/pages/tax/articles/covid-19-state-and-local-tax-due-date-relief-developments.html?id=us:2em:3na:tnv:awa:tax:041720&sfid=7011O000001xmSMQAY
URL: https://www.irs.gov/pub/irs-drop/n-20-21.pdf
URL: https://www.irs.gov/pub/irs-drop/n-20-23.pdf

State tax controversy deadlines, nexus issues: A Multistate Tax Alert from Deloitte Tax LLP summarizes guidance issued by certain state taxing authorities addressing the impact of the coronavirus on state tax controversy deadlines and nexus determinations.
URL: https://www2.deloitte.com/us/en/pages/tax/articles/state-tax-controversies-the-covid-19-effect.html?id=us:2em:3na:tnv:awa:tax:041720&sfid=7011O000001xmSMQAY

A running list of resource materials on significant tax issues stemming from the pandemic that have been released by Congress, the IRS and Treasury, and other sources is available from Deloitte Tax LLP.
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/Stimulus-Resource-Table.pdf

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Deloitte Tax looks at final, proposed hybrid regulations

The Treasury Department and IRS on April 7 issued final regulations implementing the hybrid dividend provisions of section 245A(e) and the hybrid mismatch rules of section 267A. The final regulations largely adopt proposed regulations issued December 20, 2018, and for the most part retain the proposed applicability dates.
URL: https://www.federalregister.gov/documents/2020/04/08/2020-05924/rules-regarding-certain-hybrid-arrangements

An alert from Deloitte Tax LLP provides a summary of the main changes to the proposed regulations and discusses how certain controversial aspects of the proposed regulations have been resolved. Examples from the regulations are also available.
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200417_2_suppA.pdf
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200417_2_suppB.pdf

Also on April 7, the government released proposed regulations that provide for adjustments in hybrid deduction accounts, expand the types of equity interests treated as financing transactions, and address the treatment of some payments between related controlled foreign corporations during a disqualified period under section 951A. The proposed regulations are summarized in a separate alert from Deloitte Tax.
URL: https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-05923.pdf
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200417_2_suppC.pdf

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