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House Democrats release 'Phase 4' economic recovery proposal

House Democrats on May 12 released an expansive coronavirus economic recovery package that proposes some significant changes to tax provisions in the recently enacted Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-36) and adds a slate of ambitious new tax and nontax proposals. At press time, there was no official revenue score for the HEROES Act, but various media outlets have reported the cost of the bill is in excess of \$3 trillion, larger than the combined cost of all other coronavirus relief measures enacted to date.

Here are some highlights of some of the more notable tax provisions in the House proposal. We'll provide additional details in a subsequent edition of *Tax News & Views*. (A section-by-section summary of the proposal is available from the House Appropriations Committee.)

URL: <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/documents/Heroes%20Act%20Summary.pdf>

CARES Act changes

As introduced, the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act would modify the CARES Act by, among other things:

URL: <https://docs.house.gov/billsthisweek/20200511/BILLS-116hr6800ih.pdf>

- Limiting carryback of net operating losses arising in 2019 and 2020 to taxable years beginning on or after January 1, 2018. (The CARES Act permits these losses to be carried back to the five preceding years.) The House proposal also would prohibit taxpayers with excessive executive compensation or excessive stock buybacks and dividends from carrying back losses.
- Restoring the limitation on excess businesses losses of noncorporate taxpayers enacted in the 2017 tax code overhaul (known informally as the Tax Cuts and Jobs Act) and making it permanent. (The CARES Act postponed the effective date for section 461(l) excess business losses retroactively from tax years beginning after December 31, 2017, to tax years beginning after December 31, 2020.)
- Expanding the employee retention tax credit by, for example, increasing the credit percentage; phasing in the gross receipt requirement and increasing the per-employee wage limitation; raising the threshold for determining who is a “large employer”; making the credit available to state, territory, and tribal government employers; and clarifying that group health plan expenses can be considered qualified wages even when no other wages are paid to an employee, consistent with recent revisions to IRS guidance on this issue.
URL: <https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-amount-of-allocable-qualified-health-plan-expenses-faqs>
- Modifying the Paycheck Protection Program (PPP) to clarify that borrowers may deduct business expenses related to certain loan forgiveness under the program and providing similar deductibility for other loan forgiveness provisions within the CARES Act. The proposal also would allow employers receiving loan forgiveness under the PPP to take advantage of the CARES Act’s payroll tax deferral provisions, which was prohibited in the CARES Act.

Other business provisions

Other notable business incentives in the HEROES Act include a 30 percent refundable payroll tax credit for expenses reimbursed or paid for the benefit of an employee for reasonable and necessary personal, family, living, or funeral expenses incurred as a result of the presidentially declared disaster related to COVID19; a 50 percent refundable payroll tax credit for qualified fixed costs of smaller employers; and a 90 percent refundable individual income tax credit for certain self-employed individuals who have experienced a significant loss of income.

The bill also would extend and increase the family and medical leave credits (enacted in the Families First Coronavirus Response Act, P.L. 116-127) through end of 2021, including clarifying affiliation rules to disregard large employers. Federal, state, and local governments would be allowed to take these tax credits, and the restriction on large employers taking the credits would not apply to these entities.

In addition, the HEROES Act also would provide relief to financially struggling multiemployer pension plans, modify the funding rules for community newspaper pension plans, and make other assorted changes to the rules for pensions and tax-favored retirement accounts.

Significantly, the proposal does not include provisions to extend and expand renewable energy credits or other energy tax incentives, a priority of many House Ways and Means Committee Democrats.

Individual provisions

For individuals, the HEROES Act proposes a new – and significantly expanded – round of economic recovery payments of \$1,200 per family member (maximum of \$6,000 per household), as well as above-the-line deductions for teachers and others on the front line of coronavirus response efforts.

The bill also includes proposals to:

- Suspend the current-law limitation on the deduction for state and local taxes for 2020 and 2021;
- Expand the eligibility of childless workers for the earned income tax credit for 2020;
- Provide full refundability of the child tax credit for 2020; and
- Double the child and dependent care tax credit and make it fully refundable (effective for 2020).

Notable spending proposals

As expected, the measure also includes an array of spending proposals addressing other Democratic priorities, such as direct aid to states and municipalities facing revenue shortfalls as a result of the pandemic, assistance to renters and

homeowners, funds for coronavirus testing, aid for the US Postal Service, nutrition assistance, as well as an extension of certain unemployment insurance enhancements enacted as part of earlier coronavirus relief legislation. It also would expand availability of early voting and voting by mail for federal elections.

Next steps

The HEROES Act could be brought up for a vote on the House floor as early as May 15. Many House members are currently in their districts and Democratic leaders have said they would provide 72 hours' notice before calling lawmakers back to the Capitol.

But even if this package clears the House in the coming days, conflicting policy positions put forward by House Democrats, Senate Republicans, and the White House could complicate efforts to forge a compromise in Congress that the president will sign into law.

Senate Majority Leader Mitch McConnell, R-Ky., for example, has been reluctant to embrace direct payments to state and local governments and has insisted that a future recovery bill must provide liability protections for businesses as they transition employees back to the worksite – something House Speaker Pelosi Nancy Pelosi, D-Calif., did not include in this bill. Meanwhile, President Trump has been adamant that the next relief package include a payroll tax cut – something that has drawn criticism from lawmakers on both sides of the aisle – and is said to be mulling other tax proposals such as expanding the deduction for business meals and entertainment expenses, reducing capital gains taxes, and extending and expanding 100 percent bonus depreciation beyond its scheduled phase-out after 2022.

McConnell and the president also have indicated recently that they would prefer to determine the effectiveness of the relief that has already been enacted before pursuing additional measures that will further increase the deficit – something the majority leader reiterated in comments to reporters on May 11.

“I’m in constant communication with the White House, and if we decide to go forward, we’ll go forward together,” McConnell said. “I don’t think we have yet felt the urgency of acting immediately. That time could develop, but I don’t think it has yet.”

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