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Heroes Act clears House, next steps uncertain

The House of Representatives voted 208-199 on May 15 to approve The Heroes Act (H.R. 6800), an expansive coronavirus economic recovery package that proposes some significant changes to tax provisions included in previous recovery bills enacted in March and adds a slate of new tax and nontax proposals.
URL: https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116hr6800ih.pdf

Despite its quick passage in the House – it cleared the chamber just four days after it was unveiled by Democratic leaders – the bill's path forward is unclear. Democrats did not include House Republicans in the drafting process and the response from GOP lawmakers in that chamber since the bill was introduced has generally been critical. Moreover, The Heroes Act is unlikely to get swift consideration in the Republican-controlled Senate, where leaders have raised a number of policy objections and have expressed a desire to gauge the effects of the three major economic relief bills that have been enacted over the past few weeks before taking up another package that will add to the mounting federal deficit. For his part, President Trump, who also has criticized the House bill on policy grounds, recently told reporters after a meeting with congressional Republicans that he currently is in "no rush" to get another massive piece of coronavirus-related legislation signed into law.

Provisions at a glance

Among its key business tax proposals, The Heroes Act would limit or reverse the taxpayer-favorable changes to the net operating loss rules and the limitation on excess businesses losses of noncorporate taxpayers enacted in the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136), which was signed into law on March 27. But it also proposes generally taxpayer-friendly enhancements to two of the more popular provisions in the CARES Act – the employee retention tax credit and the Paycheck Protection Program. In addition, the bill would extend and increase the family and medical leave credits that were enacted in the Families First Coronavirus Response Act (Families First Act, P.L. 116-127), which became law on March 18.

New proposals 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 the coronavirus; a 50 percent refundable payroll tax credit for qualified fixed costs of smaller employers; and a 90 percent refundable income tax credit for certain self-employed individuals who have experienced a significant loss of income.

The bill also would provide relief to financially struggling multiemployer pension plans and make other assorted changes to the rules for pensions, tax-favored retirement accounts, and certain employee benefits plans.

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 enhancements to the recovery rebate provisions enacted in the CARES Act. It also would suspend the current-law limitation on the deduction for state and local taxes for 2020 and 2021, enhance the earned income tax credit for 2020, provide full refundability of the child tax credit for 2020, double the child and dependent care tax credit and make it fully refundable for 2020, provide above-the-line deductions for teachers and others on the front line of coronavirus response efforts, and temporarily offer greater flexibility to participants in certain employee benefits plans.

The measure also includes an array of spending proposals addressing various Democratic priorities, including, among other things, nearly $1 trillion in direct aid to states, municipalities, tribal governments, and US territories, plus billions of dollars in assistance to renters and homeowners, funds for coronavirus testing, aid for the US Postal Service nutrition assistance, and other federal government programs, as well as an extension of certain unemployment insurance enhancements enacted in earlier coronavirus relief legislation. It also would fund expanded availability of early voting and voting by mail for federal elections.

The Joint Committee on Taxation staff has estimated that the tax provisions in The Heroes Act would reduce federal receipts by $883 billion over 10 years (although the estimate notes that the cost of certain retirement provisions is not currently included). At press time, there was no official estimate for the combined cost of the measure’s tax and spending provisions, but various media outlets have reported it will exceed $3 trillion, making it larger than the cost of all of the previously enacted coronavirus relief measures taken together.
URL: https://www.jct.gov/publications.html?func=startdown&id=5260

Business provisions: Revisions to ‘Phase 2’ and ‘Phase 3’ policies

The Heroes Act proposes a number of changes to provisions enacted as part of the CARES Act and Families First Act as outlined below.

Limitation on NOL carrybacks: The CARES Act allows taxpayers to carry back net operating losses (NOLs) arising in 2018, 2019, and 2020 to the five prior tax years, and also allows NOLs incurred in these years to fully offset prior-year taxable income (relaxing otherwise applicable law that generally disallowed carrybacks and provided that NOLs arising after 2017 were deductible against only 80 percent of taxable income).

The Heroes Act would claw back some of the CARES Act changes in this area by disallowing carrybacks to any taxable year beginning before January 1, 2018. (The proposal would continue to allow a full offset of prior-year taxable income, however.) In so doing, it would prevent losses from being carried back to offset taxable income that had been subject to the top corporate rate of 35 percent that applied in years before 2018.

In addition, the House bill would disallow carrybacks altogether for taxpayers subject to deduction limitations under sections 162(m) and 280G – related to certain employee remuneration over $1 million and so-called “golden parachute payments," respectively – as well as for corporations that exceed certain stated thresholds for stock buybacks and dividends.

Reversing 'excess business loss' rule changes: The Heroes Act proposes to reinstate section 461(l) – that is, the so-called "excess business loss" rule that 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 – such that it would apply retroactively to taxable years beginning on or after January 1, 2018.

The limitation was enacted in the 2017 tax code overhaul known informally as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97). The CARES Act provision suspended the limitation for taxable years beginning in 2018, 2019, and 2020, and the House-passed bill would undo that change.

Significantly, the Heroes Act also would make the excess business loss limitation permanent. (As enacted in the TCJA, the limitation is scheduled to sunset after 2025.)

Enhancing the employee retention tax credit: The CARES Act includes a refundable tax credit, computed on a calendar-quarter basis, against the 6.2 percent employer-side Social Security payroll tax for certain employers carrying on a trade or businesses in 2020 that either fully or partially suspend operations due to a government order or that sustain a significant decline in gross receipts (defined as the first calendar quarter after December 31, 2019, for which gross receipts within the meaning of section 448(c) are less than 50 percent of the amount in the corresponding prior-year quarter and ending with the next quarter in which gross receipts exceed 80 percent of the corresponding prior year quarter). The refundable credit is only applicable for wages paid after March 12, 2020, and before January 1, 2021.

Under the CARES Act, this employee retention tax credit (or ERTC) is based on 50 percent of the "qualified wages" (up to $10,000 per employee) paid to each employee. The computation of qualified wages differs depending on whether the employer's average number of full-time employees during 2019 was more or less than 100.

The ERTC, as enacted in the CARES Act, is not available to governmental employers, but is available to certain nonprofits.

The Heroes Act would make a number of changes to the ERTC (all retroactive to the credit's effective date as included in the CARES Act) that would make the credit more generous – including by increasing the credit rate to 80 percent on up to $15,000 of quarterly wages per employee (limited to $45,000 for the calendar year) and by boosting the full-time employee threshold above which the qualified wage base becomes more restrictive from 100 to 1,500 employees. A "large employer" – that is, one with more than 1,500 employees – must also have had gross receipts greater than $41.5 million during calendar year 2019.

Additionally, the House bill would allow a partial credit, phased-in for employers who suffer a decline in gross receipts of between 10 percent and 50 percent as compared to the same calendar quarter from the prior year. It would also extend the credit to governmental employers that continue to pay employees while their operations are fully or partially shuttered.

A manager's amendment submitted by House Appropriations Committee Chairwoman Nita Lowey, D-N.Y., on May 14 would also enable employers of domestic workers who perform domestic service within the meaning of section 3121(a)(7) to claim the ERTC by carving them out from the otherwise applicable requirement that an employer be carrying on a trade or business to qualify.
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200515_1_suppA.pdf

Lastly, the Heroes Act would codify recent IRS guidance that allows certain health benefits to be counted as qualified wages for furloughed workers not otherwise receiving pay. (For prior coverage, see *Tax News & Views*, Vol. 21, No. 25, May 8, 2020.)
URL: https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-amount-of-allocable-qualified-health-plan-expenses-faqs#65
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200508_1.html

Changes to Paycheck Protection Program: The House-passed bill would enhance the CARES Act's Paycheck Protection Program (PPP) through proposals to:

- **Allow payroll tax deferral for recipients of forgiven PPP loans:** Under the CARES Act, employers (and self-employed individuals) are allowed to defer payment of the 6.2 percent employer-side Social Security payroll tax for wages paid between the date of that bill's enactment and December 31, 2020 (with remittance due in equal installments by December 31, 2021 and December 31, 2022). Though recipients of forgiven Paycheck Protection Program loans were generally precluded from also utilizing the payroll tax deferral provision, the Internal Revenue Service clarified on an FAQ page published last month (Question 4) that PPP loan recipients can, in fact, defer payment on wages paid up until the point of loan forgiveness, but not beyond that date. The Heroes Act provides that even recipients of forgiven PPP loans would be allowed to continue to defer payment of payroll taxes on wages paid through the end of 2020.
  URL: https://www.irs.gov/newsroom/deferral-of-employment-tax-deposits-and-payments-through-december-31-2020
- **Clarify deductibility of expenses funded by forgiven PPP loan funds:** The Heroes Act clarifies that otherwise deductible expenses funded with PPP loan funds remain deductible even if the loan is forgiven. The IRS recently held in Notice 2020-32 that these expenses are not deductible. (For prior coverage, see *Tax News & Views*, Vol. 21, No. 24, May 1, 2020). But some prominent congressional taxwriters, including Senate Finance Committee Chairman Charles Grassley, R-Iowa, and ranking member Ron Wyden, D-Ore., along with House Ways and Means Committee Chairman Richard Neal, D-Mass., subsequently challenged that position in a letter to Treasury Secretary Steven Mnuchin, arguing that it was contrary to congressional intent and urging the Service to reconsider. Grassley, Wyden, and several other Finance Committee members also introduced legislation that would clarify the treatment of these expenses. (For prior coverage, see *Tax News & Views*, Vol. 21, No. 25, May 8, 2020.)
  URL: https://www.irs.gov/pub/irs-drop/n-20-32.pdf
  URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200501_1.html
  URL: https://www.finance.senate.gov/imo/media/doc/2020-05-05%20CEG,%20RW,%20RN%20to%20Treasury%20(PPP%20Business%20Deductions).pdf
  URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200508_1.html
- **Clarify deductibility of expenses related to other grant and loan programs:** The Heroes Act provision likewise would clarify the deductibility of expenses paid with proceeds from certain other grant or loan programs – even if not required to be repaid – including those received under section 1109 (US Treasury Program Management Authority), section 1110 (Emergency Economic Insurance Disaster Loan grants) and section 1112 (subsidies for certain loan payments) of the CARES Act.
- **Include certain interest, PPE costs as eligible expenses for PPP loan forgiveness:** In addition to payroll, mortgage interest, rent, and utility costs, the House bill would add to the list of expenses under section 1106(b) of the CARES Act that can give rise to PPP loan forgiveness certain interest on debts incurred prior to the covered period of PPP and costs related to providing personal protective equipment (PPE) to employees.

Enhancement of credits for paid sick and family leave: The Families First Coronavirus Response Act included a pair of refundable tax credits that generally would help certain employers absorb the cost of separate mandates to provide paid sick and paid family and medical leave to certain employees affected by the coronavirus. The mandates apply to employers with fewer than 500 employees. The credits apply to qualified sick and family leave wages paid from the date of the law's enactment through December 31, 2020, and, in general, are applicable to employers with fewer than 500 employees.

The Heroes Act would expand the mandates to provide paid sick and family leave to include all employers, regardless of size. Availability of the tax credits, however, would still be limited only to employers with fewer than 500 employees, although that restriction would not apply to federal, state, and local governments. The legislation would make a number of changes to the credits, including extending their availability for an additional year – that is, through 2021 – and allowing governmental employers at the federal, state, and local levels to claim them on sick and family leave wages paid to their employees.

The House bill would also boost the maximum per-employee credit for paid family leave from $10,000 to $12,000 and – with respect to the credit for paid sick leave – allow employers to claim up to $511 per day, rather than $200 per day, for employees caring for a family member or for a child whose school or place of care has been closed, thus equalizing the per-day paid sick leave credit applicable to these caregivers with workers who must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation.

New business provisions

In addition to proposals to modify previously enacted coronavirus relief provisions, The Heroes Act also includes new business-focused tax breaks designed to help compensate employers for certain pandemic-related costs.

Credit for fixed expenses of employers subject to closure or gross receipts reduction: The Heroes Act would establish a new refundable tax credit equal to 50 percent of certain "qualified fixed expenses" (generally, mortgage, rent, and utility expenses as defined in section 1106 of the CARES Act, which relates to PPP loan forgiveness) for certain employers. Qualified fixed expenses taken into account would be limited on a quarterly basis to the least of (1) the qualified expenses paid during the comparable quarter from calendar year 2019, (2) $50,000, or (3) the greater of 25 percent of qualified wages (as defined in the ERTC) or 6.25 percent of 2019 gross receipts.

Similar to other employer-focused refundable credits enacted in the wake of the coronavirus pandemic, this proposed credit would be applied against taxes imposed under section 3111(a) – that is, the 6.2 percent employer-side Social Security payroll tax.

Only employers that were carrying on a trade or business in 2020 and that had no more than 1,500 full-time equivalent employees for calendar year 2019 or had less than $41.5 million in gross receipts in 2019 would be eligible for the credit. (These are the same thresholds included in the proposed modifications to the CARES Act's employee retention credit.) Furthermore, the employer's trade or business must have been fully or partially suspended during the calendar quarter due to a governmental order or have suffered a significant decline in gross receipts – that is, a decline of at least 20 percent compared to the same calendar quarter of the preceding year. The credit would be phased-in for employers whose gross receipts reduction is between 10 percent and 50 percent.

The credit would be available to certain tax-exempt organizations, but not to governmental employers at the federal, state, and local levels. Eligible employers may also elect out of this provision.

The legislation includes aggregation rules for eligible employers and provides that any shortfalls in the Social Security and Disability Insurance trust funds on account of the credit would be offset through transfers from the government's general fund.

Credit for certain pandemic-related employee benefits paid by employers: The House bill would also provide a refundable payroll tax credit – again applied against the 6.2 percent employer-side Social Security payroll tax on a quarterly basis – for certain expenses reimbursed or paid for the benefit of an employee that are excludible under section 139 as "qualified disaster relief payments" and that the employer elects to treat as a qualified pandemic-related employee benefit expense.

The credit percentage would be 50 percent of such expenses in the case of benefits paid with respect to an "essential employee" (a defined term), and 30 percent in any other case. The credit would be limited to $5,000 per employee per calendar quarter.

The proposal also includes nondiscrimination rules that would deny credits for benefit expenses paid that discriminate in favor of highly compensated individuals (within the meaning of section 125).

The credit would not be available to federal government employers. Certain tax-exempt organizations, as well as state and local governments, would appear to qualify, however. The Social Security trust fund would be made whole through transfers from the government's general fund.

Business interruption credit for self-employed individuals: The Heroes Act proposes a 90 percent refundable individual income tax credit for certain self-employed individuals who have experienced a significant loss of income. The credit may be claimed on "qualified self-employment income," defined as the loss in gross income for self-employment that exceeds a 10 percent reduction from 2019 to 2020, scaled using the ratio of net earnings from self-employment to gross income from self-employment in 2019. The amount of qualified self-employment income taken into account cannot exceed the reduction in adjusted gross income from 2019 to 2020, and is capped at $45,000. The credit would phase out starting at $60,000 of adjusted gross income ($120,000 for married filing jointly) at a rate of $50 for every $100 of income.

Pension plan changes

The Heroes Act includes proposals intended to stabilize financially troubled multiemployer pension plans and single-employer plans, and would expand special funding rules available to certain community newspaper plans.

Relief for multiemployer pension plans: Under current law, the Pension Benefit Guaranty Corporation (PBGC) has limited authority to take on financial responsibility for some of the benefits of certain underfunded multiemployer plans to help them stay solvent. The House bill would expand the PBGC's existing authority to provide this "partition" relief, increase the number of plans eligible for relief, and simplify the application process. Eligible plans would include plans in critical and declining status, plans that are significantly underfunded and have more retirees than active workers, plans that have suspended benefits, and certain plans that have already become insolvent. The House bill would allow plans to become eligible for the special partition program through 2024.

A qualifying plan may apply to the PBGC and, upon approval, would receive financial assistance. Under the program, a plan would receive enough financial assistance to keep it solvent and well-funded for 30 years, with no cuts to the earned benefits of participants and beneficiaries. Plans that previously cut benefits would have to restore them to the retirees who earned them. In exchange for the financial assistance, each plan would have to comply with certain conditions, and would be required to file regular comprehensive reports to the PBGC and to the congressional committees of jurisdiction.

Other relief provisions for multiemployer plans in the House bill would:

- Prohibit multiemployer plans in critical or declining status from applying for or being approved for a suspension of benefits under the Multiemployer Pension Reform Act (effective upon enactment).
- Permit a plan to retain its funding zone status as of a plan year beginning in 2019 for plan years that begin in 2020 or 2021.
- Permit a plan in endangered or critical status for a plan year beginning in 2020 or 2021 to extend its rehabilitation period by five years, giving it additional time to improve its contribution rates, limit benefit accruals, and maintain plan funding (effective upon enactment).
- Permit plans to amortize investment losses in plan years beginning in 2019 and 2020 over 30 years to spread out those losses over time (generally effective for the first day of the first plan year ending on or after February 29, 2020).
- Increase the PBGC's maximum guaranteed benefit for plans receiving financial assistance to 100 percent of the first $15 in monthly benefits per year of service and 75 percent of the next $70 in monthly benefits per year of service, and index it thereafter. The increased benefit would be available to plans receiving financial assistance beginning December 16, 2014. A plan that becomes insolvent in the future would be subject to the increased guarantee in the calendar year in which it becomes insolvent. The provision would be effective for plan years beginning after December 31, 2019.

Reforming multiemployer pension rules has been a priority for Ways and Means Committee Chairman Richard Neal. The House approved a different iteration of multiemployer plan relief in 2019, but it has not been taken up in the Senate. (For prior coverage, see *Tax News & Views*, Vol. 20, No. 25, July 26, 2019.)
URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190726_2.html

Relief for single-employer pension plans: For single-employer pension plans, the House bill would permit all funding shortfalls to be amortized over 15 years (compared to 7 years under current law). It also would delay the scheduled phase-out of current-law pension "smoothing" provisions that modify the interest rate that employers must use to calculate their pension plan liabilities for purposes of determining their annual minimum funding obligations. Both provisions would be effective for plan years beginning after December 31, 2019.

Special funding rules for community newspapers: The legislation would modify the special funding rules for pension plans sponsored by financially struggling community newspapers in the Setting Every Community Up for Retirement Enhancement Security (SECURE) Act to make that relief available to additional community newspaper plans. (The SECURE Act was incorporated into an appropriations package that cleared Congress and was signed into law at the end of 2019.) The provision would be effective for taxable years beginning after December 31, 2017.
URL: https://www.congress.gov/bill/116th-congress/house-bill/1865/text?q=%7B%22search%22%3A%5B%22h.r.+1865%22%5D%7D&r=1&s=1

Qualified retirement plans and other retirement relief

The Heroes Act would expand some of the relief provided to defined contribution plan participants and IRA owners under the CARES Act and also make several targeted changes to the retirement plan rules.

Required minimum distributions: The CARES Act waived required minimum distributions from defined contribution plans and IRAs for 2020. The House bill would expand that relief by waiving required minimum distributions for 2019 (effective as if enacted in the CARES Act).

The measure also provides that required minimum distributions made for 2019 and 2020 could be rolled back to a defined contribution plan or IRA without regard to the 60-day requirement if the rollover is made by November 30, 2020 (effective for taxable years beginning after December 31, 2018).

Early distributions and plan loans: The Heroes Act would modify the CARES Act's rules permitting penalty-free early retirement plan withdrawals and higher limits on loans from qualified plans by clarifying that:

- A retirement plan may rely on an employee's certification that the employee is eligible for the special plan loan rules and
- The rules for penalty-free early distributions and plan loan relief apply to money purchase pension plans in addition to defined contribution plans and IRAs.

Both provisions would take effect as if they had been enacted in the CARES Act.

Benefits for volunteer emergency responders: The legislation would permanently extend the exclusions for qualified state or local tax benefits and qualified reimbursement payments to members of qualified volunteer emergency response organizations and would increase the exclusion for qualified reimbursement payments to $50 a month for each month that a volunteer performs services, effective for taxable years beginning after December 31, 2020. (This provision was most recently extended in the SECURE Act and is scheduled to expire at the end of this year.)

Qualified domestic relations orders: The House bill would direct the Labor Department to award grants of at least $250,000 to established community-based organizations on a competitive basis to assist low-income women and survivors of domestic violence in obtaining qualified domestic relations orders to ensure that they receive retirement plan benefits to which they are entitled from a spouse or former spouse.

Interest rate assumptions for life insurance contracts: The Heroes Act would update the interest rate assumptions under section 7702 for determining the premiums that can be used to fund life insurance contracts to better reflect the current interest rate environment and ensure that the rates will continue to appropriately reflect economic conditions. Under the bill, these rates would be tied to either a floating rate prescribed in the National Association of Insurance Commissioners' Standard Valuation Law or a floating rate based on the average applicable federal mid-term rates over a 60-month period. The provision would be effective for contracts issued after December 31, 2020.

Employee benefits

For 2020, The Heroes Act would offer greater flexibility to administrators of – and participants in – cafeteria plans, health flexible spending arrangements (FSAs) and dependent care FSAs through proposals to:

- Permit cafeteria plans and health FSAs to allow participants to carry over up to $2,750 in unused benefits or contributions from 2020 to 2021;
- Permit cafeteria plans and dependent care FSAs to allow participants to carry over up to the annual maximum amount of unused dependent care assistance benefits or contributions from 2020 to 2021;
- Permit cafeteria plans to allow participants to carry over unused paid time off from 2020 to 2021;
- Permit cafeteria plans and health FSAs to allow participants to make one-time elections for any reason to modify the amount of their contributions to a health FSA or the amount of elective paid time off (the election would be permitted between the date of enactment and December 31, 2020);

- Permit cafeteria plans, health FSAs, and dependent care FSAs to extend the grace period for the 2020 plan year to 12 months after the end of the 2020 plan year (thus allowing benefits or contributions from these plans or arrangements to be used for expenses incurred up to 12 months after the end of the plan year); and
- Permit cafeteria plans and health FSAs to allow employees who cease participation in the plan (for example, due to being terminated) to continue to receive reimbursements from unused contributions for the rest of the plan year (including the grace period as extended above).

Employers would be permitted to retroactively amend their cafeteria plans, health FSAs, and dependent care arrangements to incorporate these provisions.

Recovery rebate payments for individuals

The Heroes Act calls for an advance refundable tax credit (similar to the credit enacted in the CARES Act) of $1,200 for a single taxpayer, $2,400 for joint filers, and $1,200 for dependents (including adult dependents and dependents up to age 24 who are full-time students). The maximum household payment would be capped at $6,000. The credit would phase out beginning at $75,000 of modified adjusted gross income for single taxpayers, $112,500 for head-of-household filers, and $150,000 for joint filers at a rate of $5 per $100 of income. (The same phase-out thresholds apply to the stimulus payments in the CARES Act.)

The credit would be issued by the Treasury Department based on information in a taxpayer's 2018 or 2019 returns. Payments for Social Security beneficiaries, Supplemental Security Income recipients, Railroad Retirement plan participants, and Veterans Administration beneficiaries who did not file returns for 2018 or 2019 would be determined based on information provided by the Social Security Administration, Railroad Retirement Board, or Veterans Administration.

Taxpayers who receive an advance payment that exceeds their maximum eligible credit based on 2020 information would not be required to reimburse the government for any overpayment. If the credit based on 2020 information exceeds the amount of the advance payment, taxpayers would be allowed to claim the difference on their 2020 tax returns.

These provisions would become effective upon enactment.

Changes to CARES Act economic impact payments: In addition to proposing a new round of recovery payments, the House-passed bill includes provisions that would beef up the economic impact payments enacted in the CARES Act by:

- Expanding the range of household members eligible for the $500 dependent credit to include dependents up to age 24 who are full-time students and adult dependents;
- Allowing economic impact payments to be made to an individual who provides a taxpayer identification number rather than a Social Security number;
- Exempting economic impact payments from reduction or offset because of past-due child support;
- Protecting these payments from any form of transfer, assignment, execution, levy, attachment, garnishment, legal process, bankruptcy or insolvency law, and any other means of capture prohibited for payments made under Chapter 7, Subchapter 2 of the Social Security Act;
- Amending the CARES Act to clarify that, for an individual whose economic impact payment was paid based on a Social Security Benefit Statement or Social Security Equivalent Benefit Statement, any economic impact payment made to a representative payee or fiduciary shall only be used for the benefit of the person for whom the payment was intended.

These provisions would be effective retroactive to the enactment of the CARES Act. The bill also provides that if these amendments to the economic impact payments increase the amount of advance payments a taxpayer is eligible for, Treasury would be required to issue a rebate equal to the difference between the taxpayer's redetermined payment amount and the previously issued payment.

Temporary repeal of limitation on state and local tax deduction

The House bill would eliminate the $10,000 limitation on the deduction for state and local taxes for 2020 and 2021, effective for taxes paid or accrued in taxable years beginning after December 31, 2019.

The House approved a two-year suspension of the limitation at the end of last year, mainly on the strength of Democratic votes, but that proposal has not been taken up in the Republican-controlled Senate. The current-law cap was enacted in the GOP's tax code overhaul in 2017, and House Democrats (including members of the Ways and Means Committee) have sought to repeal it or substantially water it down since they took control of the chamber at the start of the 116th Congress.

Changes to worker and family tax credits

The Heroes Act includes temporary provisions that would enhance the earned income tax credit, the child tax credit, and the child and dependent care tax credit. The Ways and Means Committee approved similar provisions in legislation it marked up last year. (For prior coverage, see *Tax News & Views*, Vol. 20, No. 21, June 21, 2019.)
URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190621_1.html

Earned income tax credit enhancements: The Heroes Act would expand eligibility for and the amount of the earned income tax credit for taxpayers with no qualifying children (the "childless EITC") for 2020. Under this proposal, the minimum age to claim the childless EITC would be reduced from 25 to 19 (except for full-time students) and the upper age limit would be increased from age 65 to age 66. The proposal also would increase childless EITC credit percentage and phase-out percentage from 7.65 to 15.3 percent, increase the earned income amount to $9,720, and increase the phase-out amount to $11,490.

In addition, the proposal would allow taxpayers to calculate their EITC for 2020 based on their 2019 earned income if their 2020 earned income is less than their 2019 earned income.

The bill also includes permanent provisions that would:

- Repeal the provision prohibiting an EITC-eligible taxpayer with qualifying children from taking the childless EITC if he or she cannot claim the EITC with respect to qualifying children due to failure to meet child identification requirements (including a valid Social Security Number for qualifying children);
- Allow a married but separated individual filing a separate return to claim the EITC (subject to certain conditions);
- Eliminate the disqualified investment income test so that individuals are able to claim the EITC without regard to the amount of certain investment income; and
- Instruct Treasury to make payments to the territories that relate to the cost of each territory's EITC.

These provisions would take effect upon enactment.

Child tax credit: The Heroes Act would make the child tax fully refundable for 2020 and increase the amount to $3,000 per child ($3,600 for a child under age 6). It also would include 17-year-olds as qualifying children for purposes of the credit. The Treasury Department would be required to make best efforts to provide the enhanced credit in the form of an advance payment.

The measure also instructs Treasury to make payments to each "mirror code" territory for the cost of its child tax credit.

Dependent care assistance: The House bill would make the child and dependent care tax credit fully refundable for 2020 and increase the maximum credit rate to 50 percent. It also would amend the phase-out threshold to begin at $120,000 instead of $15,000, and would double the amount of child and dependent care expenses that are eligible for the credit to $6,000 for one qualifying individual and $12,000 for two or more qualifying individuals.

A separate provision would increase the exclusion for employer-provided dependent care assistance from $5,000 to $10,500 ($2,500 to $5,250 in the case of a separate return filed by a married individual) for 2020.

Targeted tax deductions and exclusions

The Heroes Act includes several tax relief provisions that would be available to certain front-line workers addressing the coronavirus emergency and certain students affected by the pandemic.

For front-line workers, the measure would:

- Double the above-the-line deduction for certain unreimbursed out-of-pocket expenses for elementary and secondary school teachers from $250 to $500 (indexed for inflation);
- Provide a $500 above-the-line deduction (indexed to inflation) for unreimbursed expenses of professional first responders related to the cost of uniforms or tuition and fees related to training; and
- Provide a $500 above-the-line deduction for 2020 for the uniforms, supplies, and equipment of first responders and coronavirus front-line employees (that is, those that perform at least 1,000 hours of essential work, as defined for pandemic premium pay reimbursable from the COVID-19 Heroes Fund, a new program that would be created under The Heroes Act and is described in Division Q).

These provisions would be effective for taxable years beginning after December 31, 2019.

The bill also would clarify that emergency financial aid grants awarded under section 3504 of the CARES Act by institutions of higher education to students affected by the coronavirus are excludable from gross income and are disregarded in determining a student's eligibility for higher education tax incentives. The provision would be effective for financial aid grants made after March 26, 2020.

Next steps

With more than 36 million US workers laid off in the past two months, many businesses still closed, bankruptcies on the rise, and other economic indicators rapidly turning negative, there is mounting pressure on Congress to enact further relief. However, a "Phase 4" recovery bill will almost certainly take longer to make its way to the president's desk than earlier packages did.

Most Republicans have argued for a "pause" in pandemic-related legislation while the impact of earlier spending and tax cuts are evaluated and have seen little to support in The Heroes Act while also showing increasing alarm about the impact of these packages on our worsening deficits. Some House Democrats also have conceded that the bill as passed by the House is a show of their priorities rather than a likely end point. On a call with reporters May 12, Ways and Means member Stephanie Murphy, D-Fla., called the bill a "negotiating start point."

No love from Republicans: House Republican leaders rejected the Democratic bill this week. Minority Leader Kevin McCarthy, R-Calif., labeled it "a liberal wish list that has no chance of becoming law" on May 12. Ways and Means Committee Chairman Kevin Brady, R-Texas, and other GOP taxwriters contended in a May 13 news release that the bill would undo "years of commonsense reforms." They specifically cited the proposed repeal of the SALT deduction cap; a second round of relief checks and the expansion of eligibility, which they claimed could allow payments to undocumented immigrants; the expansion of paid leave mandates without an accompanying expansion of the corresponding tax credits; the scaling back of NOL allowances; and extension of the $600-per-week supplement to unemployment insurance, which they say pays some individuals more not to work than to accept employment.

Senate Republicans and the president were similarly dismissive of the Democratic bill. Majority Leader McConnell, R-Ky., called it "a totally unserious effort" in May 14 remarks on the Senate floor, and Majority Whip John Barrasso of Wyoming told reporters May 12 that the bill "will never pass the Senate."

President Trump, speaking at a May 13 White House event, called the proposal "dead on arrival." The White House followed up on May 14 with a Statement of Administration Policy (SAP) in which it commented that "the bill is more concerned with delivering on longstanding partisan and ideological wishlists than with enhancing the ability of our Nation to deal with the public health and economic challenges we face." The SAP noted that [i]f H.R. 6800 were presented to the president, his advisors would recommend that he veto the bill.
URL: https://www.whitehouse.gov/wp-content/uploads/2020/05/SAP_H.R.-6800.pdf

Democratic response: But House Speaker Nancy Pelosi, D-Calif., rejected the GOP's argument that The Heroes Act is a purely partisan exercise.

"[W]e're saying: Okay. Here is our offer. Let's see where you are," she said at a May 14 press conference. "You have supported supporting our heroes with state and local support before. You have supported testing in the first, very first bill we passed…on March 4th and the very most recent bill that we passed with $25 billion in testing, as you later agreed to. You have supported direct payments to the American people and support for Unemployment Insurance, et cetera. So…these are just taking us further down the path of most of that legislation."

Pelosi also argued at her press conference that the expansive spending and tax provisions in the legislation are necessary given the impact of the coronavirus pandemic on the US economy.

"[W]e want to put money in the pockets of the American people. We're doing that with direct payments to American families with Unemployment Insurance, with child tax credit, low income tax credit, employment retention tax credit, a number of different ways. And until it is…not necessary anymore, this is the path that we have to be on," she said.

Ways and Means Chairman Neal made a similar case in a May 12 news release issued shortly after The Heroes Act was introduced.

"People across our nation are hurting, and Congress must take extraordinary, immediate action to provide them with relief. Families are feeling the pain of a terrible one-two punch – a national public health emergency coupled with a historic economic downturn. The gravity of our new reality demands substantial solutions, and that's what Ways and Means Democrats offer in this latest response package."

GOP ideas to aid businesses: The one tax provision in The Heroes Act that gained some measure of support from Ways and Means ranking member Kevin Brady was the proposed expansion of the employee retention tax credit.

"We are willing to discuss, in a bipartisan way, how to make the credit work better and to expand it," he told reporters this week.

Brady also told reporters that House Republicans and Trump administration officials are discussing a proposal to temporarily allow businesses to immediately expense costs of updating their workplaces to address coronavirus-related health and safety issues and providing protective equipment to workers as they reopen. Even better, he said, would be to make full expensing permanent. (Under the Tax Cuts and Jobs Act, the full expensing allowance begins to phase out by 20 percent per year beginning in taxable years after 2022 and expires after 2026.)

"The White House has suggested [permanent full expensing] to provide certainty for those long term investments we want businesses to make," Brady said. "We think the economy and workforce places will look different in the future. Why not encourage businesses to make those investments now for the long term?"

Brady said other ideas Republicans are discussing include a targeted tax incentive to accelerate development of US production lines for critical drugs and medical supplies; doubling the size of the research and development tax credit; and repealing the TCJA provision that requires businesses to amortize their research costs over five years beginning in 2022. Brady also said he supports a proposal President Trump recently made to cut payroll taxes for workers through the end of 2020.

"It's an immediate 7 percent pay raise for workers that's welcome in every family in the economy," he said, adding that it would provide an incentive for employees to return to work.

Ways and Means Committee Chairman Neal recently said Democrats might support temporary full expensing in exchange for Republican support on other pandemic relief proposals, telling *Tax Law360* in April, "We are open at the committee level to suggestions on all of this."

Senate shift?: One Republican senator who requested anonymity told *The Hill* newspaper May 12 that the GOP will be able to sustain its call for a legislative "pause" for only so long before the pressure to act will become too strong to ignore.

"I think it's viable for now," the senator said. "How long it remains viable is determined by what is going on in the country, what the 'getting back out, going back to work, getting out of our homes' begins to look like. …Unemployment numbers being what they are, I think there's going to be an insistence that something additional happen."

In a possible sign of that thaw beginning, some noted a slight shift in Majority Leader McConnell's language May 12, when he conceded that additional virus-related legislation may be necessary, while emphasizing that it needs to be targeted.

"We're going to insist on doing narrowly targeted legislation if and when we do legislate again, and we may well," he told reporters.

Senate Republican Whip John Thune, R-S.D., this week also recognized the possibility of additional legislation, saying May 12, "If and when there is another round and there's a need to do something, we've solicited ideas – our office has – and there's a lot of good stuff coming in the door, much of which is being vetted and thought about and discussed in terms of how it might be integrated to the next CARES Act or Phase 4."

A key issue that Senate Republicans have raised to date is their insistence on the need for liability protections for health care workers, business owners, and employees as the country emerges from its lockdown over the coming weeks and months.

"As my Republican colleagues and I have made clear, strong legal protections will be a hard red line in any future legislation," McConnell said on the Senate floor May 13.

He said a day earlier that he and Sen. John Cornyn, R-Texas, are preparing a "major package of COVID-related liability reforms" that would extend significant new protections to front-line workers, businesses, nonprofits, governments, workers, and schools that are "following public health guidelines to the best of their ability."

"Let me be clear," Cornyn said on the floor May 11. "Not all lawsuits are created equal. Without a doubt, there will be legitimate claims as a result of reckless wrongdoing in the wake of this pandemic. Those are the types of cases we want to make sure are heard…and we are actively developing a proposal that I hope will gain bipartisan support."

Cornyn also said that Republicans may release a plan soon to modify the newly bolstered unemployment insurance payments to address concerns that the additional $600 per week now allotted is a disincentive to unemployed workers to rejoin the labor force. One idea that has been proposed by Sen. Rob Portman, R-Ohio, would allow workers to keep a portion of their unemployment insurance if they go back to work.

"We're finding from employers back home that as they reopen, they're having a difficult time getting workers, and part of it is because of the unemployment [insurance] issue," he said. "The idea is to allow them to take some of their $600 back to work with them."

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Updated FAQ page explains review process for Paycheck Protection good-faith certifications

The Treasury Department and Small Business Administration (SBA) on May 12 updated their FAQ page on the Paycheck Protection Program (PPP, enacted as part of the Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136) to explain how the SBA will review borrowers' required good-faith certification concerning the necessity of their loan request.
URL: https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf

Treasury and the SBA explain in Question 46 that "[a]ny borrower that, together with its affiliates, received PPP loans with an original principal amount of less than $2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith."

They also note that "borrowers with loans greater than $2 million that do not satisfy this safe harbor may still have an adequate basis for making the required good-faith certification, based on their individual circumstances in light of the language of the certification and SBA guidance." The guidance also reminds borrowers that the SBA has previously stated that it will review "all PPP loans in excess of $2 million, and other PPP loans as appropriate" and explains the consequences if the SBA determines that "a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request."

Treasury and the SBA stated in earlier guidance (Question 43, published on May 5) that "any borrower who applied for a PPP loan before April 24, 2020, and repays the loan in full by May 14, 2020, will be deemed by SBA to have made the required certification in good faith." The SBA subsequently extended that deadline to May 18, 2020 (Question 47, published on May 13).

Cafeteria plan elections and carryovers

In other coronavirus guidance developments, the IRS on May 12 issued two notices addressing issues related to mid-year elections and carryover of unused benefits under the section 125 cafeteria plans rules.

- Notice 2020-29 provides greater flexibility regarding mid-year elections under a cafeteria plan during calendar year 2020 related to employer-sponsored health coverage, health flexible spending arrangements (FSAs), and dependent care assistance programs by: (1) extending claims periods for taxpayers to apply unused amounts remaining in a health FSA or dependent care assistance program for expenses incurred for those benefits through December 31, 2020, (2) expanding the ability of taxpayers to make mid-year elections for health coverage, health FSAs, and dependent care assistance programs, and (3) applying earlier relief for high-deductible health plans to cover expenses related to COVID-19 and a temporary exemption for telehealth services retroactively to January 1, 2020.
  URL: https://www.irs.gov/pub/irs-drop/n-20-29.pdf
- Notice 2020-33 increases the limit for unused health FSA carryover amounts from $500, to a maximum of $550, as adjusted annually for inflation. It also clarifies the ability of a health plan to reimburse individual insurance policy premium expenses incurred prior to the beginning of the plan year for coverage provided during the plan year.
  URL: https://www.irs.gov/pub/irs-drop/n-20-33.pdf

State tax considerations

Also this week, Deloitte Tax LLP's Multistate Tax Group released an alert providing an updated summary of tax filing due date relief related to the coronavirus and the state-level filing relief programs that have been announced to date.
URL: https://www2.deloitte.com/us/en/pages/tax/articles/updated-covid-19-updated-state-and-local-tax-due-date-relief-developments.html?id=us:2em:3na:tnv:awa:tax:051520&sfid=7011O000001xmY4QAI

Find out more

A running list of guidance and other resources that address significant tax issues stemming from the pandemic is available from Deloitte Tax LLP.
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/Stimulus-Resource-Table.pdf

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House OKs rule change to permit proxy voting, remote committee hearings

In recognition of the challenges that ongoing coronavirus pandemic restrictions have placed on lawmakers, the House passed a significant change to its rules May 15 that will temporarily allow proxy voting on the House floor. This will allow the chamber to conduct business and act on legislation with as few as 40 members present but voting on behalf of their colleagues.

The resolution making the rules change (H. Res. 965), which passed by a vote of 217-189, authorizes the House speaker, in consultation with the minority leader, to implement remote committee proceedings and remote voting in the House during a coronavirus public health emergency. The authority lasts for 45 days and can be extended or renewed if the health emergency persists or returns.

URL: https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116hres965.pdf

The resolution provides that a lawmaker can serve as a “designated proxy” for up to 10 members and must receive and follow “exact written instruction” on how their colleagues want to vote on any question, from individual amendments to final passage of legislation. Any member who wants to vote by proxy must send written authorization to the clerk of the House designating their in-person representative, and this list will be posted online. Each member’s vote will also be read aloud during the proceedings, and the list of members voting by proxy will be printed in the *Congressional Record* for full transparency. Proxy votes will count towards a quorum.

Despite the constraints Democrats included in the rule, House Minority Leader Kevin McCarthy, R-Calif., opposed the change, calling it “the biggest power grab in the history of Congress.” However, House Majority Leader Steny Hoyer, D-Md., said the new rule “neither advantages the majority nor disadvantages the minority.”

“This is simply to replicate what we can do in person but are precluded from doing by an extrinsic force,” he said May 13.

Under the new rule, the speaker also may authorize House committees to hold virtual hearings and mark-ups, and to take depositions, with members participating remotely counting toward a quorum and allowed to vote. The hearings can be held completely remotely, or with some members present in the Capitol and others attending virtually.

Proxy voting was allowed in committees until Republicans banned the practice after they took the House majority in 1994; it is still permitted in Senate committees, but not for votes of the full Senate.

Study on remote voting

The resolution also directs the House Administration Committee to study “the feasibility of using technology to vote remotely in the House.” If the study finds that there is “operable and secure technology” for remote voting, the Rules Committee will then issue regulations to implement such an option, and the speaker will be able to authorize remote voting during the coronavirus health emergency.

Democrats initially sought a rule allowing proxy voting last month, when members were forced to scramble to return to Washington from around the country to approve economic relief legislation when a member refused to let the bill pass by unanimous consent. However, Republicans pushed back – with the Rules Committee’s ranking Republican, Rep. Tom Cole of Oklahoma, saying the concept of remote voting “diminishes the power of the institution” – and Speaker Nancy Pelosi, D-Calif., instead created a bipartisan task force to further study the issue. The task force’s Republican members, who included McCarthy and Cole, did not endorse the resolution passed this week.

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