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Senate Republicans present opening bid on economic recovery package

Senate Republicans on July 27 formally unveiled their proposal for the next round of tax-and-spending legislation to address the economic impact of the coronavirus.

The proposal was released as a series of discrete bills that Majority Leader Mitch McConnell, R-Ky., said would be known collectively as the Health, Economic Assistance, Liability Protection, and Schools (HEALS) Act. Notable tax proposals in the Senate plan include:

- Incentives for businesses to hire and retain employees plus an additional round of economic recovery payments for individuals;
  URL: https://www.finance.senate.gov/imo/media/doc/SFC%20CARES%202.0%20Legislative%20Text.pdf
- An expansion of the current-law Paycheck Protection Program (PPP), but without a fix to clarify that certain business expenses related to PPP loan forgiveness are deductible;
  URL: https://www.rubio.senate.gov/public/_cache/files/49aef1eb-2397-4200-8011-17bd4b35ad10/55738B7798C596512E3B9002EA0A23CC.continuing-small-business-recovery-and-paycheck-protection-program-act---mir20e14.pdf
- New tax incentives to promote domestic production of personal protective equipment (PPE) and encourage repatriation of intangible property relating to medical PPE; and
  URL: https://www.lgraham.senate.gov/public/_cache/files/bac7d1c0-a7ba-4ace-bb1a-59cdd09bfa51/bai20728---domestic-manufacturing.pdf

- A temporary increase (to 100 percent) in the deduction for business meals.
  URL:
  https://www.scott.senate.gov/imo/media/doc/Scott%20Supporting%20Americas%20Restaurant%20Workers%20Act.pdf

Other provisions include liability protections for health care workers, business owners, and employees; new spending for schools and coronavirus testing; greater flexibility for state and local governments to use funds already allocated in the Coronavirus Aid, Relief, and Economic Security (CARES) Act enacted in March; and a pathway for ensuring solvency of the Social Security and Medicare trust funds.

This special edition of *Tax News & Views* provides a high-level summary of the business and individual tax provisions in the Senate plan. We will provide a more detailed discussion of the Senate package in our week-in-review edition on July 31.

Business tax provisions

Among the plan's business-focused tax policies are provisions that would:

- Expand the CARES Act's employee retention tax credit (ERTC), including by increasing the credit rate from 50 percent to 65 percent, increasing the base of qualified wages on which the credit is applied from $10,000 per employee to a maximum of $30,000 per employee per year, relaxing the decline-in-gross-receipts threshold that in part determines eligibility for the credit, and, with certain limitations, allowing Paycheck Protection Program funding recipients to also avail themselves of the ERTC. (See additional details on the PPP below.)
- Expand the work opportunity tax credit (WOTC) – for individuals hired after the date of enactment and before January 1, 2021 – by establishing a new "targeted group" for individuals who are certified as having received unemployment compensation immediately prior to their hiring date.
- Provide a new refundable credit against the 6.2 percent employer-side Social Security payroll tax for certain business expenses incurred before 2021 to protect employees from COVID-19 (for example, costs related to testing, PPE, cleaning products or services, and reconfiguring workplaces and technology to prevent the spread of the virus).
- Establish a safe harbor that would allow – for the remainder of 2020 – marketplace platform companies – those operating in the "gig" economy, for example – to provide certain coronavirus-related assistance to service providers without jeopardizing the service provider's independent contractor status, while also providing that certain noncash assistance received by a service provider will be excluded from taxable income.
- Provide that, through 2024, for purposes of state and local income tax, employees who work in multiple states would be subject to income tax only in their state of residence and any nonresidence state(s) in which they worked more than 30 days. For calendar year 2020, the threshold would be 90 days for employees working outside their residence jurisdiction "as a result of the COVID-19 public health emergency."
- Enhance the Paycheck Protection Program in several ways, including by adding to the list of expenses that can give rise to loan forgiveness, allowing "second draw" PPP loans for prior borrowers that meet certain size and gross-receipt-reduction thresholds, and simplifying forgiveness application procedures for smaller borrowers. Absent, however, is language granting tax deductibility to business expenses funded by forgiven PPP loan funds – a point that some prominent taxwriters, including Senate Finance Committee Chairman Charles Grassley, R-Iowa, and ranking Democrat Ron Wyden of Oregon, along with House Ways and Means Committee Chairman Richard Neal, D-Mass., maintain was intended by lawmakers when they drafted the CARES Act, but which according to the IRS – in Notice 2020-32, issued on April 30 – would require a statutory change to effectuate.
  URL: https://www.irs.gov/pub/irs-drop/n-20-32.pdf
- Provide a full deduction for business meal expenses paid or incurred before January 1, 2021.

Supply chain and intellectual property issues

The HEALS Act would create a new 30 percent investment tax credit (ITC) designed to incentivize the manufacture of PPE within the US (total credit allocations would be capped at $7.5 billion), while also mandating that the federal government purchase domestic-made PPE to refill the Strategic National Stockpile.

Relatedly, it also would allow US taxpayers receiving the new ITC for US-made PPE to repatriate intangible property associated with that PPE manufacturing activity without immediate US tax effect. (Built-in gain on the property would be preserved and realized if later sold or transferred).

Individual tax provisions

On the individual side of the tax code, the HEALS Act calls for another round of direct stimulus payments at the same level enacted under the CARES Act – that is, $1,200 for an unmarried taxpayer, $2,400 for joint filers, and $500 per dependent, subject to a phase-out based on household income. But it would expand the range of household members eligible for the $500 dependent payment to include dependents of any age. (The CARES Act provision is limited to dependent children up to age 17.)

The HEALS Act also would temporarily increase the flexibility of tax-preferred flexible spending accounts (FSAs), dependent care flexible spending accounts (DCFSAs), and health savings accounts (HSAs) by:

- Allowing employees to roll over unused 2020 contributions to their FSAs and DCFSAs into the 2021 plan year and
- Treating expenses for care provided at employer on-site clinic as eligible expenses under the HSA rules.

Next steps

The provisions introduced in the Senate are seen as just an opening bid in the necessary negotiations with the House, where Democrats passed a $3 billion relief package known as the HEROES Act in May with markedly different priorities. (For details on the Heroes Act, see *Tax News & Views*, Vol. 21, No. 27, May 15, 2020.)
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200515_1.html

House Speaker Nancy Pelosi, D-Calif., and Senate Democratic Leader Charles Schumer, D-N.Y., were scheduled to meet and begin formal talks the evening of July 27 with the Trump administration's lead negotiators, White House Chief of Staff Mark Meadows and Treasury Secretary Steven Mnuchin.

Congress is hoping to complete action on this measure within days to allow both chambers to escape Capitol Hill for their traditional August recess and the quadrennial political conventions. In addition, the looming expiration at the end of this week of the CARES Act's $600 per week unemployment bonus is also driving imminent action. (The Senate Republican proposal includes an extension of the added benefits – but at a substantially lower dollar level in response to concerns the higher benefit amount is paying some people more to not work than to go back to their old jobs.) However, the scope of issues separating the parties guarantees many more starts and stops before something arrives at the Resolute Desk for the president's signature.

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