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Bipartisan agreement appears elusive as Senate Republicans release economic recovery proposal

House and Senate negotiations on the next round of legislation to address the economic impact of the coronavirus began in earnest this week as Senate Republican leaders released long-awaited details of a tax-and-spending plan that they say will cost roughly $1 trillion.

But just how quickly – or even whether – congressional leaders and the Trump administration can put a deal together remained unclear by week's end. The Senate adjourned for the weekend on July 30 after negotiators made little apparent progress in reconciling some of the significant differences between the Senate proposal and the $3 trillion plan passed by House Democrats in May; moreover, some rank-and-file Senate Republicans indicated they do not support their leadership's plan – or indeed, any further stimulus package.

Overview of Senate plan

The Senate Republican plan, which Majority Leader Mitch McConnell, R-Ky., unveiled on July 27, consists of several discrete bills that are known collectively as the Health, Economic Assistance, Liability Protection, and Schools (HEALS) Act. Notable tax provisions 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 significant fix sought by lawmakers in both parties 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 roadmap for Congress to adopt legislation ensuring solvency of the Social Security and Medicare trust funds.

Tax incentives for employers

The HEALS Act includes tax incentives to encourage employers to retain current employees, hire new ones, and protect employees and customers from the coronavirus.

Employee retention tax credit: The HEALS Act would expand the CARES Act's employee retention tax credit (ERTC), through provisions to:

- Increase the credit rate from 50 percent to 65 percent;
- Increase the base of qualified wages on which the credit is applied from $10,000 per employee per year to $10,000 per employee per quarter (limited to $30,000 for the calendar year);
- Relax the decline-in-gross-receipts threshold (generally from 50 percent to 25 percent as compared to the comparable prior-year quarter) that in part determines eligibility for the credit; and
- Allow Paycheck Protection Program funding recipients to also avail themselves of the ERTC, subject to certain limitations. (See additional details on the PPP below.)

The HEALS Act also would increase the CARES Act's full-time employee threshold – above which the qualified wage base becomes more restrictive – from 100 to 500 employees.

These changes generally would be effective as of the beginning of the calendar quarter during which the provision is enacted. (Certain provisions that would modify the treatment of health plan expenses and the definition of gross receipts for tax-exempt organizations would apply retroactively as if enacted in the CARES Act,)

Work opportunity tax credit: The GOP proposal would temporarily expand the current-law work opportunity tax credit by establishing a new "targeted group" for individuals who are certified as having received unemployment compensation immediately prior to their hiring date. The credit rate for this particular targeted group would be 50 percent rather than the otherwise applicable rate of 40 percent; similarly, the wage base limitation for this targeted group would be increased from $6,000 to $10,000.

This provision would be effective for individuals hired after the date of enactment and before January 1, 2021.

Coronavirus protection incentives: In addition to enhancing existing tax incentives, the proposal calls for a new refundable credit against the 6.2 percent employer-side Social Security payroll tax for certain business expenses incurred after March 12, 2020, and before January 1, 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.

The 50 percent credit rate would be applied on a quarterly basis against qualifying expenses that, in total, are limited and phased down as an employer's average number of employees increases – that is, $1,000 for each of the first 500 employees, $750 for each of the next 500 employees, and $500 for each employee over 1,000.

Paycheck Protection Program modifications

The HEALS Act would enhance the Paycheck Protection Program in several ways, including by:

- Adding to the list of expenses that can give rise to loan forgiveness (such as for certain worker protection costs and expenses related to cloud computing, software, and accounting needs);
- Allowing "second draw" PPP loans for prior borrowers that have no more than 300 employees and experience a gross receipts reduction of at least 50 percent; and
- Simplifying forgiveness application procedures for smaller borrowers.

No provision on deductibility of business expenses: But the measure does not include language backed by lawmakers in both parties that would permit tax deductibility for business expenses funded by forgiven PPP loan funds. 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 that Congress intended for these expenses to be deductible when they drafted the CARES Act; but the IRS has argued – in Notice 2020-32, issued on April 30 – that treating these expenses as deductible would require a statutory change to effectuate. (For prior coverage, see *Tax News & Views*, Vol. 21, No. 24, May 1, 2020, and *Tax News & Views*, Vol. 21, No. 25, May 8, 2020.)
URL: https://www.finance.senate.gov/imo/media/doc/2020-05-05%20CEG,%20RW,%20RN%20to%20Treasury%20(PPP%20Business%20Deductions).pdf
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://newsletters.usdbriefs.com/2020/Tax/TNV/200508_1.html

For his part, House Ways and Means Committee ranking Republican Kevin Brady of Texas, who previously had stated there was "no unified congressional intent" to treat these expenses as deductible, told reporters July 29 that he would be willing to reconsider the issue.

"I'm open to that conversation," Brady said.

JCT Chief of Staff Tom Barthold, meanwhile, weighed in on the debate in a July 27 letter to Finance Committee member John Cornyn, R-Texas, discussing the revenue impact of legislation (S. 3612), sponsored by Cornyn, Grassley, and Wyden, that would clarify that otherwise deductible business expenses funded with PPP loan proceeds would remain deductible even if the loan is forgiven.
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200731_1_suppA.pdf
URL: https://www.congress.gov/bill/116th-congress/senate-bill/3612/text?q=%7B%22search%22%3A%5B%22s.+3612%22%5D%7D&r=1&s=1

In explaining his conclusion that the proposal "would have no effect on federal fiscal year budget receipts," Barthold noted that "[t]he Joint Committee staff understood the intent of the [CARES Act provision] was not to deny deductions for qualifying expenses."

Supply chain issues, repatriation of intellectual property

The HEALS Act would create a new nonrefundable 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 it is later sold or transferred.)

Issues related to the coronavirus and the security of the US medical supply chain were the subject of recent trade-focused hearings in the Senate Finance Committee (on July 28 and 30) and the House Ways and Means Trade Subcommittee (on July 23).

'Gig' economy and remote workers

The HEALS Act includes provisions addressing service providers in the so-called "gig" economy and the ability of states to impose income tax on workers who temporarily work outside their state of residence.

Gig economy: The GOP plan would establish a safe harbor that would allow – for the remainder of 2020 – marketplace platform companies to provide certain coronavirus-related assistance (for example, health care expenses such as for PPE, cleaning supplies, and coronavirus testing) to service providers without jeopardizing the service provider's independent contractor status, while also providing that certain noncash assistance received by a service provider would be excluded from the service provider's taxable income.

Remote workers: The HEALS Act also would 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 nonresident state(s) in which they worked more than 30 days during which the wages or remuneration were earned. 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."

These changes would not apply to professional athletes and entertainers, certain public figures, and individuals engaged in "film, television, or other commercial video production."

Business meals deduction

The HEALS Act includes a proposal that would provide a full deduction for business meal expenses paid or incurred before January 1, 2021.

President Trump in recent months has pushed for a more generous business meals deduction as a way to prop up the restaurant and hospitality industry during the pandemic.

Recovery rebate payments

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. As in the CARES Act, payment would begin to phase out for single taxpayers with adjusted gross income (AGI) over $75,000 ($150,000 for joint filers) and would phase out completely for single taxpayers with AGI over $99,000 ($198,000 for joint filers).

But the HEALS Act 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.)

Individuals who receive income through nontaxable, means-tested benefits would be eligible for a full rebate payment, as they are under the CARES Act.

The HEALS Act would retain CARES Act provisions that shield recovery rebate payments from administrative garnishment for past-due federal or state debts – with an exception for past-due child support payments. The GOP proposal adds a new provision, effective upon enactment, that would protect recovery rebate payments from bank garnishment or levy by private creditors or debt collectors.

To address concerns that some recovery rebate checks issued under the CARES Act were sent to individuals who were deceased, the Senate GOP proposal would clarify that individuals dying before January 1, 2020, are ineligible to receive a payment. It also would clarify that recovery rebate payments are not available to certain incarcerated individuals. Both provisions would be effective as if originally enacted in the CARES Act.

Flexible spending and health savings accounts

The HEALS Act would temporarily relax the rules for tax-preferred flexible spending accounts (FSAs) and dependent care flexible spending accounts (DCFSAs) by allowing employees to roll over unused 2020 contributions to their FSAs and DCFSAs into the 2021 plan year.

It also would provide more generous benefits under the rules for tax-preferred health savings accounts (HSAs) by treating expenses for care provided at employer on-site clinics as eligible expenses under the HSA rules.

CARES Act corrections and clarifications

Senate Republicans also propose to make several tweaks to the CARES Act that would:

- Clarify that money purchase pension plans are considered eligible retirement plans under the rules allowing penalty-free withdrawals of retirement account funds and expanded access to retirement plan loans to cover emergency expenses related to the coronavirus pandemic.
- Clarify that the due date for single-employer pension plan required minimum contributions (which were delayed for 2020 under the CARES Act) is January 4, 2021.
- Clarify that eligible retirement plans may rely on an employee's self-certification that the employee meets the requirements for an increased retirement account loan limit under the CARES Act. (The CARES Act already allows plan participants to self-certify that they are eligible for a COVID-related emergency retirement plan distribution.)
- Allow farmers who elected a two-year net operating loss (NOL) carryback prior to the CARES Act to retain that carryback instead of claiming the five-year carryback enacted in the CARES Act. It also would allow farmers who previously waived an election to carry back an NOL to revoke that waiver.

These provisions would be effective retroactively as if enacted in the relevant sections of the CARES Act.

Uncertain path forward

Both Republicans and Democrats spent recent days emphasizing that nearly 20 million Americans collecting unemployment benefits would lose their federal supplemental payments (enacted under the CARES Act) on July 31 if Congress did not act; but as each side blamed the other for failing to negotiate, there was no sign of a deal to stave off the expiration.

The administration's key negotiators, White House Chief of Staff Mark Meadows and Treasury Secretary Steven Mnuchin, met several times this week with House Speaker Nancy Pelosi, D-Calif., and Senate Democratic Leader Charles Schumer of New York, but did not make any significant progress on a legislative compromise. The Democrat's plan – the Heroes Act (H.R. 6800), which the House approved on May 15 – would extend the additional $600 payments enacted under the CARES Act through January 31, 2021, in contrast with the Senate GOP's proposal for a substantially smaller supplement.
URL: https://www.congress.gov/116/bills/hr6800/BILLS-116hr6800pcs.pdf

Also due to expire July 31 is a moratorium on evictions and foreclosures. The House bill would extend this housing assistance, but there is no such provision in the Senate proposal. As pressure mounted this week, President Trump said during remarks at the White House July 29 that preventing this housing upheaval should be a priority in the negotiations and advocated that Congress pass a short-term bill extending just unemployment supplements – although he did not specify an amount – along with an eviction moratorium.

Conflicting 'must-have' lists: Each party has declared its "must-have" provisions that have in turn been dubbed "non-starters" by the other side, with House Democratic leaders demanding nearly $1 trillion in additional money for state and local governments and Republicans insisting on a liability shield to generally protect businesses, schools, and hospitals following prescribed safety rules from COVID-related lawsuits. Moreover, while both chambers have proposed similar amounts of additional funding for schools, the Senate bill would allocate two-thirds of the money to those planning to reopen this fall rather than provide virtual learning, a limitation not found in the House-passed measure.

There also are stark differences between the House-passed bill and the Senate's proposal on several key tax issues. Among them:

- Unlike the House bill, the Senate bill does not include a provision allowing a deduction for expenses paid with forgiven PPP loans.
- The House bill's proposed expansion of the ERTC would increase the rate to 80 percent on qualified wages of up to $45,000 per employee and allow entities with up to 1,500 employees to receive the full credit, while the Senate would raise the rate to 65 percent on wages of up to $30,000 per employee.
- The House bill does not include tax credits for US production of PPE or business investment in COVID-related safety measures, or an expansion of the work opportunity tax credit; it does, however, propose expanding the earned income tax credit.
- The House bill 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 CARES Act, while the Senate measure would leave these CARES Act provisions in place.
- The House bill would suspend for two years the $10,000 cap on the individual deduction for state and local taxes, which Republicans passed as part of the 2017 tax overhaul and have vigorously defended.

Even provisions left out of both bills have the potential to slow down negotiations if their respective supporters decide to fight for their inclusion in a final agreement.

Neither bill, for example, includes a payroll tax holiday – something that has been championed by President Trump but has not been embraced by a majority of lawmakers in either party.

Another notable omission is a proposal – backed mainly by Republicans – that would allow businesses to monetize certain unused tax credits, something Ron Wyden has cautioned "would need to be carefully designed and properly targeted," because "[o]therwise it would be ripe for abuse, difficult for the IRS to administer, and the benefits would flow overwhelmingly to large multinational corporations that don't need assistance."

Divisions among Republicans: Senate Majority Leader Mitch McConnell also continues to face some internal party resistance to the HEALS Act and will likely need to secure a significant number of Democratic votes to pass a bill in his chamber. Even after Republicans spent weeks developing the legislative language for their recovery proposal, numerous GOP senators made public their disagreement with various elements of the bill – and in some cases with the idea of providing any further relief.

Following a GOP lunch July 28, Republican Sen. Rand Paul of Kentucky criticized some of his colleagues for the bill's price tag and the presumption that it will rise in negotiations with the House.

"It's just very frustrating to me because it's people who go home and say we're fiscally conservative [and] are now in a bidding contest with the Democrats to see how much money they can spend," he told reporters.

Sen. Rick Scott of Florida also raised objections to the overall cost and specifically to a proposal in the Senate measure that would give state and local governments greater flexibility in using money appropriated in earlier recovery packages.

"I'm very concerned about the amount of money we're talking about," he said. "What I don't want to do is bail out the states. That's wrong."

Speaking on Fox News July 30, McConnell said that "there are about 20 of my members who think we've already done enough and some who regret that we did what we did back in April and March. So, yeah, I do have about 20 members who feel that we've added enough to the national debt."

The key negotiators are expected to continue talking over the weekend, and the Senate will reconvene on August 3. The House plans to depart July 31 and remain out of session until there is a compromise bill on which they need to vote.

— Alex Brosseau, Michael DeHoff, and Storme Sixeas
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New regulations address business interest deduction limitation, carried interests

The Treasury Department and Internal Revenue Service this week released final and proposed regulations addressing the limitation on the deduction for business interest expense under section 163(j) and proposed regulations on the treatment of carried interest income, along with guidance on the exemption for aircraft management services from aircraft excise taxes, accounting methods for small taxpayers, and issues related to the coronavirus pandemic.

Business interest deduction limitation

Final and proposed regulations issued on July 28 address the limitation on the deduction for business interest expense under section 163(j). The new regulations reflect changes to the limitation enacted in the 2017 tax code overhaul informally known as the Tax Cuts and Jobs Act (TCJA, P.L. 115-97) and temporary changes to the TCJA provisions enacted in March in the Coronavirus Aid, Recovery, and Economic Security (CARES) Act (P.L. 116-36).
URL: https://www.irs.gov/pub/irs-drop/td_9905_reg_106089_18.pdf
URL: https://www.irs.gov/pub/irs-drop/nprm_reg_107911_18.pdf

The TCJA generally capped the deduction for business interest expense at the sum of (1) the taxpayer's business interest income, (2) 30 percent of the taxpayer's adjusted taxable income (ATI), and (3) the taxpayer's floor plan financing interest expense for the taxable year.

The CARES Act relaxed that limitation by increasing the 30 percent of ATI threshold to 50 percent for taxable years beginning in 2019 and 2020 and allowing taxpayers to elect to use their 2019 ATI as their ATI in 2020. Special partnership rules also apply.

Additional 163(j) guidance: The government also released two other section 163(j) guidance items on July 28 in conjunction with the final and proposed regulations.

Notice 2020-59 contains a proposed revenue procedure that provides a safe harbor allowing taxpayers engaged in a trade or business that manages or operates qualified residential living facilities to treat that trade or business as a real property trade or business solely for purposes of qualifying as an electing real property trade or business under section 163(j)(7)(B).
URL: https://www.irs.gov/pub/irs-drop/n-20-59.pdf

Aggregation FAQs provide a general overview of the aggregation rules that apply for purposes of the gross receipts test, and that apply to determine whether a taxpayer is a small business that is exempt from the business interest expense deduction limitation.
URL: https://www.irs.gov/newsroom/faqs-regarding-the-aggregation-rules-under-section-448c2-that-apply-to-the-section-163j-small-business-exemption#footnote-1

Deloitte Tax materials available: A summary from Deloitte Tax LLP compares the provisions in the final regulations and new proposed regulations with the provisions in proposed regulations proposed regulations that were issued in 2018 and also discusses Notice 2020-59. A separate summary discusses the Aggregation FAQs.
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200731_2_suppA.pdf
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200731_2_suppB.pdf

Carried interests

Proposed regulations issued on July 31 address tax code changes enacted under the TCJA that recharacterized certain net long-term capital gain with respect to applicable partnership interests as short-term capital gain. They also amend existing regulations on holding periods to clarify the holding period of a partner's interest in a partnership that includes in whole or in part an applicable partnership interest and/or a profits interest.
URL: https://www.irs.gov/pub/irs-drop/reg-107213-18.pdf

Aircraft excise taxes, accounting methods for small taxpayers

In other TCJA developments, Treasury and the IRS on July 29 released:

- Proposed regulations addressing a TCJA provision that exempts certain aircraft management services from the excise taxes imposed on taxable transportation by air, and
  URL: https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-15504.pdf
- Proposed regulations on the TCJA provision that allows taxpayers with annual average gross receipts of $25 million or less to use the cash method of accounting. The guidance also includes proposed amendments to existing regulations under section 460 regarding the special accounting rules for long-term contracts to implement amendments to the tax code made by TCJA sections 12001 (repealing the corporate alternative minimum tax imposed by section 55) and 14401 (adding the base erosion anti-abuse tax imposed by new section 59A).
  URL: https://aboutbtax.com/Sim

Coronavirus guidance update

Also this week, the government on July 24 issued the following guidance items addressing issues related to the coronavirus:

- Temporary and proposed regulations released on July 24 provide guidance to employers for reconciling advance payments of qualifying sick- and family-leave wage credits under the Families First Coronavirus Response Act and the employee retention tax credit under the Coronavirus Aid, Relief, and Economic Security Act and address the government's authority to recapture erroneously refunded credits when necessary.
  URL: https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-16302.pdf
  URL: https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-16300.pdf
- Notice 2020-58, issued July 31, provides that taxpayers claiming the tax credit for qualified rehabilitation expenditures and have a measuring period under the substantial rehabilitation test ending on or after April 1, 2020, and before March 31, 2021, now have until March 31, 2021, to satisfy the test.
  URL: https://www.irs.gov/pub/irs-drop/n_20_58.pdf

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 approves child care tax relief package

The House of Representatives approved legislation on July 29 with a number of tax-relief provisions for individuals and businesses – including permanent enhancements to the child and dependent care tax credit and a new payroll tax credit for employer-paid dependent care expenses – aimed at making child care more affordable and more widely available in the wake of workforce and economic disruptions resulting from the coronavirus pandemic.

The Child Care for Economic Recovery Act (H.R. 7327) cleared the chamber by a vote of 250-161, with 20 Republicans breaking ranks to join Democrats in the "aye" column. The measure does not include revenue offsets and would increase the federal deficit by $91.3 billion over 10 years, according to an estimate from the Joint Committee on Taxation staff.
URL: https://www.govinfo.gov/content/pkg/BILLS-116hr7327ih/pdf/BILLS-116hr7327ih.pdf
URL: https://www.jct.gov/publications.html?func=startdown&id=5266

Expanded child tax credit and other provisions for individuals

The House-passed bill would permanently expand the child and dependent care tax credit to make it fully refundable and increase the maximum credit rate to 50 percent. It also would increase the credit's phase-out threshold to

$120,000 (from $15,000) and 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.

The expanded credit would be effective for taxable years beginning after December 31, 2019, and accounts for a substantial portion – $88.7 billion – of the measure's overall 10-year cost.

Employer-provided dependent care assistance: H.R. 7327 also would permanently increase the exclusion for employer-provided dependent care assistance from $5,000 to $10,500 (from $2,500 to $5,250 in the case of a separate return filed by a married individual) effective for taxable years beginning after December 31, 2019.

Dependent care flexible spending arrangements: The measure would permit dependent care flexible spending arrangements (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, thus allowing benefits or contributions from these arrangements to be used for expenses incurred up to 12 months after the end of the plan year.

FSA sponsors would be permitted to make retroactive amendments to their plans to accommodate these provisions.

Employee retention credit allowed for domestic workers: The bill would permit employers of household domestic workers to claim the employee retention tax credit on wages they pay domestic workers who cannot work due to a pandemic-related government order. This provision would take effect as if enacted in the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was signed into law on March 27.

Payroll credit for employer-paid dependent care expenses

For businesses, the House-passed measure would provide a 30 percent refundable payroll credit for qualified depended care expenses paid by an employer on behalf of an employee. Qualified dependent care expenses include dependent care assistance as defined for the purposes for the existing income exclusion for household and dependent care services necessary for gainful employment. For each quarter, qualified dependent care expenses eligible for this credit would be limited to $2,500 per employee.

The provision would be effective for qualified fixed expenses paid or accrued in calendar quarters beginning after the date of enactment until December 31, 2020 and would be financed through a transfer from the general fund.

Payroll tax credit for childcare facilities

The legislation calls for a 50 percent refundable payroll tax credit for rent, mortgage, and utility costs incurred by qualified childcare facilities facing coronavirus-related business interruptions or revenue losses.

For each quarter, qualified expenses eligible for the credit would be limited to the lesser of:

- $25 million or
- 25 percent of qualified wages (as defined in the employee retention credit) or 6.25 percent of 2019 gross receipts, with a limitation of up to $50,000 of qualified expenses per facility.

The credit would be available to childcare businesses that are facing a full or partial suspension of operations due to a coronavirus-related government order or have a decline in gross receipts of at least 10 percent compared to the same calendar quarter of the preceding year. A phase-in would apply for businesses with a decline in gross receipts between 10 percent and 50 percent.

This provision would be effective for qualified fixed expenses paid or accrued in calendar quarters beginning after the date of enactment until December 31, 2020.

Policy marker

H.R. 7327 is not expected to come up for a vote in the Republican-controlled Senate and is more likely to serve as a marker for Democratic bargaining positions in future policy debates.

Several provisions in the bill are similar to those in the Heroes Act (H.R. 6800), the $3 trillion package the House approved in May to address the economic impact of the coronavirus pandemic. Senate GOP leaders rejected that bill as "dead on arrival" and, apart from some enhancements to the FSA rules, did not include provisions like those in H.R. 7327 as part of the economic recovery package they released on July 27. (See separate coverage in this issue for details on the Senate proposal, known as the Health, Economic Assistance, Liability Protection, and Schools Act.)

— Michael DeHoff
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House OKs FY 2021 budget bump for IRS

The House of Representatives this week approved a fiscal year 2021 spending package that, among other things, would give the Internal Revenue Service a budget of just over $12.1 billion, compared to the $11.5 billion in effect for fiscal 2020.

The IRS funding provisions were part of a Financial Services and General Government funding bill that was folded into a larger "minibus" of appropriations measures (H.R. 7617) covering a broad swath of federal departments and agencies. H.R. 7617 cleared the chamber on July 31 by a vote of 217-197.
URL: https://docs.house.gov/billsthisweek/20200727/BILLS-116HR7617-RCP116-60.pdf

Across the Service's four major program areas, the FY 2021 appropriation in the House-passed bill calls for:

- $2.6 billion for taxpayer services (up from $2.51 billion in fiscal 2020);
- $5.2 billion for enforcement ($5.01 billion in fiscal 2020);
- $4.1 billion for operations support ($3.81 billion in fiscal 2020); and
- $250 million for business systems modernization ($180 million in fiscal 2020).

Policy riders include provisions that would require the IRS to provide employee training programs related to taxpayer rights and various customer service issues, institute policies to safeguard taxpayer information and protect against identity theft, increase staffing for "1-800" telephone assistance, and allocate resources to improve response time for customer assistance requests – particularly those involving possible identity theft.

Other riders would prohibit the Service from using appropriated funds to target US citizens for exercising First Amendment rights, target groups for regulatory scrutiny based on their ideological beliefs, pay for conferences that do not meet standards and requirements laid out by IRS leadership, pay a performance bonus or other monetary award to a current employee or rehire a former employee without taking into account their professional conduct and compliance with federal tax law, or violate the requirements of section 6103 regarding disclosure of tax returns and tax return information.

Waiting on the Senate

The Senate Appropriations Committee has not yet taken up its version of a Financial Services and General Government funding measure.

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