In this issue:

Agreement on economic recovery package remains out of reach as negotiations continue

A week after key economic benefits expired for jobless individuals and those finding it difficult to pay rent and mortgages, talks between Republicans and Democrats on another package to address the economic and health impacts of the coronavirus pandemic remained at an impasse. Key negotiators vowed to continue their discussions, but many in Congress expressed pessimism about bridging the parties' significant differences, and President Trump indicated he could issue executive orders as soon as August 7 to bypass Congress in areas such as the extension of enhanced unemployment benefits, eviction protections, and a payroll tax cut.

House Speaker Nancy Pelosi, D-Calif., Senate Democratic Leader Charles Schumer of New York, White House Chief of Staff Mark Meadows, and Treasury Secretary Steven Mnuchin have met almost daily since Senate Republican leaders introduced their proposed "Phase 4" recovery package – the roughly $1 trillion HEALS Act – on July 27. House Democrats passed their own bill – the $3.4 trillion Heroes Act (H.R. 6800) – in May, and the two parties have laid out significantly different priorities that are proving difficult to reconcile. In an August 6 interview with Fox News, Meadows described the two sides as still being "trillions of dollars apart." (For details on The Heroes Act, see *Tax News & Views*, Vol. 21, No. 27, May 15, 2020. For details on the HEALS Act and an overview of the differences between the two bills, see *Tax News & Views*, Vol. 21, No. 37, July 31, 2020.)
URL: https://www.congress.gov/116/bills/hr6800/BILLS-116hr6800pcs.pdf
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200515_1.html
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200731_1.html

Spending concerns dominate

The headline disagreements have emerged primarily on the spending side. Perhaps the most pressing priority for many individuals is an extension of federal supplements to state-issued unemployment benefits, which were enacted under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) earlier this year but expired at the end of July. Those who have lost their jobs during the pandemic were getting an extra $600 per week, and while Democrats want to extend the federal supplement at that level through January 2021, Republicans have argued for a significantly lower amount, pointing out the higher payments have in some cases resulted in individuals collecting more in unemployment insurance benefits than they lost in wages, making it difficult for employers to get employees back on the job.

Another area in which neither side has shown signs of compromise is state and local government funding, with Democrats seeking an additional infusion of about $1 trillion and Republicans insisting that still-unspent appropriations from the CARES Act are sufficient – although they have supported giving localities additional flexibility to use those funds and have expressed an openness to a much smaller infusion of additional money than proposed by House Democrats.

One area where consensus appeared to be emerging was an extension of the moratorium on evictions for renters, which also expired at the end of July.

Tax takes a backseat for now

Although both the House and Senate have put forward some substantial tax proposals, including some overlapping interest in expanding the Employee Retention Tax Credit (ERTC), tax policy issues have not played a central role in these talks – at least based on public comments from the lead negotiators and from rank-and-file lawmakers.

There are, nonetheless, some important differences that would need to be resolved if an agreement does come together, including, for example, the Democrats' insistence on suspending the $10,000 cap on state and local tax deductions enacted in 2017's Tax Cuts and Jobs Act (something Republicans generally oppose), divergent approaches to the ERTC expansion, and a provision in the House measure but not in the Senate package that would treat business expenses paid with forgiven Paycheck Protection Program loan proceeds as deductible (something the IRS found impermissible in Notice 2020-32).

Even items that are not in either package – for example, a proposal from Texas Republicans Jodey Arrington (who sits on the House Ways and Means Committee) and Sen. John Cornyn (a member of the Senate Finance Committee) that would allow monetization of general business credits – have the potential to slow down negotiations if their respective supporters decide to fight for their inclusion in a final agreement.

President promises executive action

For his part, President Trump responded to the sluggish pace of negotiations in an August 6 tweet in which he said that he has White House staff working on "an Executive Order with respect to Payroll Tax Cut [sic], Eviction Protections, Unemployment Extensions, and Student Loan Repayment Options." He told reporters that he will "probably" issue one or more orders on August 7 or 8.

The payroll tax cut the president mentioned is something that has failed to attract support from a majority of lawmakers in either party but continues to be pushed by White House negotiators. It is not clear exactly how such a cut might be structured or how it would be administered, but there is speculation that President Trump favors suspending the employee-side of the tax for an as-yet unspecified period of time.

Senate Finance Committee Chairman Charles Grassley, R-Iowa, who opposes a payroll tax cut, told reporters August 6, "For tax policy to make a big difference, it's got to be long term." Nevertheless, reflecting his growing frustration with the so-far fruitless negotiations, Grassley commented in an August 6 interview with Bloomberg TV that he could support the president taking executive action, if necessary, to resolve some of the ongoing disagreements.

"I don't know if he has the authority to do it," Grassley said. "But if he has the authority to do it, he ought to do it."

Democrats reject stop-gap fix

At several points during the week, Republicans have floated offers to extend federal unemployment benefits – some for as little as one week – while negotiations on a broader package continue, but Democratic leaders have refused to agree to narrow legislation.

Speaker Pelosi again ruled out this option during an August 6 press conference, saying, “We’re not having a short-term extension.”

Next steps

Senate leaders delayed the start of the chamber’s scheduled August recess – though most senators left for the weekend – and said floor votes are possible the week of August 10 if negotiators reach an agreement in principle in the next couple of days.

House lawmakers left Washington on July 31 and will be given 24 hours’ notice to come back into session once leaders are ready to bring a bill to the floor.

However, it is unclear how the release of any executive orders from the White House on some of the key issues could affect the legislative process.

— Storme Sixeas
Tax Policy Group
Deloitte Tax LLP

BEAT final regs reach OIRA

The Office of Information and Regulatory Affairs (OIRA) indicated in an update to its website this week that it has received final regulations on the base erosion and anti-abuse tax (BEAT) from the Treasury Department for review.
URL: https://www.reginfo.gov/public/do/eoDetails?rrid=130957

The BEAT was enacted as part of the 2017 tax code overhaul to prevent certain large multinational taxpayers from reducing their tax liability through certain payments to foreign related parties. Proposed regulations issued last December address the determination of a taxpayer’s aggregate group in determining gross receipts and the base erosion percentage, an election to waive deductions, and the application of the BEAT rules to partnerships. (For a summary of the proposed regulations, see *Tax News & Views*, Vol. 20, No. 39, Dec. 6, 2019.)
URL: https://www.govinfo.gov/content/pkg/FR-2019-12-06/pdf/2019-25745.pdf#page=1
URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/191206_2.html

OIRA is part of the White House Office of Management and Budget. Its review of a regulatory project is one of the final actions taken before the guidance is released to the public

SBA releases Paycheck Protection Program FAQs

On the coronavirus guidance front, the Small Business Administration published a new FAQ page on issues related to the loan forgiveness rules under the Paycheck Protection Program (PPP), which was enacted in March as part of the Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136) and modified in June under the Paycheck Protection Program Flexibility Act (P.L. 116-142).
URL: https://www.sba.gov/sites/default/files/2020-08/PPP%20Loan%20Forgiveness%20FAQs%208-4-20.pdf

The FAQs discuss general issues regarding the PPP loan forgiveness rules, as well as specific questions related to the eligibility of certain payroll and nonpayroll expenses for loan forgiveness.

Other pandemic guidance: For its part, the Internal Revenue Service released COVID-related guidance this week that addresses:

- **Leave-sharing plans:** A new FAQ page discusses tax considerations for employers and employees when an employer establishes a leave-sharing plan that permits employees to deposit leave in an employer-sponsored leave bank for use by other employees who have been adversely affected by a major disaster such as the coronavirus pandemic.
  URL: https://www.irs.gov/newsroom/leave-sharing-plans-frequently-asked-questions
- **Accounting method change applications:** A news release outlines a new temporary procedure for fax transmission of the duplicate copy of Form 3115, Application for Change in Accounting Method. This change applies only to taxpayers requesting consent to make a change in accounting method under the automatic change procedure.
  URL: https://www.irs.gov/newsroom/temporary-procedure-to-fax-automatic-consent-forms-3115-due-to-covid-19

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

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP