

Treasury announces tax payment relief; Senate clears COVID-19 bill; talks continue on stimulus tax measures

March 18, 2020

In brief

Treasury Secretary Steven Mnuchin on March 17 announced that individuals can defer tax payments up to \$1 million for 90 days and corporations can defer tax payments up to \$10 million for the same period; the Secretary indicated that the \$1 million limit is meant to cover small businesses and pass-through entities. The IRS today announced specific details on tax payment relief. IRS Notice 2020-17 provides guidance on tax payment relief as outlined by Secretary Mnuchin, but also states that “no extension is provided in this notice for the payment or deposit of any other type of Federal tax, or for the filing of any tax return or information return.”

The Senate today voted 90 to 8 to pass the COVID-19 relief legislation (H.R. 6201) recently approved by the House, clearing the measure for the White House without further change. The House on March 16 approved technical corrections to the version of H.R. 6201 that was originally passed on March 13. The House-approved technical corrections include modifications to certain provisions providing a new business tax credit for certain employers with fewer than 500 employees to provide paid sick leave and paid family and medical leave through the end of 2020. President Trump has stated that he will sign the bill approved by Congress. The Joint Committee on Taxation staff has estimated the cost of the business tax credits provided by H.R. 6201 at \$104.8 billion for 2020 and 2021.

The Senate is discussing a range of options for an economic stimulus package to respond to the economic effects of COVID-19. The Treasury Department today released proposals for a \$1 trillion stimulus plan, and administration officials have indicated that a fourth package of emergency proposals is anticipated to provide funding for federal response efforts. Senate Majority Leader Mitch McConnell (R-KY) on March 17 stated that Senate Republicans are working with the Trump Administration to reach consensus on a ‘Stage Three’ economic stimulus package before talks begin with Senate Democrats on a bipartisan package. In a separate action, Senate Democratic Leader Chuck Schumer (D-NY) on March 17 released a \$750 billion package of Senate Democratic economic relief proposals.

Majority Leader McConnell has stated that the Senate will remain in session until the third COVID-19 bill is passed. A Senate economic stimulus bill would need to be considered by the House, which recessed after passing H.R. 6201 and is scheduled to reconvene on March 23. The next scheduled recess for both the House and the Senate is set to begin Monday, April 6 for a two-week period, but the congressional schedule may be revised as events warrant.

In detail

Tax payment relief

Following up on President Trump's March 13 declaration of COVID-19 national emergency, Treasury Secretary Mnuchin today announced that individuals can defer tax payments up to \$1 million for 90 days and corporations can defer tax payments up to \$10 million for the same period; the Secretary indicated that the \$1 million limit is meant to cover small businesses and pass-through entities.

Secretary Mnuchin stated that the tax payment relief would result in the deferred tax payment of as much as \$300 billion and would provide "an enormous amount of liquidity in the system."

Specific details on tax payment relief were announced today by the IRS (see link below). IRS Notice 2020-17 provides guidance on tax payment relief as outlined by Secretary Mnuchin, but also states that "no extension is provided in this notice for the payment or deposit of any other type of Federal tax, or for the filing of any tax return or information return."

Observation: President Trump's declaration of a COVID-19 national emergency was made under the Stafford Act, which authorizes a broad range of disaster relief measures. In other times of national disasters, the Treasury Department and Internal Revenue Service have exercised the full power afforded by the Stafford Act to provide both filing and payment extensions to business and individual taxpayers.

Families First Coronavirus Response Act (H.R. 6201)

President Trump is expected to sign into law the "Families First Coronavirus Response Act" (H.R.6201), which follows an earlier \$8.3 billion COVID-19 funding bill enacted on March 6. In addition to providing funding for COVID-19 medical tests, H.R. 6201 provides a new business tax credit for certain mandated employer-provided paid sick leave and paid family and medical leave. H.R. 6201 also provides funding for expanded unemployment compensation and food assistance for certain individuals affected by the COVID-19 public health emergency.

The Senate voted to approve without modification the final House-passed version of H.R. 6201, clearing the measure for the White House. The Senate action came after the House on March 16 approved technical corrections to the original version of H.R. 6201 that was passed on March 13. The House-approved technical corrections include modifications to certain provisions providing a new business tax credit for certain employers with fewer than 500 employees that will be required to provide paid sick leave and paid family leave through the end of 2020.

Note: The House technical corrections revised the definition of payroll taxes eligible to be offset by the new business credits to include payroll taxes paid by railroad workers under the Railroad Retirement Tax Act (such employees are exempt from Social Security payroll taxes). The legislation as modified also provides an option for employers with fewer than 50 employees to be exempted if the requirement to provide paid sick leave or paid family leave would jeopardize the going concern of the business. The original version of the legislation would have permitted an exemption only from the paid family leave requirement for such employers.

Business tax credits for paid sick leave and paid family medical leave

Under the final legislation, 100% refundable tax credits are provided to private-sector employers with fewer than 500 employees that are required to provide paid sick leave and paid family leave benefits. Similar credits are provided for self-employed individuals.

The credits for employers with fewer than 500 employees are to be claimed against the employer-share of payroll tax liability, with any excess refunded to the employer. Payments to employees would be taxable income to the employees and subject to employee payroll taxes, but not subject to the employer portion of payroll taxes. Special rules are provided for certain credit limitations and the refundability of certain excess credit amounts.

Payroll credit for required sick leave wages

- Covered employers with fewer than 500 employees would be required to pay employees their full wages, up to \$511 per day and \$5,110 in the aggregate, in the case of employees unable to work for the following reasons: (1)

the employee is subject to a Federal, state, or local quarantine or isolation order due to coronavirus; (2) the employee has been advised by a healthcare provider to self-quarantine related to coronavirus; or, (3) the employee is experiencing symptoms of coronavirus.

- Covered employers would be required to pay employees two-thirds of their full wages, up to \$200 per day and \$2,000 in the aggregate, in the case of employees unable to work for the following reasons: (1) the employee is caring for an individual who is subject to a Federal, state, or local quarantine or isolation order or has been advised by a healthcare provider to self-quarantine; (2) the employee is caring for a child whose school or place of care has been closed due to the coronavirus; or, (3) the employee is experiencing any other substantially similar condition specified by certain federal officials.
- The tax credit is increased for the amount of the employer's qualified health plan expenses that are properly allocable to the qualified sick leave wages that are eligible for the credit. The credit is limited to the employer-paid premiums that are excluded from the employee's income and does not apply to the cost of the healthcare provided.
- The tax credit is reduced by any credits allowed for the employment of qualified veterans (Work Opportunity Tax Credit) and research expenditures of qualified small businesses (Payroll Tax Credit for Increasing Research Activities).
- The employer must include the amount of the tax credit as taxable income. Employers can waive the right to the credit.
- This new business tax credit for required sick leave pay is applicable only to wages paid during a period beginning on a date to be selected by the Treasury Secretary which is during the 15-day period beginning on the date of enactment and ending on December 31, 2020.

Payroll credit for required paid family leave wages

- The requirement for covered employers with fewer than 500 employees to provide family leave generally applies when an employee is unable to work due to a need to leave to care for a son or daughter under age 18 because the school or place of care has been closed, or the child care provider is unavailable for a COVID-19-related public health emergency.
- The first 10 days of public health emergency leave may consist of unpaid leave, after which paid leave is required. The paid leave is for a maximum of 10 weeks. The amount of required paid leave is based on an amount not less than two-thirds of an employee's regular rate of pay, and the number of hours the employee would otherwise be normally scheduled to work.
- The amount of mandated paid leave may not exceed \$200 per day and \$10,000 in the aggregate.
- Wages taken into account for the credit may not be taken into account for purposes of the credit under Section 45S (Employer credit for paid family and medical leave).
- The employer must include the amount of the tax credit in taxable income. Employers can elect to waive the credit.
- As with the sick leave credit, the paid leave wage credits are effective only for qualifying wages paid during a period beginning on a date to be selected by the Treasury Secretary which is during the 15-day period beginning on the date of enactment and ending on December 31, 2020.

Note: The legislation does not define how to apply the 500-employee threshold. Existing FMLA rules treat each business as a separate entity but then apply an "integrated employer" test which may result in aggregating entities. In contrast, in the Federal employment tax context, employers generally are not aggregated absent specific exceptions. It also is not clear if the test will be a snapshot on a date (e.g., January 1, 2020 or date of enactment) or whether it will be based on an average headcount over a period of time.

Senate economic stimulus options

The Senate is discussing a range of options for a 'Stage Three' economic stimulus package to respond to the economic effects of COVID-19. Treasury Secretary Mnuchin has been meeting with Senate Republicans to discuss an economic stimulus package. Senate Majority Leader McConnell on March 17 stated that Senate Republicans are working with the Trump Administration to reach consensus on a 'Stage Three' economic stimulus package before talks begin with Senate Democrats on a bipartisan package. The Federal Reserve and Treasury Department also are taking actions to promote liquidity and to provide regulatory relief for businesses.

The Treasury Department today released a two-page summary of the key elements of the Administration's 'Stage Three' proposals for a broad stimulus package to address the economic effects of efforts to contain the spread of COVID-19. The Administration plan totals \$1 trillion and includes the following:

- \$200 billion for an exchange stabilization fund for specified uses (i.e., airline industry secured lending facility, secured lending or loan guarantees for other severely distressed sectors, and temporary use to guarantee money market mutual funds);
- \$500 billion for "economic impact" payments (i.e., two equal rounds of direct payments to individuals, based on income and family size, to be issued beginning April 6 and May 18); and
- \$300 billion for small business interruption loans.

Senate Democratic Leader Schumer on March 17 released a \$750 billion package of Senate Democratic economic relief proposals. Senator Schumer's proposal includes \$400 billion in emergency appropriations for a range of COVID-19 relief measures, including funding for medical services and equipment, child care costs for families affected by school and daycare closures, and loans to small businesses. The package also proposes \$300 billion in benefit increases and measures intended to bolster federal safety net programs. The Senate Democratic package calls for employers receiving federal assistance to provide a \$15 minimum wage and proposes that such employers should be subject to 'strict requirements to keep workers in their jobs, and not cut their benefits.' Some Senate Democrats also have called for limits on executive bonuses and stock buybacks for companies receiving federal assistance.

Observation: Senate leaders have set an ambitious goal of trying to pass this Stage Three bill by the end of this week. Doing so would require extensive cooperation and a rapid negotiation between the two parties, which may not be achievable. Despite that, the mere suggestion of additional legislation this week should shed light on the degree to which lawmakers are feeling the need for urgent action.

The takeaway

President Trump and Congress are responding to the developing COVID-19 public health emergency and its impact on US business activity with specific proposals for economic stimulus and targeted relief. Stakeholders should engage with policymakers to ensure that issues and proposals affecting their business operations and employees are carefully considered.

Additional information

For the IRS notice on tax payment relief, click [here](#). For additional IRS guidance updates on coronavirus tax relief, click [here](#).

For a Joint Committee on Taxation staff technical explanation of the tax credit provisions of H.R. 6201, click [here](#). For a copy of the final statutory text, click [here](#).

For Senator Schumer's statement on Senate Democratic stimulus proposals, click [here](#).

Let's talk

For a deeper discussion of how this might affect your business, please contact:

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