

### **Phase 3 Coronavirus Economic Stimulus Bill**

Senate Republicans released their proposal for the [third tranche of coronavirus aid](#) late Thursday afternoon. The GOP proposal focuses on four areas: small businesses; direct financial help for Americans; help for impacted industries; and boosting the public health response to the coronavirus. Senate Majority Leader McConnell is expected to sit down with Senate Minority Leader Charles Schumer (D-N.Y.) soon as they start negotiations on the package, which will likely top \$1 trillion. Senators and aides expect they will work through the weekend, underscoring the belief that Congress needs to act quickly to counter a virus that has taken a toll on the country's economy.

The Phase 3 Economic bill includes the following tax provisions:

- Delay of estimated tax payments for corporations
  - The provision allows corporations to postpone estimated tax payments due after the date of enactment until October 15, 2020. There is no cap on the amount of tax payments postponed. This delay will provide critical cash flow to help businesses maintain operations and continue paying employees during the COVID-19 emergency.
- Delay of payment of employer payroll taxes
  - The provision allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. All employers are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. The Social Security Trust Funds will be held harmless under this provision.
- Modifications for net operating losses
  - The provision relaxes the limitations on a company's use of losses from prior years. Net Operating Losses (NOL) are currently subject to a taxable income limitation, and they cannot be carried back to reduce income in a prior tax year. This provision provides that a loss from 2018, 2019, or 2020 can be carried back five years. The provision also temporarily removes the taxable income limitation to allow an NOL to fully offset income. These changes will allow companies to utilize losses and amend prior years' returns, which will provide critical cash flow and liquidity during the COVID-19 emergency.
- Modification of limitation on losses for taxpayers other than corporations
  - The provision modifies the loss limitation applicable to pass-through businesses and sole proprietors, so they can benefit from the NOL carryback rules described above and access critical cash flow to maintain operations and payroll for their employees.
- Modification of credit for prior year minimum tax liability of corporations
  - The corporate Alternative Minimum Tax (AMT) was repealed as part of the Tax Cuts and Jobs Act, but corporate AMT credits were made available as refundable credits over several years, ending in 2021. The provision accelerates the ability for companies to recover those AMT credits, permitting companies to claim a refund now and obtain additional cash flow during the COVID-19 emergency.

- Modification of limitation on business interest
  - The provision temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30-percent limitation to 50-percent of the taxable income for 2019 and 2020. As businesses look to weather the storm of the current crisis, this provision will allow them to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.
  
- Technical amendment regarding qualified improvement property
  - The provision enables businesses, especially in the hospitality industry, to immediately write off costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building. The provision, which corrects an error in the Tax Cuts and Jobs Act, not only increases companies' access to cash flow by allowing them to amend a prior year return, but also incentivizes them to continue to invest in improvements as the country recovers from the COVID-19 emergency.
  
- Installments not to prevent credit or refund of overpayments or increase estimated taxes
  - Section 965, the one-time repatriation toll charge, imposed a tax on the untaxed foreign earnings of U.S. companies in 2017. Companies had the option to pay the tax up front, or in installments over eight years. Some companies overpaid their 2017 taxes as a result of Section 965 but were unable to claim a refund of those taxes due to an interaction with the rules for electing installment payments. This provision, which corrects an error in the Tax Cuts and Jobs Act, allows companies to recover the overpayment of taxes paid on the toll charge to help with liquidity during the current crisis.
  
- Restoration of limitation on downward attribution of stock ownership in applying constructive ownership rules
  - This technical correction addresses the tax treatment of certain foreign subsidiaries resulting from changes made by the Tax Cuts and Jobs Act, which changed the ownership requirements for foreign entities that are subject to U.S. tax. The goal in changing these ownership rules was to target certain abusive transactions. However, the changes had the unintended consequence of subjecting some foreign entities to excessive tax and reporting requirements. The provision clarifies that certain foreign subsidiaries should not be subject to those requirements, which will permit companies to amend their 2018 tax return to free up critical cash for operations and payroll and significantly reduce their tax compliance burdens this year.
  
- Allowance of partial above the line deduction for charitable contributions.
  - The provision encourages Americans to contribute to churches and charitable organizations in 2020 by permitting them to deduct up to \$300 of cash contributions, whether they itemize their deductions or not.
  
- Modification of limitations on charitable contributions during 2020
  - The provision increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations. For individuals, the 50-percent of adjusted gross income limitation is suspended for 2020. For corporations, the 10-

percent limitation is increased to 25-percent of taxable income. This provision also increases the limitation on deductions for contributions of food inventory from 15 percent to 25 percent.

The bill contains the following provisions for small business.

#### Small Business Assistance

- Small employers with 500 employees or fewer will be eligible to apply for the loans.
- Loans would be immediately available through existing Small Business Administration - certified lenders, including banks, credit unions, and other financial institutions, and SBA would be required to streamline the process to bring additional lenders into the program.
- The Secretary of Treasury would be authorized to expedite the addition of new lenders and make further enhancements to expedite delivery of capital to small employers.
- The size of the loans would be tied to an applicant's average monthly payroll; mortgage, rent, and utility payments; and other debt obligations over the previous year. The maximum loan amount would be \$10 million.
- Conditional upon business retaining their employees and payroll levels during the covered period (March 1, 2020, through June 30, 2020), the portion of the loan used to cover payroll and payments on pre-existing debt would be forgiven. Further, employers with tipped employees would receive forgiveness for additional wages paid to such employees during the covered time.
- The bill would provide \$300 billion to support these loans.

#### Loan Guaranty Program

- The bill would expand the allowable uses for the existing 7(a) Small Business Administration loan program to permit payroll support, including paid sick leave, supply chain disruptions, employee salaries, mortgage payments, and other debt obligations to provide immediate access to capital for affected small businesses.
- The maximum loan amount for SBA Express loans would be increased from \$350,000 to \$1 million. These loans provide borrowers with revolving lines of credit for working capital purposes.
- The cost of participation in the 7(a) program would be reduced for both borrowers and lenders by providing fee waivers, an automatic deferment of payments for one year, and no prepayment penalties.

#### Entrepreneurial Assistance

- The bill would provide grants to offer counseling, training, and related assistance to small businesses affected by COVID-19:
  - \$240 million for SBA Small Business Development Centers and Women's Business Centers. The non-federal match for Women's Business Centers would be waived for a period of three months.
  - \$10 million for Minority Business Development Agency's Minority Business Centers
  - \$25 million for grants to associations representing resource partners.

Leader McConnell will now work with Senator Schumer and Speaker Pelosi on the path forward for the Phase 3 bill. The hope is that both chambers can vote on a finalized Phase 3 bill sometime next week.