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Legislative Update: Senate's "phase 3" coronavirus (COVID-19) bill; initial impressions of tax provisions

The U.S. Senate tonight released its "phase 3" coronavirus (COVID-19) legislation—H.R. 748, the "Coronavirus Aid, Relief, and Economic Security Act" (CARES Act).

A bipartisan deal on the legislation was announced in the Senate last night, but negotiations continued throughout the day today. Additional changes to the last night's agreement were made in the Senate today, presumably achieving bipartisan agreement for the measure.

The CARES Act includes substantial tax and non-tax measures, for both individuals and for businesses. Although the tax provisions in this bill are similar in many respects to those contained in prior drafts of the Senate bill, some changes were made, including the addition of:

- An employee retention credit for certain businesses significantly affected by COVID-19
- A temporary exception from excise tax for alcohol used to produce some hand sanitizers
- A temporary income exclusion for certain employer payments of student loans

Read text of the [883-page bill](#) [PDF 1.08 MB]. The bill includes tax and revenue provisions.

The legislative process

It is expected that the Senate will move quickly to vote on this legislation, perhaps as soon as tonight. Assuming the Senate approves the "phase 3" bill, the legislation would then move to the House for passage.

Legislative action in the House is complicated, however, by the fact that most members of the House are in their home districts, rather than in Washington, D.C. The House could nevertheless approve the "phase 3" legislation by unanimous consent of those House members who are present or by voice vote of those present (instead of a roll call vote); other alternatives such as proxy voting, may require changes to the House rules. Depending on how quickly the Senate acts on the "phase 3" legislation, the House could seek approval of the bill as soon as tomorrow.

President Trump is expected to sign the legislation if it is approved by both houses of Congress.

Highlights of tax provisions in “phase 3” legislation

General highlights of the tax measures proposed in the “phase 3” legislation include the following—some of which are temporary in nature.

Tax measures for individuals

- “Recovery rebate” credits of up to \$1,200 for eligible single filers and \$2,400 for eligible joint filers for 2020 (with amounts increased by \$500 per child). These payments would be subject to phase-outs beginning at \$75,000 / \$150,000 adjusted gross income (AGI) for single filers / joint filers.
- A waiver of the early withdrawal penalty for certain coronavirus-related withdrawals from qualified retirement plans.
- A temporary waiver of the required minimum distribution rules for certain retirement plans and accounts.
- Allowance of up to \$300 of charitable deductions for non-itemizing taxpayers for tax years beginning in 2020 and a temporary relaxation of the limitations on certain charitable contributions for those taxpayers who itemize.
- A temporary income tax exclusion for those individuals who receive student loan repayment benefits from their employers.

Tax measures for businesses

- A delay of payment of certain employer and self-employment payroll taxes for the period running from enactment through the end of 2020. This obligation to pay 2020 tax would be deferred in part until 2021 and in part until 2022.
- Changes to the rules governing net operating losses (NOLs), including a five-year carryback of certain 2018, 2019, and 2020 losses and, temporarily, the ability to fully offset income.
- Suspension of the limitation on loss rules for taxpayers other than corporations for tax years beginning after 2017 and before 2021.
- A refundable employee retention payroll tax credit (generally equal to 50% of an employee’s wages up to \$10,000) for qualifying employers that have had to fully or partially suspend operations or that have experienced a significant decline in gross receipts related to COVID-19.
- Temporary acceleration of refundability of corporate alternative minimum tax (AMT) credits.
- Temporary relaxation of the section 163(j) limitation on business interest expense deductions to 50% of adjusted taxable income for tax years beginning in 2019 and 2020, and an election to use 2019 adjusted taxable income for tax years beginning in 2020.
- Technical corrections to a handful of provisions in the 2017 tax law (“Tax Cuts and Jobs Act”), including the qualified improvement property fix, the NOL effective date fix, and fixes to the loss limitation rules for taxpayers other than corporations.

- Modifications of single-employer plan funding rules and rules related to charitable employers whose primary exempt purpose is providing services with respect to mothers and children.
- A suspension of certain aviation excise taxes through the creation of an “excise tax holiday” through December 31, 2020.
- A temporary exception from excise tax for distilled spirits used to produce certain hand sanitizers through 2020.
- A temporary increase for the deduction for contributions of food inventory from 15% to 25% for contributions made during 2020.
- A temporary relaxation of the limitations on certain other charitable contributions by corporations.
- Modifications relating to advance refunding of credits with respect to the payroll credit for required paid sick leave enacted as part of “phase 2” COVID-19 response legislation.
- Various health-related provisions, including provisions relating to telehealth as well as inclusion of certain over-the-counter medical products as qualified medical expenses for purposes of health savings account rules.
- Rules treating certain loans made or guaranteed by the Treasury under the legislation as indebtedness for tax purposes.

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