Some tax changes ahead as Senate takes up COVID relief measure

The Senate this week began work on its version of the American Rescue Plan, President Biden's $1.9 trillion tax-and-spending package to address the continuing economic and health impacts of the COVID-19 pandemic. A vote on final passage could come as soon as the weekend of March 6.

But the bill that emerges from the Senate will include changes from the version that recently cleared the House of Representatives, which means it will have to go back to the lower chamber for a second vote before it can be submitted to the White House for the president's signature.

Hewing to the House bill…

The tax title of the Senate measure generally follows the contours of the bill that was approved in the House on February 27. Notable provisions include, among other things:
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210305_1_suppA.pdf

- Direct economic impact payments to individuals of $1,400 per adult taxpayer (as well as to qualifying children and adult dependents);
- Temporary enhancements to the earned income tax credit, child tax credit, and child and dependent care tax credit;
- Extensions and modifications of the employee retention tax credit and credits for certain businesses that provide COVID-related paid sick and family leave to their employees;
- Exclusions from gross income for Economic Injury Disaster Loan grants and Restaurant Revitalization grants, along with a clarification that these exclusions would not result in a denial of business deductions, a reduction of tax attributes, or a denial of increase in tax basis, and
- Provisions to shore up financially struggling multiemployer pension plans and single-employer plans.

Also in the mix are revenue-raising provisions from the House-passed bill that would:

- Repeal the worldwide interest allocation election under section 864(f), which took effect on January 1 of this year and
- Reduce the reporting threshold for third-party settlement organizations from $20,000 and 200 transactions per payee under current law to $600 without regard to the number of transactions. The provision generally is effective in calendar quarters beginning after December 31, 2021. A clarification that reporting is not required on transactions which are not for goods or services applies to transactions after the date of enactment.

(For details on the House bill, see *Tax News & Views*, Vol. 22, No. 8, Feb. 27, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210226_1.html

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…But with a few alterations

Based on legislative language available at press time, however, Senate Democratic leaders have included some modifications to the House-passed bill that will have implications on the tax side.

Expanded roster of 'covered employees' under section 162(m) deduction limitation: The Senate bill adds a provision not in the House-passed measure that would expand the list of "covered employees" under the section 162(m) limitation on the deduction for excessive employee remuneration.

Current law limits public companies from deducting more than $1 million in compensation paid to the CEO, CFO, and the next three highest-paid officers. The 2017's Tax Cuts and Jobs Act added the CFO to this list, among other changes. The Senate bill would add to the $1 million compensation deduction limit the next five highest-paid employees. This provision appears to be included to offset the deficit impact of proposals aimed at providing relief to multiemployer and single-employer pension plans. Notably, it would not take effect until tax years beginning after the end of 2026.

Further expansion of the employee retention tax credit: The Senate measure would build on the House bill's enhancements to the employee retention tax credit by allowing the hardest hit businesses to count wages paid to all employees as qualifying wages (rather than just those wages paid to employees that are not providing services) and by making the credit available to certain start-up businesses, subject to certain limits. It also would clarify that employers that were not in existence in 2019 must use their average number of 2020 employees for purposes of determining the credit wage base and that qualified wages do not include wages taken into account as payroll costs under certain Small Business Administration programs. Similar aggregation rules for employers apply as in last year's Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Further expansions of paid sick- and family-leave credits: The Senate bill also would expand the House's proposed enhancements to the employer payroll tax credits for COVID-related paid sick leave and paid family leave by providing for reimbursement of pension plan and apprenticeship program contributions made by employers under collective bargaining agreements that are allocable to employee paid sick and family leave. It also would clarify that qualified sick leave wages do not include wages taken into account as payroll costs under certain Small Business Administration programs.

Faster phase-out for economic impact payments: Senate Democratic leaders agreed to a request from some moderates within the party to accelerate the phase-out of the direct economic impact payments to individuals in an effort to better target the relief to those facing financial hardship.

As is the case in the House-passed bill, the $1,400 payment amount under the Senate version would begin to phase out when adjusted gross income (AGI) reaches $75,000 for single taxpayers, $112,500 for heads of household, and $150,000 for joint filers. Under the Senate plan, however, payments would be fully phased out when AGI reaches $80,000 for single taxpayers (compared to $100,000 in the House bill), $120,000 for heads of household ($150,000 in the House bill), and $160,000 for joint filers without children ($200,000 in the House bill). Families with children could have higher AGI levels before being fully phased out of these payments.

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Gross income exclusion for forgiven student loan indebtedness: The Senate bill adds a new provision that calls for an exclusion from gross income for student loan indebtedness forgiven after December 31, 2020, and before January 1, 2026. (The exclusion would not apply if the indebtedness was forgiven in exchange for the performance of services for certain entities.)

No increased minimum wage requirement or tax-based workaround: Democrats were forced to drop a provision in the House-passed measure that would increase the minimum wage to $15 an hour after the Senate parliamentarian advised that the provision would have only an incidental impact on the federal budget and therefore would not comply with one of the so-called Byrd Rule limitations on what can be included in a reconciliation bill.

Senate Finance Committee Chairman Ron Wyden, D-Ore., had indicated in the wake of the parliamentarian's ruling that he would offer a workaround that "would impose a 5 percent penalty on a big corporation's total payroll if any workers earn less than a certain amount." (He did not specify his proposed wage floor or the parameters for determining what businesses would be subject to the tax penalty.) Wyden dropped that plan this week, however, telling reporters that the time that would be required to draft appropriate anti-avoidance rules would create an unacceptable delay in getting the larger bill through the Senate and back to the House for reconsideration.

Path forward

The bill is moving through Congress under budget reconciliation rules which, provided certain limitations on substance are adhered to, offer procedural protections for qualifying legislation in the Senate. Most notably, the reconciliation rules allow qualifying measures to pass in the Senate by a simple majority vote rather than the three-fifths supermajority typically required to overcome procedural hurdles in that chamber. As a result, Democrats, who control 50 Senate seats plus the tie-breaking vote of Vice President Kamala Harris, are in a position to advance the measure without any support from Republicans.

Under the rules governing the process, reconciliation legislation is afforded up to 20 hours of debate on the Senate floor. However, much like consideration of a budget resolution that can tee-up the reconciliation process, after the set debate time has lapsed there is a process – known as the "vote-a-rama" – that typically unfolds which allows lawmakers to offer an unlimited number of amendments to the underlying measure with little or no debate.

The Senate officially took up its bill during the afternoon of March 4. But determining just how long it might be before lawmakers might complete their work is complicated by the fact that Republican Sen. Ron Johnson of Wisconsin requested that the Senate clerk read the full text of the bill – which runs roughly 600 pages – aloud to lawmakers before the debate could begin. Johnson also has indicated that he will make a similar request for each amendment that is considered during the vote-a-rama. (Although a list was not available at press time, some informal estimates have suggested that the number of amendments submitted during the vote-a-rama could run into the hundreds, and dozens of those could receive votes on the Senate floor.)

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Under Senate rules any member is allowed to request a reading of any bill coming before the chamber, although that right is rarely exercised. It is expected that complying with Johnson's requests will prolong the process of considering the COVID relief measure – the initial reading of the bill lasted nearly 11 hours – and push the likely time for a vote on final passage into the weekend of March 6. Majority Leader Charles Schumer, D-N.Y., said on the Senate floor March 4 that the chamber will remain in session until work on the bill is completed.

Assuming Democrats remain united and secure passage in the Senate, House lawmakers intend to consider and vote on the amended bill during the week of March 8. (In addition to the proposed tax changes, House members will also have to consider Senate amendments to various spending provisions.)

Democratic leaders in both chambers have indicated that they intend to get a final bill to President Biden's desk before March 14, when the latest round of emergency federal supplements to state-level unemployment benefits is scheduled to expire.

CBO: Budget outlook bleak even without additional COVID relief

This week's developments came as the nonpartisan Congressional Budget Office (CBO) on March 4 released its annual Long-Term Budget Outlook, which paints a sobering picture of the long-term budget and economic outlook even before factoring in the potential for lawmakers to enact additional COVID relief.
URL: https://www.cbo.gov/publication/57038

The report, which extrapolates CBO's typical 10-year "baseline" projections over the next three decades (in this case, through 2051) predicts the federal debt held by the public (that is, debt not held in intragovernmental accounts such as the Social Security trust fund) will reach 202 percent of gross domestic product (GDP) by 2051 – roughly 60 percentage points higher that the debt level projected in the final year (2049) of the agency's most recent pre-pandemic long-term report published in June of 2019. (For prior coverage of the most recent 10-year baseline, see *Tax News & Views*, Vol. 22, No. 6, Feb. 12, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210212_2.html

The largest debt-to-GDP level in recorded US history – 106 percent – was reached in the 1946 in the wake of World War II.

Those increasing debt levels are the product of large and growing annual budget deficits that would consistently rise from about 5.7 percent of GDP in 2031 to more than 13 percent of GDP in 2051. (Over the past five decades, budget deficits have averaged 3.3 percent annually). The projected debt level for 2026 marks the low point of CBO's current projections and reflects an assumption that the pandemic has eased and that certain revenue-raising components of 2017's Tax Cuts and Jobs Act that are set to phase in over the coming years and certain tax breaks that are set to expire – including the changes on the individual side of the tax code that are scheduled to lapse after 2025 – are allowed to do so.

Revenues: In CBO's estimation, revenues will rise gradually over the next few decades – from about 16 percent of GDP this year to 18.5 percent of GDP by 2051 – as the economy recovers, temporary tax cuts expire,

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scheduled tax increases take effect, and more income is taxed at higher rates due to a concept called "bracket creep" (or the tendency of revenues to naturally rise over time as wage growth exceeds the inflation index to which the individual tax brackets are tied). Accelerating distributions from tax-deferred retirement plans by Baby Boomers exiting the workforce also plays a role.

Over the past five decades, revenues have averaged slightly more than 17 percent of GDP.

Spending and debt service: Another notable metric in this week's report – and a large contributor to future deficits, along with growing outlays on Social Security and Medicare on account of the aging population and growing health care expenses – relates to the government's projected debt service costs. Though low interest rates have caused the CBO to significantly write down its estimates of what the government will spend on interest over the next 10 years, it does not see that trend continuing after 2030. Between 2030 and 2051, the agency projects debt service costs will roughly quadruple from 2.2 percent of GDP to 8.6 percent of GDP.

No 'alternative fiscal scenario'…yet: In a departure from its typical practice, the CBO's latest long-term outlook does not include a parallel set of long-term estimates under a so-called "alternative fiscal scenario" that assumes certain current policies – for example, individual tax relief under the TCJA – do not expire as scheduled but instead remain in place throughout the projection period. Presumably, the deficit and debt outlook would be even worse under such assumptions.

"In order to release this report when it would be most useful to the Congress, CBO presents budgetary outcomes for the extended baseline only," the report states.

An earlier press release issued by the agency indicated CBO plans to produce estimates under an alternative scenario at a later date.
URL: https://www.cbo.gov/publication/57011

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