$1.9 trillion COVID relief package clears Senate

The Senate voted 50-49 on March 6 to approve 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.

Passage came along strict party lines with all of the chamber's Democrats aligned in support of the bill and all Republicans in opposition. GOP Sen. Dan Sullivan of Alaska had to leave Washington because of a family emergency and was not able to cast a vote, meaning Democrats did not have to rely on Vice President Harris to break what likely otherwise would have been a 50-50 tie.

What's retained from the House bill

The measure hews closely to legislation approved in the House of Representatives on February 27. On the tax side, both bills call for additional direct economic impact payments to individuals, temporary enhancements to certain family-focused tax credits, expanded tax relief for certain hard-hit businesses, and provisions to shore up financially struggling multiemployer and single-employer pension plans.

Both measures also include revenue-raising provisions 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, generally effective for transactions after December 31, 2021. Special reporting rules would apply as of date of enactment.

(For additional details on the House-passed legislation, 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

But the Senate bill as introduced on March 4 made a number of modifications to the tax title and the spending provisions in the House-approved legislation. Additional changes were adopted during the Senate's "vote-a-rama" process that followed the general debate on the measure.

This special edition of *Tax News & Views* highlights the tax-related changes that were approved as part of the Senate legislation and discusses what will need to happen next before a final package can make its way to President Biden's desk.

New revenue offsets

The Senate bill adds a few discrete revenue raisers in an effort to offset the expected deficit impact of certain tax-relief and spending provisions.

Extension of excess business loss limitation: The Senate legislation includes a provision not in the House bill that would extend section 461(l) – that is, the so-called "excess business loss" rule, which generally limits certain current losses attributable to trades or businesses for noncorporate taxpayers to $250,000 ($500,000 in the case of joint filers), indexed for inflation – through 2026. The limitation was enacted in 2017's Tax Cuts and Jobs Act but was suspended for taxable years beginning in 2018, 2019, and 2020 in last year's Coronavirus Aid, Relief, and Economic Security (CARES) Act. It is currently scheduled to expire at the end of 2025.

The proposed extension of the limitation was adopted as part of an amendment offered by Finance Committee Chairman Ron Wyden, D-Ore. It is expected to help absorb the revenue loss from another provision in Wyden's amendment that would make a portion of unemployment insurance income tax-free for certain taxpayers while making other modifications to the federal supplement to state-level unemployment benefits. (More on those provisions below.)

Expanded roster of 'covered employees' under section 162(m) deduction limitation: The Senate-approved bill also adds a provision 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 CFO was added the list under the Tax Cuts and Jobs Act.) The Senate bill would expand the list of covered employees to include the next five highest-paid employees.

This provision would offset the deficit impact of proposals aimed at providing funding relief to financially struggling multiemployer and single-employer pension plans. Notably, it would not take effect until tax years beginning after the end of 2026.

Changes to business tax incentives

The House's COVID relief bill proposes to expand certain credits available under current law to business facing economic disruption because of the pandemic. The Senate measure adopts those House provisions and proposes to make them more generous.

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 certain 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 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.

Changes to individual tax incentives

Modifications to individual tax incentives include a proposed haircut for direct economic impact payments, tax relief for certain recipients of unemployment insurance benefits, and a new income tax exclusion for certain borrowers who benefit from cancellation of student loan indebtedness.

Faster phase-out for economic impact payments: The Senate legislation includes a provision backed by moderate Democrats that would 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-passed 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).

Tax exclusion for certain unemployment insurance benefits: Finance Committee Chairman Wyden's amendment extending the limitation on excess business losses (discussed above) also includes a provision that would exempt from gross income up to $10,200 in unemployment insurance benefits received in 2020 for households with income below $150,000. (The extension of the business loss limitation is intended to offset the deficit impact of the proposed tax relief).

The amendment also would extend the enhanced federal supplement to state-level unemployment benefits through September 6 (compared to August 29 in the House bill) but reduce the payment amount to $300 a week (from $400 in the House bill).

Gross income exclusion for forgiven student loan indebtedness: The Senate bill includes 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 minimum wage hike 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. (The American Rescue Plan is moving through Congress under fast-track budget reconciliation rules that 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. These protections essentially put Democrats in a position to advance the bill without Republican support.)

Budget Committee Chairman Bernie Sanders, I-Vt., tried without success to add the provision to the Senate bill during the vote-a-rama process. (His amendment was subject to a point of order and fell well short of the 60 votes required for adoption.)

Finance Committee Chairman Wyden 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 subsequently dropped that plan, 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.

Back to the House

The Senate bill now heads back across the Rotunda to the House. Democratic leaders in that chamber have indicated that they intend to bring the measure to the floor for consideration and a vote on final passage 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 before March 14, when the latest round of emergency federal supplements to state-level unemployment benefits is scheduled to expire.

President Biden is expected to sign the measure into law once it reaches his desk.

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