$1.9 trillion COVID relief package headed to White House

Congress has now approved and will send to President Biden the final version of his American Rescue Plan, a $1.9 trillion tax-and-spending package aimed at addressing the continuing economic and health impacts of the coronavirus pandemic.
URL: https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117HR1319EAS.pdf

The bill would, among other things, extend and enhance a number of current-law tax incentives for businesses, provide another round of direct economic impact payments for certain individuals, enhance several family-focused tax credits, and provide funding relief for cash-strapped multiemployer and single-employer pension plans. On the spending side, the measure calls for substantial assistance to state and local governments, increased funding to speed vaccine production and distribution, another extension of the federal supplement to state-level unemployment benefits, additional housing assistance, and nutrition assistance.

An initial version of the legislation cleared the House on February 27 and was amended and passed in the Senate on March 6. The amended bill was sent back to the House, where it was approved on March 10 by a largely party-line vote of 220-211, with all but 1 of the chamber's Democrats aligned in the "aye" column and Republicans united in opposition. (One member of the GOP did not cast a vote.) Last month's House vote and the Senate's recent vote on its version of the legislation likewise broke along party lines.

The bill now goes to the White House, where President Biden is expected to quickly sign it into law to prevent a lapse in emergency federal unemployment benefit payments. (The current round of benefits expires on March 14.)

Revenue-raising provisions

The American Rescue Plan includes a few discrete revenue raisers that are intended to offset the expected deficit impact of certain tax-relief and spending provisions. (According to an estimate from the Joint Committee on Taxation staff, the tax and pension provisions in the legislation, along with temporary federal subsidies for health insurance continuation coverage for certain displaced workers, would, on net, reduce federal receipts by nearly $583.6 billion between 2021 and 2031.)
URL: https://www.jct.gov/publications/2021/jcx-14-21/

Repeal of worldwide interest allocation election: The legislation would repeal the election for US affiliated groups to allocate interest expense on a worldwide basis, effective for taxable years beginning after 2020.

The election, which was enacted as part of the American Jobs Creation Act of 2004 (AJCA), permits taxpayers to allocate interest expense between US and foreign sources for purposes of determining their foreign tax credit limitation. As enacted in the AJCA, the election was scheduled to take effect for taxable years beginning after December 31, 2008, but that effective date was delayed several times in subsequent legislation, most recently until taxable years beginning after December 31, 2020, in the Hiring Incentives to Restore

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Employment Act, which was signed into law in 2010. Thus, the optional election became effective on January 1, 2021, but would be repealed retroactively under this provision.

Lower reporting threshold for third-party settlement organizations: The legislation would 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, effective in calendar quarters beginning after December 31, 2021. A separate provision clarifying that the reporting requirement does not apply to transactions that are not for goods or services is effective for transactions after the date of enactment.

Extension of excess business loss limitation: The legislation 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 (TCJA, P.L. 115-97) but was suspended for taxable years beginning in 2018, 2019, and 2020 in last year's Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136). It is currently scheduled to expire, along with the individual provisions in the TCJA, at the end of 2025.

The proposed extension is expected to help absorb the revenue loss from another provision in the bill 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 bill includes 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, the next three highest-paid officers, and certain other covered employees after 2016. This 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.

Business tax incentives

The American Rescue Plan would extend and expand certain business-related tax incentives that were originally enacted under the Families First Coronavirus Response Act (Families First Act; P.L. 116-127) and the CARES Act, both of which were signed into law last March. (For prior coverage of the Families First Act, see *Tax News & Views*, Vol. 21, No. 11, Mar. 18, 2020. For details on the CARES Act, see *COVID-19 response: A taxpayer guide to the CARES Act* from Deloitte Tax LLP.)

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URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200318_1.html
URL: https://www2.deloitte.com/us/en/pages/tax/articles/covid-19-tax-policy-updates.html

Employee retention tax credit: The employee retention tax credit (ERTC) was enacted in the CARES Act as a temporary refundable tax credit, computed on a calendar-quarter basis, against the 6.2 percent employer-side Social Security payroll tax for certain employers carrying on a trade or business that either fully or partially suspended operations due to a government order or that sustain a significant decline in gross receipts. The credit initially applied to wages paid after March 12, 2020, and before January 1, 2021. It was extended through June 30, 2021, and expanded in the Consolidated Appropriations Act, 2021 (P.L. 116-260), the omnibus tax-and-spending package that was signed into law late last year. (For details on those changes, see *Tax News & Views*, Vol. 21, No. 55, Dec. 21, 2020.)
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/201221_1.html

The bill now headed to the president's desk would further extend the ERTC through December 31, 2021. It also would structure the ERTC as a refundable payroll credit against the employer's share of the Hospital Insurance tax beginning after June 30, 2021 – a change necessitated by certain limitations imposed under the fast-track budget reconciliation process, which Democrats relied on to pass this bill with a simple majority in the Senate rather than the three-fifths supermajority typically required to overcome procedural obstacles in that chamber. (Budget reconciliation protections essentially allowed Democrats, who control 50 seats in the Senate plus the tie-breaking vote of Vice President Kamala Harris, to advance the bill without Republican support.)

Other enhancements to the ERTC would:

- Allow 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) in determining their credit and
- Make the credit available to certain start-up businesses, subject to certain limits.

The bill 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.

Credits for paid sick and family leave: The Families First Act created refundable tax credits for certain employers who provide COVID-related paid sick leave and paid family leave to their employees under a federal mandate that was also created in that legislation. Those credits were set to expire on December 31, 2020, but were extended through March 31, 2021, under the 2020 year-end omnibus legislation. The American Rescue Plan would further extend the credits through September 30, 2021.

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Other changes in the legislation would:

- Increase the amount of wages for which an employer may claim the paid family leave credit in a year from $10,000 to $12,000 per employee and increase the number of days for which self-employed individuals may claim the credit from 50 to 60.
- Expand the list of reasons that an employer may provide paid family leave (and thus claim the paid family leave credit).
- Allow employers to claim the paid sick leave and paid family leave credits for leave taken to obtain a COVID-19 vaccine or to recover from an injury, disability, illness, or condition related to a COVID-19 immunization.
- Allow 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.
- Clarify that qualified sick leave wages do not include wages taken into account as payroll costs under certain Small Business Administration programs.
- Prohibit employers from claiming the credits if their leave policy discriminates in favor of highly compensated employees, full-time employees, or based on an employee's length of service.
- Reset the 10-day limitation on the maximum number of days for which an employer can claim the paid sick leave credit with respect to wages paid to an employee. The current limitation runs from the start of the credit in 2020 through March 31, 2021. The new limitation would apply to sick days after March 31, 2021. The limitation for self-employed individuals resets on January 1, 2021.
- Restructure the credit for paid family and medical leave as a refundable credit against the Hospital Insurance payroll tax beginning after March 31, 2021.
- Allow state and local government employers as well as tax-exempt entities under section 501(c)(1) to claim both credits.
- Increase the value of the credits by the amounts equal to the employer share of the Social Security and Hospital Insurance tax imposed on qualified paid family and medical leave wages for purposes of this credit.

These provisions generally would be effective for amounts paid with respect to leave taken after March 31, 2021. The provisions related to self-employed individuals would be effective after December 31, 2020.

Tax treatment of grant and loan proceeds: The legislation provides that Economic Injury Disaster Loan (EIDL) grants and Restaurant Revitalization grants would be exempt from tax. These exclusions would not result in a denial of business deductions, a reduction of tax attributes, or a denial of increase in tax basis.

The Treasury Department would be directed to prescribe rules for determining a partner's distributive share or shareholder's pro rata share of amounts received through an EIDL grant and a Restaurant Revitalization grant.

These provisions generally would align the tax treatment of proceeds from EIDL and Restaurant Revitalization grants with the tax treatment of loan proceeds received under the Paycheck Protection Program.

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Tax relief for individuals

Proposed tax relief for individuals under the American Rescue Plan includes another round of direct payments for certain households; temporary enhancements to the child tax credit, the earned income tax credit (EITC), the child and dependent care tax credit, and the health insurance premium tax credit; and gross income exclusions for certain unemployment insurance income and certain forgiven student indebtedness.

Recovery rebate payments: The legislation would boost the $600 direct recovery rebate payments to individuals enacted in the 2020 year-end omnibus legislation to $2,000 by providing plus-up payments of $1,400 ($2,800 for joint filers) to eligible recipients.

The additional $1,400 payment, which would be paid out as an advanceable refundable tax credit, would be available to adult taxpayers as well as children and adult dependents. The payment amount 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. It would be fully phased out when AGI reaches $80,000 for single taxpayers, $120,000 for heads of household, and $160,000 for joint filers. (These phase-out ranges are steeper than those applicable to the $600 payments authorized last December.)

Under the legislation, a taxpayer is eligible for a payment with respect to any individual in the household, provided the income tax return on which the payment is claimed includes that individual's valid Social Security Number. Individuals who died before January 1, 2021, are not eligible to receive a payment.

The measure would authorize the Treasury Department to issue payments based on the information on a taxpayer's 2019 or 2020 tax returns. Treasury also would have broad authority to issue payments to nonfilers based on information available to the Secretary.

Taxpayers who receive an advance payment that exceeds their maximum eligible payment amount based on 2021 tax return information would not be required to reimburse the government for any overpayment. If the payment amount based on 2020 information exceeds the amount of the advance payment, taxpayers would be allowed to claim the difference on their 2021 tax returns.

Payments generally would not be subject to administrative offset for past-due federal or state debts, including past-due child support.

Child tax credit: For 2021, the bill would make the child tax credit fully refundable and partially advanceable, increase the credit amount to $3,000 per child ($3,600 for a child under age 6), and increase the age limit for a qualifying child to 17. (Under current law, a partially refundable credit of $2,000 is generally available for each of a taxpayer's qualifying children under age 17, and the credit is claimed when a taxpayer files his or her return.)

The increased per-child credit amounts would be reduced by $50 for every $1,000 of modified AGI exceeding $150,000 for joint filers, $112,500 for heads of household, and $75,000 for other filers. Once the increased

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credit amount phases out completely, the credit would plateau at the current-law level of $2,000 and then phase down to zero for taxpayers whose modified AGI exceeds current-law thresholds of $400,000 for joint filers and $200,000 for all other filers.

In a notable change from current law, the bill would direct the Treasury Department to pay the credit to taxpayers in advance (based on 2019 or 2020 tax return information) in equal installments on a "periodic" basis. (Treasury would determine the interval that is administratively feasible.) The advance installment payments would begin on July 1, 2021 and would cover 50 percent of the credit amount to which a taxpayer is entitled for 2021. The remaining credit amount would be claimed on a taxpayer's 2021 tax return.

The child tax credit claimed on a taxpayer's 2021 return would be reduced by the aggregate of advance payments paid. If a taxpayer receives advance payments in excess of his or her allowable child tax credit during a taxable year, the taxpayer's tax liability for the taxable year would be increased by the excess amount. However, for taxpayers that have modified AGI below certain thresholds, that excess may be reduced by a safe harbor amount that would limit the increase in tax liability and allow the taxpayer to retain a portion of the excess amount. (The safe harbor amount is $2,000 for each child incorrectly taken into account in determining the advance payment amount for taxpayers with modified AGI of up to $60,000 for joint filers, $50,000 for heads of households, and $40,000 for all other filers. The safe harbor amount would be reduced ratably as modified AGI increases and would be reduced to zero when modified AGI reaches double the threshold amount for the taxpayer's filing status.)

The bill would direct the Treasury Department to establish an on-line portal that would allow taxpayers to opt out of receiving advance payments and to provide information regarding changes in income, marital status, and number of qualifying children for purposes of determining each taxpayer's maximum eligible credit.

The legislation also would direct the Treasury Department to make payments to each "mirror code" US territory for the cost of each territory's total amount of child tax credit claimed by its residents.

Earned income tax credit enhancements: The bill would expand eligibility for and the amount of the earned income tax credit for taxpayers with no qualifying children (the "childless EITC") for 2021. Specifically, it would reduce the minimum age to claim the childless EITC from 25 to 19 (except for full-time students) and eliminate the upper age limit. The measure also would increase the childless EITC credit percentage and phase-out percentage from 7.65 to 15.3 percent, increase the earned income limit for the maximum credit amount to $9,820, and increase the income threshold at which the credit begins to phase out to $11,610 for non-joint filers. Special rules would govern the application of the credit to former foster youths and homeless youths.

In addition, the measure would permit a taxpayer to elect to calculate the EITC for taxable years beginning in 2021 based on 2019 rather than 2020 earned income, if the taxpayer's earned income in 2021 is less than in 2019.

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The bill also includes permanent provisions that would:

- Repeal the current-law rule prohibiting an EITC-eligible taxpayer with qualifying children from taking the childless EITC if he or she cannot claim the EITC with respect to qualifying children due to failure to meet child identification requirements (including a valid Social Security Number for qualifying children);
- Allow a married but separated individual filing a separate return to claim the EITC (subject to certain conditions); and
- Increase the limitation on disqualified investment income for purposes of claiming the EITC from $3,650 (the limit in place for 2020) to $10,000 and index it to inflation going forward.

The measure would instruct the Treasury Department to make payments to the territories that relate to the cost of each territory's total amount of EITC claimed by its residents.

These provisions would take effect upon enactment.

Dependent care assistance: The bill would make the child and dependent care tax credit fully refundable for 2021 and increase the maximum credit rate to 50 percent. It also would amend the phase-out threshold to begin at $125,000 of AGI instead of $15,000 and would increase the amount of child and dependent care expenses that are eligible for the credit to $8,000 for one qualifying individual and $16,000 for two or more qualifying individuals.

The 50 percent credit rate would begin to phase-out at AGI of $125,000 and would plateau at 20 percent for taxpayers with AGI greater than $183,000. Under a second phase-out, the 20 percent credit rate would begin to decline for taxpayers with AGI greater than $400,000 and would be reduced to zero once AGI exceeds $438,000.

Mirror code territories would be reimbursed for the costs of the refundable credit claimed by residents in 2021. A non-mirror code territory would be eligible for reimbursement of the aggregate value of such a credit, provided the territory develops a plan, approved by the Secretary, to distribute these amounts to its residents.

A separate provision would increase the exclusion for employer-provided dependent care assistance from $5,000 to $10,500 ($2,500 to $5,250 in the case of a separate return filed by a married individual) for 2021.

Health care tax credits: For 2021 and 2022, the legislation would reduce an individual's or family's share of premiums used in determining the amount of the premium assistance credit under the Patient Protection and Affordable Care Act and make the credit available to taxpayers with incomes above the present-law limitation of 400 percent of the federal poverty line for the applicable family size.

For tax year 2020, the measure would modify the repayment obligations for taxpayers receiving excess premium tax credits so that those payments would not be subject to recapture.

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For 2021, the bill would provide advanced premium tax credits as if the taxpayer's income was no higher than 133 percent of the federal poverty line for certain individuals receiving unemployment compensation.

Tax exclusion for certain unemployment insurance benefits: The legislation would exempt from gross income up to $10,200 in unemployment insurance benefits received in 2020 for taxpayers with adjusted gross income below $150,000. (The deficit impact of this provision would be offset by the extension of the excess business loss limitation discussed above.)

The measure also would extend the enhanced federal supplement to state-level unemployment benefits (which are set to expire on March 14) through September 6, at a rate of $300 a week.

Gross income exclusion for forgiven student loan indebtedness: The bill would provide an exclusion from gross income for student loan indebtedness forgiven after December 31, 2020, and before January 1, 2026. (The exclusion would not apply to indebtedness that is forgiven in exchange for the performance of services for certain entities.)

Pension plan changes

The American Rescue Plan includes provisions intended to stabilize financially troubled multiemployer pension plans and single-employer plans, and would expand special funding rules available to certain community newspaper plans.

Funding assistance and other relief for multiemployer plans: The bill would create a special assistance program that would allow the Pension Benefit Guaranty Corporation (PBGC) to make direct cash payments to certain underfunded multiemployer pension plans to ensure that they can remain solvent and continue to pay benefits to retirees. (PBGC would make the payments using amounts transferred from the Treasury general fund.)

Eligible plans generally would include plans in critical and declining status and plans that are significantly underfunded and have more retirees than active workers in any plan year beginning in 2020 through 2022. Plans that have suspended benefits and certain plans that have already become insolvent also would be eligible.

Plans would be eligible to apply for funding assistance through December 31, 2025. Once an application is approved, a plan would receive a single, lump-sum payment in an amount sufficient to keep it solvent and well-funded through the last day of the plan year ending in 2051, generally with no cuts to the earned benefits of participants and beneficiaries. Plans would be required to invest the funds received in investment-grade bonds or other investments permitted by the PBGC.

The legislation also would increase the premium rate for multiemployer plans to $52 per participant beginning in calendar year 2031 and index that rate to inflation in subsequent years.

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Other relief provisions for multiemployer plans would:

- Permit a plan to retain its funding zone status as of a plan year beginning in 2019 for plan years that begin in 2020 or 2021;
- Permit a plan in endangered or critical status for a plan year beginning in 2020 or 2021 to extend its rehabilitation period by five years, giving it additional time to improve its contribution rates, limit benefit accruals, and maintain plan funding (effective for plan years beginning after December 31, 2019); and
- Permit plans to amortize investment losses in plan years beginning in 2019 and 2020 over 30 years to spread out those losses over time (generally effective for the first day of the first plan year ending on or after February 29, 2020).

Reforming multiemployer pension rules has been a priority for House Ways and Means Committee Chairman Richard Neal since he took the gavel in 2018. The House approved similar provisions last year in the Heroes Act (the expansive COVID relief package that cleared the chamber last May) and a narrower version of that legislation that was passed in October. (For prior coverage, see *Tax News & Views*, Vol. 21, No. 27, May 15, 2020, and *Tax News & Views*, Vo. 21, No. 44, Oct. 2, 2020.) Neither version of the Heroes Act was taken up in the Senate during the 116th Congress.
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200515_1.html
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/201002_1.html

Relief for single-employer pension plans: For single-employer pension plans, the bill provides that all shortfall amortization bases for 2019 or 2020 (at the election of the plan sponsor) and all shortfall amortization installments determined with respect to those bases would be reduced to zero. For all plan years beginning after December 31, 2019, all shortfalls would be amortized over 15 years (compared to 7 years under current law). A plan sponsor also may elect to apply this provision for the 2019 plan year. This provision would be effective for plan years beginning after December 31, 2018.

The measure also would delay the scheduled phase-out of current-law pension "smoothing" provisions that modify the interest rate that employers must use to calculate their pension plan liabilities for purposes of determining their annual minimum funding obligations. This provision would be effective for plan years beginning after December 31, 2019.

Special funding rules for community newspapers: The legislation would modify the special funding rules for pension plans sponsored by financially struggling community newspapers in the Setting Every Community Up for Retirement Enhancement Security (SECURE) Act to make that relief available to additional community newspaper plans. (The SECURE Act was incorporated into an appropriations package that cleared Congress and was signed into law at the end of 2019. For additional discussion, see *Tax News & Views*, Vol. 20, No. 42, Dec. 19, 2020.)
URL: https://www.congress.gov/bill/116th-congress/house-bill/1865/text?q=%7B%22search%22%3A%5B%22h.r.+1865%22%5D%7D&r=1&s=1
URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/191219_1.html

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What's next?

Enactment of the American Rescue Plan will mark the completion of the Biden administration's first major fiscal initiative.

The president and congressional Democratic leaders have indicated that they hope to move to an economic recovery package – known as the "Build Back Better" plan – later this year, depending on the state of the economy. The Build Back Better plan is expected to emphasize infrastructure investments, health care spending, and climate change mitigation, along with incentives for research and development and domestic manufacturing. It could be financed in large part by permanent tax increases on large corporations and affluent individuals. We may get a clearer idea of the tax and spending proposals President Biden intends to include in that plan when he releases his budget proposal for fiscal year 2022 later this spring.

Although no final decisions have been made, the president has not ruled out the possibility of moving this package under budget reconciliation protections, as he did with the American Rescue Plan. (Congressional Democrats will have an opportunity in the coming months to use budget reconciliation for fiscal year 2022.) Opting for reconciliation would once again clear a path for Democrats to get a key White House proposal through Congress without having to attract Republican votes.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

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