

Tax Legislative Update
March 19, 2020

Legislative Update

Senate Republican draft “Phase 3” legislation

Late this afternoon, Senator McConnell released draft legislation representing the Senate Republican position for negotiations on a third COVID-19 related piece of legislation. That legislation includes numerous tax provisions, for which I have provided high-level summary below. Please follow up with me if you would like to discuss any of the provisions in more detail.

- I. Individual Tax Provisions:
 - a. Recovery Rebates:
 - i. Provide to U.S. citizens and U.S. tax residents tax credits of \$1,200 (\$2,400 for joint filers), with \$600 (\$1,200 for joint filers) being refundable, plus \$500 (refundable) per qualifying child.
 - ii. Must either have (1) \$2,500 of qualifying income (earned income, Social Security benefits, and certain pensions and other compensation) or (2) gross income in excess of the standard deduction and positive net income tax liability.
 - iii. Credit phases out at 5-percent rate for taxpayers with AGI in excess of \$75,000 (\$150,000 for joint filers).
 - b. Filing deadlines:
 - i. Suspend the April 15 filing deadline until July 15.
 - ii. Suspend deadlines for estimated tax payments otherwise due between date of enactment and October 15 until October 15.
 - c. Retirement accounts:
 - i. Allow up to \$100,000 in penalty-free withdrawals from qualified retirement accounts for certain coronavirus-related purposes, with the tax on distributions spread out over three years, and three years to re-contribute the funds without being subject to the standard annual cap on contributions.
 - ii. Provide flexibility to loans from certain retirement plans for coronavirus-related purposes.
 - d. Charitable contributions:
 - i. Allow above-the-line deduction for charitable contributions made in cash, limited to \$300 and for tax year 2020 only.
 - ii. For cash contributions made during 2020, suspend the 50-percent limitation on individuals, increase to 25 percent the 10-percent limitation on corporations, and increase to 25 percent the 15-percent limitation on food inventory.

- II. Business/Employer Tax Provisions:
- a. Postpone the due date for corporate estimated tax payments otherwise due between date of enactment and October 15, 2020, until October 15.
 - b. Postpone the due date for depositing employer payroll (i.e., employment) taxes and 50 percent of self-employment taxes related to Social Security and Railroad Retirement and attributable to wages paid during 2020 such that half would be due December 31, 2021, and half would be due December 31, 2022.
 - c. Net operating losses:
 - i. Suspend the 80-percent-of-taxable-income limit on NOL carryovers (enacted in the TCJA) for three years, such that the limit would not apply to tax years beginning in 2018, 2019, and 2020.
 - ii. Allow NOLs arising in 2018, 2019, and 2020 to be carried back five years. *Note that the legislative text only applies to NOLs arising in 2018 and 2019, but I have confirmed that this is an error and the intent is to apply the rules to losses arising in 2020 as well.*
 - iii. Adopt the TCJA technical correction related the effective date of TCJA NOL provisions.
 - d. Business losses of pass-through entities:
 - i. Suspend the limitation on the use of business losses against non-business income (enacted in the TCJA) for three years, such that the limit would not apply to tax years beginning in 2018, 2019, and 2020.
 - ii. Adopt TCJA technical corrections related to section 461(l).
 - e. Limitation on business interest expense:
 - i. Temporarily increase the 30 percent of adjusted taxable income (“ATI”) threshold to 50 percent of ATI, for tax years beginning in 2019 and 2020.
 - ii. Allow taxpayers to elect to use tax year 2019 ATI in lieu of tax year 2020 ATI for the purpose of calculating its tax year 2020 limitation.
 - f. Make any remaining corporate AMT credits fully refundable for tax year 2018.
 - g. Adopt the following TCJA technical corrections (in addition to those described above):
 - i. Qualified improvement property
 - ii. Treatment of overpayments with respect to taxpayers making a section 965(h) election
 - iii. Restoration of limitation on downward attribution of stock for purposes of subpart F and GILTI
- III. Aviation Excise Tax Provisions: Provide an excise tax holiday from date of enactment through the end of 2020 for aviation ticket taxes (both passengers and freight) and taxes on kerosene used in commercial aviation.

Note that all of the TCJA technical corrections would be permanent, whereas the other tax provisions generally are temporary.

The Senate Finance Committee released a [section-by-section summary](#) of all the tax provisions in Division B (thus excluding the aviation excise tax holiday). House Ways and Means Chairman Richie Neal issued a [statement](#) describing the legislation as “inadequate.”