

CORONAVIRUS INFORMATION & UPDATES

August 3, 2020

Senate Proposes the Health, Economic Assistance, Liability Protection and Schools Act

*****This legal development is still in progress. We will update this Alert as the Act makes its way through the legislative process.*****

On July 27, 2020, the Senate Republicans proposed the Health, Economic Assistance, Liability Protection and Schools Act (HEALS Act) in response to the House passing the Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act). The HEALS Act is a combination of eight individually proposed bills from the Senate. Both the HEALS Act and the HEROES Act are commonly referred to as Phase 4 of the federal government’s response to the COVID-19 crisis.

- Complete bills and language for the HEALS Act can be found here. [S4318](#), [S4317](#), [S4319](#), [S4320](#), [S4321](#), [S4322](#), [S4323](#), [S4324](#).

As the Senate Republicans had done with the HEROES Act, the House Democrats have declared this proposal “dead on arrival.”

Nonetheless, below are (i) tax highlights of the notable tax-related provisions of the HEALS Act and the HEROES Act, as they may be negotiated further; (ii) how they compare to each other; and (iii) how they compare to the CARES Act (also known as Phase 3 of the federal government’s response to the COVID-19 outbreak). Hyperlinks to the Ropes & Gray Alerts on both the HEROES Act and the CARES Act can be found in the respective headings of the table below.

The cost of the HEALS Act is projected to be approximately \$1 trillion. The cost of the HEROES Act is projected to be approximately \$3 trillion.

| | <i>CARES Act and Related Guidance - Tax Section Highlights (As Related to the HEROES Act and HEALS Act)</i> <u>Click here for a link to the full alert</u> | <i>HEROES Act - Tax Section Highlights</i> <u>Click here for a link to the full alert</u> | <i>HEALS Act - Proposed Senate Bills - 7/27/2020</i> <u>S4318, S4317, S4319, S4320, S4321, S4322, S4323, S4324</u> |
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| Part A: Changes to Net Operating Losses; Modifying CARES Act | | | |
| Net Operating Losses | A net operating loss (NOL) arising in a taxable year beginning after December 31, 2017, and before January 1, 2021 may generally be carried | Modifies and reverses significant part of CARES Act by limiting application of NOL provisions. Permits businesses to carry back losses only from 2019 and 2020 | Generally follows CARES Act. |

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| | back five years. The effective date of the “80% NOL limitation” on carryforwards is pushed out to tax years beginning after December 31, 2020. | to prior year only (i.e., can carryback only one-year). | |
| Excess Business Losses (for Individuals) | Expands allowance of excess business losses for non-corporate taxpayers. | Reverses the CARES Act by restoring and making permanent the disallowance of excess business losses. | Not addressed. |
| Part B: Benefits for Certain Loan Recipients (such as PPP Recipients) | | | |
| PPP loan forgiveness | Any resulting cancellation of such loan is excluded from gross income for tax purposes. | Expands exclusion from taxable income for PPP loan forgiveness and certain other business financial assistance from gross income. | (i) Expands eligible expenditures for loan forgiveness under the CARES Act; (ii) enables eligible entities to receive a second PPP loan; and (iii) streamlines loan forgiveness based on loan amount. |
| | IRS Notice 2020-32 prohibits deductions of expenses paid with PPP funds. | Reverses IRS position by permitting tax deductions and basis adjustments for expenditures giving rise to loan forgiveness. | Not addressed. |
| Payroll tax Deferral | Delays payment of employer social security payroll taxes (and 50% of self-employment taxes) accrued from the date of enactment to January 1, 2021, with 50% of the deferred amount being due on December 31, 2021 and the remainder due on December 31, 2022. | Amends CARES Act by allowing payroll tax deferral for recipients of PPP loan forgiveness. | Not addressed. |
| Part C: Benefits for Eligible Individuals | | | |
| Original Economic | Provides for "recovery rebates" to individuals in the form of an advanced refundable tax credit | Retroactively changes the CARES Act’s recovery rebate by (i) expanding the definition of | Retroactively changes the CARES Act’s recovery rebates by (i) removing incarcerated individuals |

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| Recovery Rebate | against eligible individuals' 2020 tax liability in the amount of \$1,200 per individual (\$2,400 for joint return) plus \$500 per qualifying child, subject to certain reductions. | eligible individual; (ii) replacing qualifying child with dependent; (iii) removing technical foot-fault provisions; and (iv) protecting amounts received by individuals from garnishment and assignment. | from the definition of eligible individuals; (ii) ensuring payments received by deceased individuals are recovered; and (iii) protecting amounts received by individuals from garnishment and assignment. |
| Second Economic Recovery Rebate | Not addressed. | Implements a second round of recovery rebate payments for eligible individuals (\$1,200 per eligible individual or \$2,400 for joint return) which includes (i) an additional \$1,200 per dependent (with a maximum of three dependents); (ii) an expansion of the definition of eligible individual from the CARES Act; and (iii) protects amounts received by individuals from garnishment and assignment. Recovery rebate subject to certain reductions. | Eligible individual and joint return rebates are the same as the HEROES Act. Includes an additional \$500 per dependent (not limited to qualifying children under 17). Rebate is subject to restrictions based on SSN of eligible individuals and dependents. Certain reductions apply. |
| SALT Deduction | Not addressed. | Allows deduction of state and local taxes (SALT) without limitation for taxable years 2020 and 2021. | Not addressed. |
| Child Tax Credit | Not addressed. | Increased credits for taxpayers with children for 2020. | Not addressed. |
| First responders, essential employees and teachers. | Not addressed. | Creates deductions for first responders, essential employees and elementary and secondary school teachers. | Not addressed. |
| Tax Relief for Students | Suspends federally held student loan payments (with no interest accruing through September 30, | Student recipients of qualified emergency financial aid grants | Student recipients of certain elementary and secondary education |

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| | 2020) and all involuntary collection activity relating to student loans. An employee may exclude up to \$5,250 from its income the payments made by an employer after the date of enactment but before January 1, 2021, for the employee's principal/interest on qualified educational loans. | may exclude the grant from gross income. | scholarships may exclude the grant from gross income. |
| Earned Income Tax Credit | Not addressed. | Expands the earned income tax credit (EITC). | Not addressed. |
| Part D: Benefits for Eligible Employers & Businesses | | | |
| FFCRA's sick and family leave | Waiver of penalties imposed for failing to make a tax deposit due to anticipation of receiving a credit from Phase 2. Pursuant to Phase 2, enables an advance payment of FFCRA credit. | Expands the (Phase 2) FFCRA's sick and family leave credits, with many taking effect as if included in the FFCRA. | Not addressed. |
| Employee Retention Credits | Generally provides certain eligible employers a refundable credit against applicable employment taxes for each calendar quarter for 50% of up to \$10,000 of qualified wages paid to employees if its business operations were partially or fully suspended or if its gross receipts were materially affected due to certain COVID-related reasons. Applies to wages paid after March 12, 2020 and before January 1, 2021. Credits subject to large employer threshold rule for | Retroactively expands the CARES Act's employee retention credits by (i) increasing credit percentage to 80%; (ii) increasing annual credit limit to \$45,000; and (iii) allowing partial credit for employers with a decline in gross receipts between 10% and 50%. Retroactively eliminates the 100 full-time employee threshold (which determines whether the | Expands the CARES Act's employee retention credits by (i) increasing credit percentage to 65%; (ii) increasing annual credit limit to \$30,000; and (iii) lowering eligibility threshold to 25%. Generally effective for quarters beginning after June 30, 2020. Revises CARES Act large employer threshold rule to only apply to employers with more than 500 full- |

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| | <p>employers with more than 100 full-time employees.</p> <p>Employers receiving PPP loans are not eligible to receive credits.</p> | <p>wages of working employees qualify for the credit) in favor of a revised threshold, which would require 1,500 full-time employees as well as gross receipts of more than \$41.5 million in 2019.</p> <p>Allows employers receiving PPP loans to receive credits (with provisions to avoid duplicative benefits with respect to the same wages).</p> | <p>time employees, possibly retroactively.*</p> <p>Same as HEROES Act.</p> |
| Payroll Credit | Not addressed. | <p>Not addressed, but creates a different 50% refundable phased-in payroll credit for certain employer fixed expenses (such as rent, mortgage and utility payments), capped at \$50,000. Not available to employers with 1,500 or more full-time employees or \$41.5 million in gross receipts in 2019.</p> | <p>Creates a 50% payroll credit for employers' qualified employee protection expenses (which include COVID testing, cleaning supplies, protective personal equipment, and qualified workplace reconfiguration expenses incurred to prevent the spread of COVID-19) incurred between March 13, 2020 and before January 1, 2021 to prevent the spread of COVID, limited at: (i) up to \$1,000 per employee for the first 500 employees; (ii) up to \$750 per employee for the next 500 employees; and (iii) up to \$500 per employee for each additional employee.</p> <p>Up to \$500 credit available for self-employed individuals.</p> |
| Business meal deduction. | Not addressed. | Not addressed. | <p>100% employer deduction for business meals before January 1, 2021 (current law allows deductions up to 50%).</p> |
| Work Opportunity | Not addressed. | Not addressed. | <p>Temporary tax credit of up to \$5,000 (per employee) for employers hiring</p> |

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| Tax Credit (WOTC) | | | unemployed individuals. No limitation on rehires until 2021. |
| Investment Tax Credit | Not addressed. | Not addressed. | Up to \$7.5 billion tax credit for investments in facilities that manufacture certain medical PPE, calculated as 30% of investment basis. Certain intangible property related to manufacturing certain medical PPE may be repatriated without immediate tax. Any built-in gain is preserved and triggered upon subsequent sale or transfer. |
| Part E: Benefits for Self-Employed Individuals | | | |
| FFCRA's sick and family leave | Pursuant to (Phase 2) FFCRA, enables an advance payment of FFCRA credit. | Expands the FFCRA sick and family leave credits with respect to self-employed individuals. | Not addressed. |
| Business interruption credit | Not addressed. | Creates a "business interruption credit" (capped at \$45,000) for certain self-employed individuals. | Not addressed. |
| Part F: State Tax Changes | | | |
| Tax Relief for Employees Who Worked in Multiple States Due to COVID | Not addressed. | Not addressed. | For calendar years 2020 through 2024, employees who work in multiple states will be taxed on their wages only in their state of residence and any states in which they are present and working for more than 30 days (or 90 days for 2020) during the calendar year. Does not apply to professional athletes, professional entertainers, certain production employees or public figures. |

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| <p>State Nexus, Withholding and Reporting Relief for Employers</p> | <p>Not addressed.</p> | <p>Not addressed.</p> | <p>Before the earlier of (i) December 31, 2020 and (ii) when 90% of a business's workforce returns to their primary work location, the business may generally treat employee wages as earned in the employee's primary work location (absent a daily tracking system) for state/local tax filing and reporting purposes. During this period, no nexus is created between the business and another state due to remote working.</p> <p>Employers may generally rely on an employee's annual determination of the time s/he spent working in each taxing jurisdiction for withholding purposes.</p> |
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*This section is not included in the list of rules with retroactive effect. It is unclear whether this provision was intended to take effect retroactively.