

# DC Tax Flash: Senate Virus Response Bill Nears Official Release, Vote Expected Today

Tax Alert  
03.25.2020

Senate Majority Leader Mitch McConnell (R-KY) today discussed the forthcoming release of the final text of the bipartisan version of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. He said that the Senate will debate and vote on the bill (H.R. 748) today.

Although early drafts have circulated, the official text of the final legislation has not been issued yet. (It could be released at any moment.) There are reports that technical changes are still being ironed out, including some [last-minute concerns raised by Sens. Lindsay Graham \(R-SC\), Ben Sasse \(R-NE\), and Tim Scott \(R-SC\) regarding the unemployment insurance provisions](#).

The Senate Finance Committee today issued [a summary](#) of the bill's tax and unemployment proposals that includes the following provisions directed at businesses:

---

## **Section 2301. Employee retention credit for employers subject to closure due to COVID-19**

The provision provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended, due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

## **Section 2302. Delay of payment of employer payroll taxes**

The provision allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. The Social Security Trust Funds will be held harmless under this provision.

## **Section 2303. Modifications for net operating losses**

The provision relaxes the limitations on a company's use of losses. Net operating losses (NOL) are currently subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year. The provision provides that an NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years. The provision also temporarily removes the taxable income limitation to allow an NOL to fully offset income. These changes will allow companies to utilize losses and amend prior year

returns, which will provide critical cash flow and liquidity during the COVID-19 emergency.

#### **Section 2304. Modification of limitation on losses for taxpayers other than corporations**

The provision modifies the loss limitation applicable to pass-through businesses and sole proprietors, so they can utilize excess business losses and access critical cash flow to maintain operations and payroll for their employees.

#### **Section 2305. Modification of credit for prior year minimum tax liability of corporations**

The corporate alternative minimum tax (AMT) was repealed as part of the Tax Cuts and Jobs Act, but corporate AMT credits were made available as refundable credits over several years, ending in 2021. The provision accelerates the ability of companies to recover those AMT credits, permitting companies to claim a refund now and obtain additional cash flow during the COVID-19 emergency.

#### **Section 2306. Modification of limitation on business interest**

The provision temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30-percent limitation to 50 percent of taxable income (with adjustments) for 2019 and 2020. As businesses look to weather the storm of the current crisis, this provision will allow them to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.

#### **Section 2307. Technical amendment regarding qualified improvement property**

The provision enables businesses, especially in the hospitality industry, to write off immediately costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building. The provision, which corrects an error in the Tax Cuts and Jobs Act, not only increases companies' access to cash flow by allowing them to amend a prior year return, but also incentivizes them to continue to invest in improvements as the country recovers from the COVID-19 emergency.

#### **Section 2308. Temporary exception from excise tax for alcohol used to produce hand sanitizer**

The provision waives the federal excise tax on any distilled spirits used for or contained in hand sanitizer that is produced and distributed in a manner consistent with guidance issued by the Food and Drug Administration and is effective for calendar year 2020.

---

Assuming the bill, when finalized, passes the Senate, it would go to the House for quick consideration. In a statement issued today, House Majority Leader Steny Hoyer (D-MD) said, "I will be conferring with the Speaker and other House leaders to determine the best way for the House to consider the legislation the Senate passes." He promised to give House members 24 hours notice before a vote is scheduled on the bill. The House is currently in recess but could conceivably pass it by unanimous consent without fully reassembling if no member of the House objects.

The Finance Committee summary of the tax and unemployment provisions in the emerging final bill is [posted here](#).

A Finance Committee summary of the bill's health provisions is [posted here](#).

A Senate Appropriations Committee summary of the bill's emergency spending provisions is [posted here](#).

The 271-page text of the emergency appropriations portion of the CARES Act is [posted here](#).

---

The information contained in this communication is not intended as legal advice or as an opinion on specific facts. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. For more information, please contact one of the senders or your existing Miller & Chevalier lawyer contact. The invitation to contact the firm and its lawyers is not to be construed as a solicitation for legal work. Any new lawyer-client relationship will be confirmed in writing.

This, and related communications, are protected by copyright laws and treaties. You may make a single copy for personal use. You may make copies for others, but not for commercial purposes. If you give a copy to anyone else, it must be in its original, unmodified form, and must include all attributions of authorship, copyright notices, and republication notices. Except as described above, it is unlawful to copy, republish, redistribute, and/or alter this presentation without prior written consent of the copyright holder.