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Key tax provisions of the proposed HEALS Act

Four months after the passage of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Senate republicans recently introduced the Health, Economic Assistance, Liability Protection and Schools Act ("HEALS Act") to provide additional relief to individuals and businesses impacted by the COVID-19 pandemic. The HEALS Act is actually comprised of eight smaller bills that are linked together. The following are the major tax provisions proposed in the HEALS Act, which remain subject to modification as the bill moves its way through Congress.

Expansion of the Employee Retention Payroll Tax Credit

As we previously discussed, the CARES Act provided a refundable employee retention payroll tax credit equal 50% of qualified wages paid to employees by certain eligible employers impacted by COVID-19 (the "Employee Retention Payroll Tax Credit"). The CARES Act also limited the Employee Retention Payroll Tax Credit to $10,000 of qualified wages per employee for all calendar quarters. The HEALS act proposes to increase the percentage of qualified wages from 50% to 65% and increases the annual qualified wage limitation to $30,000 of qualified wages per employee per calendar year (limited to $10,000 per calendar quarter). In essence, what was once a maximum of a $5,000 tax credit per employee now equals a maximum of a $19,500 tax credit per employee.

The HEALS Act also proposes to loosen the qualifications for businesses to be an "eligible employer" for purposes of receiving the Employee Retention Payroll Tax Credit. Under the CARES Act, an employer conducting a trade or business during 2020 must show that it either (i) was required by a governmental authority to fully or partially suspend its trade or business (the "Business Suspension Test") or (ii) experienced a significant decline in gross receipts (the "Gross Receipts Test"). The Gross Receipts Test under the CARES Act requires that an employer experience a more than 50% reduction in gross receipts for a 2020 calendar quarter when compared to the same calendar quarter in 2019. The HEALS Act would reduce the threshold for the Gross Receipts Test to 25% down from 50%.

Finally, the HEALS Act would expand what wages count as "qualified wages" for purposes of the Employee Retention Payroll Tax Credit. Under the CARES Act, (i) employers with not greater than 100 employees can receive the Employee Retention Payroll Tax Credit for all wages paid to employees, regardless of whether an employee is providing services, but (ii) employers with greater than 100 employees may only claim the Employee Retention Payroll Tax Credit for wages paid to employees who are not providing services. The HEALS Act would raise that threshold from 100 employees to 500 employees, such that employers with 500 or fewer employees would be able to claim the Employee Retention Payroll Tax Credit on all wages, regardless of whether an employee is providing services.

Temporary expansion of the Work Opportunity Tax Credit

The Work Opportunity Tax Credit (the "WOTC") is available to employers for hiring individuals form certain targeted groups (e.g., veterans, ex-felons, etc.) who face significant barriers to employment. The HEALS Act would temporarily expand the WOTC to include a new targeted group defined as 2020 qualified COVID-19 unemployment recipients. Employers hiring 2020 qualified COVID-19 unemployment recipients, as certified by the applicable employee's state workforce agency, would receive a WOTC equal to 50% of the first $10,000 of qualified wages paid to such employees. In order to qualify for the expanded WOTC, the eligible employee must begin working between the enactment of the HEALS Act and January 1, 2021.

Safe and Healthy Workplace Tax Credit

The HEALS Act would create a new tax credit equal to 50% of an employer's expenses related to COVID-19 precautions (the "Safe and Healthy Workplace Tax Credit"). Specifically, the Safe and Healthy Workplace Tax Credit is equal to 50% of "qualified employee protection expenses," "qualified workplace reconfiguration expenses," and "qualified workplace technology expenses" incurred by the employer between March 13, 2020, and December 31, 2020.

The amount of the Safe and Healthy Workplace Tax Credit is tied to the number of employees employed by an eligible employer in a calendar quarter. The Safe and Healthy Workplace Tax Credit is capped at (i) $1,000 for each of the first 500 employees (ii) $750 for each employee between 500 and 1,000 employees, and (iii) $500 for each employee over 1,000 employees. For example, if an employer has 200 employees, the Safe and Healthy Workplace Tax Credit would be capped at $200,000.

Additional tax provisions

In addition to the tax provisions discussed above, the HEALS Act would temporarily allow for a full deduction of expenses (up from 50%) related to business meals incurred after the date of enactment of the HEALS Act through December 31, 2020. Additionally, the HEALS Act relieves some uncertainty faced by remote workers by providing that state income tax rules from January 1, 2020 through December 31, 2024 are modified such that employee who work in multiple states are generally only subject to income tax in their state of residence and any state where they are working more than 30 days.

Edward Buchholz is a member of Thompson Coburn LLP's Tax Group.

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Edward J. Buchholz