ML STRATEGIES

COVID-19 Insights Week in Review — May 8, 2020

May 08, 2020 | |

Your team at ML Strategies continues to monitor **federal** and **state** legislative and regulatory responses to the public health and economic crisis. Each week, ML Strategies will provide updates from Massachusetts and Washington, DC to keep you informed and aware of relief opportunities and guidance for your businesses.

This week, ML Strategies monitored the following updates stemming from Washington, DC and the Commonwealth of Massachusetts:

FEDERAL UPDATE

MASSACHUSETTS UPDATE

FEDERAL UPDATE

Phase 4 Stimulus Still Under Discussion and Development

As reported in last week's *COVID-19 Insights Week in Review*, behind the scenes negotiations on the next stimulus measure have continued. The expectation is that House Democrats will move first, with a bill focused largely on economic relief for states and local governments, with economic recovery efforts including infrastructure to be addressed in a later, Phase 5, stimulus package. We expect democrats to announce their Phase 4 proposal in the coming weeks with the goal of passing final legislation by the end of May, although that timeline could slip. With that said, Senate Republicans are insisting that any future stimulus include liability protections for businesses in the event that employees of reopened businesses contract COVID-19, a proposal democrats oppose; and the president is calling for any future stimulus to include a payroll tax cut, although that proposal is not supported by all republicans and the Speaker has said she will not support such a cut.

Bipartisan Support for State and Local Government Borrowers

Representatives Ruppersberger (D-MD) and Stivers (R-OH), co-chairs of the Municipal Finance Caucus, led a bipartisan letter signed by 41 of their colleagues urging Treasury Secretary Mnuchin and Federal Reserve Chairman Powell to take an active role in stabilizing and lowering the cost of borrowing for state and local governments facing revenue losses as a result of the COVID-19 pandemic.

Noting that state and local governments contribute more than twice as much to U.S. GDP as the federal government, that they fund approximately two-thirds of the nation's infrastructure, and that their access to the $3.8 trillion municipal bond market allows for the building of schools, roads, and community health centers, the letter calls for the Federal Reserve to stand up facilities to purchase medium- and long-term municipal securities publicly issued in the secondary market and directly from issuers.

Read the letter here…

Senate Bill Would Create Flexibility on Coronavirus Relief Fund

Senator Kennedy (R-LA) has introduced the Coronavirus Relief Fund Flexibility for State and Local Government Act. The bill would allow state and local governments to use Coronavirus Relief Funds for operating expenses unrelated to the COVID-19 pandemic, with the exception of shoring up pension funds. Additionally, under the CARES Act, funding under this program must be used by states by December 30, 2020. The Kennedy legislation would allow state and local governments to continue using these funds until they are expended.

Read the bill text here…

Congressional Leaders on Treasury Implementation of CARES Act Programs

Senate Finance Committee Chairman Grassley (R-IA) and Ranking Member Wyden (D-OR), along with House Ways and Means Committee Chairman Neal (D-MA), wrote to Treasury Secretary Mnuchin on May 4 regarding the Paycheck Protection Program (PPP). The letter questions recent guidance from Treasury and the IRS, indicating that otherwise deductible business expenses are not deductible if the taxpayer is the recipient of a PPP loan that is subsequently forgiven. The letter says that this "ignores the overarching intent of the PPP, as well as the specific intent of Congress to allow deductions in the case of PPP loan recipients."

Read the letter here…

The trio also wrote to Secretary Mnuchin regarding recent guidance on the employee retention credit stating that they "disagree with the determination that employers who continue providing qualified health benefits to their employees do not qualify for the retention credit unless they continue paying other qualifying wages. As expressed previously to Treasury and the IRS, this interpretation runs directly counter to congressional intent." They go on to say that they are "disappointed with the recent determination that an employer that is no longer paying regular wages but continues to provide full health benefits would not be able to treat any portion of those health benefits as qualifying wages for the retention credit."

Read the letter here…

New Proposals for Small- and Mid-Sized Businesses

Senators Bennet (D-CO) and Young (R-IN) released a proposal to double the covered period for Paycheck Protection Program loans from 8 to 16 weeks and to create a new RESTART program to provide loans to cover the next six months of payroll, benefits, and fixed operating expenses for businesses that have taken a substantial revenue hit during the COVID-19 pandemic. A share of that loan would be forgiven based on the revenue losses suffered by the business in 2020, and the remainder could be repaid over seven years, with no interest payments due in the first year and no principal due for the first two years. The RESTART program includes an employment cap of 5,000, with streamlined procedures for companies with fewer than 500 employees.

A summary of the proposal can be found here…

Senator Harris (D-CA) and Rep. Pressley (D-MA) are introducing the Saving our Street (SOS) Act, a bill to establish a Microbusiness Assistance Fund of $124.5 billion to provide up to $250,000 directly to small "micro" businesses with fewer than 10 employees. Businesses with at least half of their employees from the community and within a low-income community may have up to 20 employees. Seventy-five percent of the funding would be reserved for historically underrepresented businesses, including minority-owned businesses.

Click here to read a summary…

Bipartisan Bill Would Allow Expense Deductions for PPP Loan Recipients

The Small Business Expense Protection Act was introduced this week by Senate Finance Committee Chairman Grassley (R-IA) and Sens. Cornyn (R-TX), Wyden (D-OR), Rubio (R-FL), and Carper (D-DE). The bill would clarify that businesses can deduct from their taxes expenses paid with a forgiven Paycheck Protection Program (PPP) loan. Chairman Grassley says the Treasury Department and IRS are inaccurately interpreting the CARES Act, which created the PPP, in a way that prevents businesses from deducting expenses associated with PPP loans.

Read the press release here…

U.S. International Trade Commission Report on COVID-19 Related Goods

The U.S. International Trade Commission (ITC) released a report on known imported products that may be needed to respond to the ongoing COVID-19 pandemic. The report was prepared at the request of Senate Finance Chairman Grassley (R-IA) and House Ways and Means Chairman Neal (D-MA). The chairmen requested the ITC produce a report detailing source countries, tariff classifications, and applicable rates of duty associated with the products to assist the committees and the office of the U.S. Trade Representative (USTR) in their work to combat the coronavirus emergency.

Access the report here…

In response to the ITC report, Chairman Neal released an analysis in which he calls upon the Administration to "exercise its existing authorities, including emergency authorities, to suspend all tariffs for the next 90 days on the products identified by the ITC as relevant to responding to the COVID-19 public health crisis." The Chairman also urged the Administration to take the measures necessary to increase domestic production of these goods in an effort to help resolve the persistent shortages of supplies, equipment, and medicines the United States needs to successfully combat the pandemic and save lives.

Read the Chairman's analysis here…

Ways and Means Chairman Calls for Public Briefing on Economic Impact Payments

House Ways and Means Committee Chairman Neal (D-MA) wrote to Treasury Secretary Mnuchin and Internal Revenue Service (IRS) Commissioner Rettig requesting that the IRS promptly provide a public briefing on the COVID-19 economic impact payments authorized under the CARES Act. The Chairman's request comes after the agency canceled a public webinar on the payments that was previously scheduled for April 23.

Read the letter here…

Democratic Senators Call for Disability Education Funding in Future Stimulus

Twenty-four Democratic senators wrote to Senate Majority Leader McConnell (R-KY) and Senate Minority Leader Schumer (D-NY) asking that any future COVID-19 relief package protect the rights of students who experience disabilities and provide school districts with emergency funding so that educators are able to effectively serve these students during this unprecedented time. Senator Hassan (D-NH), who led the letter, says in a press release that the "funding would give school districts more resources to continue to provide students who experience disabilities with a free and appropriate public education as required under the Individuals with Disabilities Education Act (IDEA)."

Access the press release and letter here…

Treasury Issues FAQs on Coronavirus Relief Fund

The Treasury Department issued answers to frequently asked questions to supplement Treasury's Coronavirus Relief Fund ("Fund") Guidance for State, Territorial, Local, and Tribal Governments, dated April 22, 2020.

Access the FAQs here…

Modification of Liquidity Coverage Ratio for Banks Participating in Money Market Mutual Fund Liquidity Facility and Paycheck Protection Program Liquidity Facility

According to a May 5 press release from the Federal Reserve, "To support the flow of credit to households and businesses, the federal bank regulatory agencies today announced an interim final rule that modifies the agencies' Liquidity Coverage Ratio (LCR) rule to support banking organizations' participation in the Federal Reserve's Money Market Mutual Fund Liquidity Facility and the Paycheck Protection Program Liquidity Facility. In particular, the interim final rule facilitates participation in these facilities by neutralizing the LCR impact associated with the non-recourse funding provided by these facilities. The rule does not otherwise alter the LCR or its calibration."

The rule is effective immediately, and comments will be accepted for 30 days after publication in the Federal Register.

Read the rule here…

MASSACHUSETTS UPDATE

Rating Agency Projects Massachusetts to Absorb Revenue Hit

Last week, the House went to great lengths to pass a rules package on Monday that would allow members the opportunity to debate remotely on Governor Baker's borrowing bill and other key legislation thereafter. While partisanship slowed the adoption process, House leadership worked diligently to get to "yes" on the package to clear the path for the chamber's first formal session since the start of the COVID-19 pandemic. While the Legislature expressed a sense of urgency in passing the Governor's bill, HB4593 – *An Act to facilitate the delay of the income tax filing deadline*, Standard and Poor's (S&P) believes the Commonwealth has enough cash flow to cover expenses for the remainder of FY2020 without additional funds.

For additional information on S&P's projections, read Boston Business Journal's article here.

COVID-Era Rules Packages in House and Senate

On Monday, May 4, the House passed a rules package temporarily governing formal sessions during the state of emergency. With the passage of the emergency rules package early this week, the House was about to take up the Governor's borrowing bill in a formal session on Wednesday, May 6, in which the bill was passed unanimously (157-0). What got House Democrats to find middle ground with the minority party? In the previous version of the rules package (HB4676), House members were limited to speaking once during debate if the member signed up before 10:00 am on formal session day, according to an outlined process for doing so. The amended version of the package would allow the minority leader, the chair of the committee releasing the bill, and the ranking minority member of the committee releasing the bill to be recognized more than once during debate. It also permits the primary sponsor, or a designee, to provide further explanation of a particular amendment or section of the bill, capped at five minutes. A member of the opposing party will also be allowed five minutes of speaking time in response. In the original version of the package, unanimous consent was required to allow for further explanation.

The Senate filed its own rules package on Monday, May 4, which would only apply to debate on the Governor's borrowing bill scheduled to pass both chambers by next week. SB2688 – *Remote voting*, provides three options for senators to vote on the legislation: designating another present senator as a proxy to vote on the absent senator's behalf, communicating their vote to a court officer to vote on their behalf, or entering the chamber one by one with masks on to cast their vote. The Senate working group developing a longer-term package for sessions in the COVID-era plans to file a more comprehensive package by early June.

To access the Governor's borrowing bill as amended by House Ways and Means (HB4677), click here.

To access the House rules package adopted on Monday (HB4690), click here.

To access the Senate rules package filed on Monday (SB2688), click here.

Governor Baker Easing Restrictions on Car Dealers and Retailers

On Monday, the Baker Administration updated its COVID-19 essential services guidance easing restrictions on car dealerships and retailers during the pandemic. Car dealers and retailers will now have the ability to reopen with strict limitations and requirements for employees and operation practices. For retailers, the updated guidance allows for up to three employees to work while wearing masks and remaining six feet apart in businesses smaller than 10,000 square feet. For businesses with more than 30,000 square feet, up to seven employees may be working with the same mask and social distancing requirements. While businesses must remain closed to the public, retailers may fulfill online and over-the-phone orders and offer no-contact deliveries. For car dealers, sales may take place over the phone or online with electronic document processing encouraged. Walk-in sales and test drives are prohibited in the updated guidance; however, transfer, delivery, or return of new and leased vehicles may take place in person by way of a scheduled appointment.

To read the Baker Administration's updated guidance on essential services, click here.

Mask Requirement Effective May 6, 2020

Late last week, Governor Baker shifted his stance on the state's role in requiring residents of the Commonwealth to wear masks. In previous press conferences, the Governor has deferred mask requirements to local officials across the 351 cities and towns of the Commonwealth. Last Friday, however, Governor Baker issued COVID-19 Order No. 31, directing Massachusetts residents to wear masks when social distancing is not possible, such as within grocery stores, outdoor spaces, pharmacies, and in transportation services such as ride-sharing apps or public transportation. Effective Wednesday, May 6 through termination of the state of emergency, residents are required to wear a mask or facial covering, or be subject to a fine up to $300 to be enforced by local officials. This Order does not apply to children under two years old or those with medical conditions deeming them exempt from the Order.

To access Gov. Baker's COVID-19 Order No. 31, click here.

Massachusetts COVID-19 Pending Legislation

As the Legislature continues to consider and move bills through the legislative process, the Reopening Advisory Board led by Lieutenant Governor Polito is laser focused on reopening organizations and businesses that make up the backbone of the Commonwealth's economy. The seventeen-member Board plans to release recommendations on May 18, in line with the expiration of Governor Baker's non-essential business closure order. To some groups, however, the May 18 deadline is one week too late. The Greater Boston Chamber of Commerce is calling on the Reopening Advisory Board to release a plan as soon as this Friday, May 8. The Chamber is requesting the Board and the Baker Administration to commit to universal testing, reopening child care centers by June 1, and changes to MBTA capacity guidelines such as setting maximum passenger limits as part of the plan for phased reopening across the state. During the Governor's press conference the same day the Baker Administration received the Chamber's letter, Governor Baker announced that some guidelines for reopening could be released before May 18, a welcome announcement to business leaders in the Commonwealth.

With passage of the Governor’s borrowing bill on Wednesday in the House, the Senate holds the torch in getting the financial security bill to the finish line. As the Commonwealth approaches the end of the FY2020 fiscal year, legislators will be particularly focused on available cash balances, end-of-year revenues, and projections for the first quarter of FY2021. With April revenues coming in at approximately $2.3 billion short of last April’s totals, budget development proves to be a much grimmer task than it has been in previous fiscal years. Despite the fact that a new budget should be passed by July 1, it is likely the Legislature will delay action and pass what is commonly known as a “1/12th budget,” which will level fund state accounts for one month into the new fiscal year. This process will likely occur until legislators can formulate a balanced budget. As we continue to navigate through these unprecedented times, know that ML Strategies continues to keep lines of communication open with members on Beacon Hill to address the many sectors being impacted by the COVID-19 pandemic. Do not hesitate to reach out to your team at ML Strategies with any questions during these uncertain times.

Authors