AMERICANS FOR TaxFairness

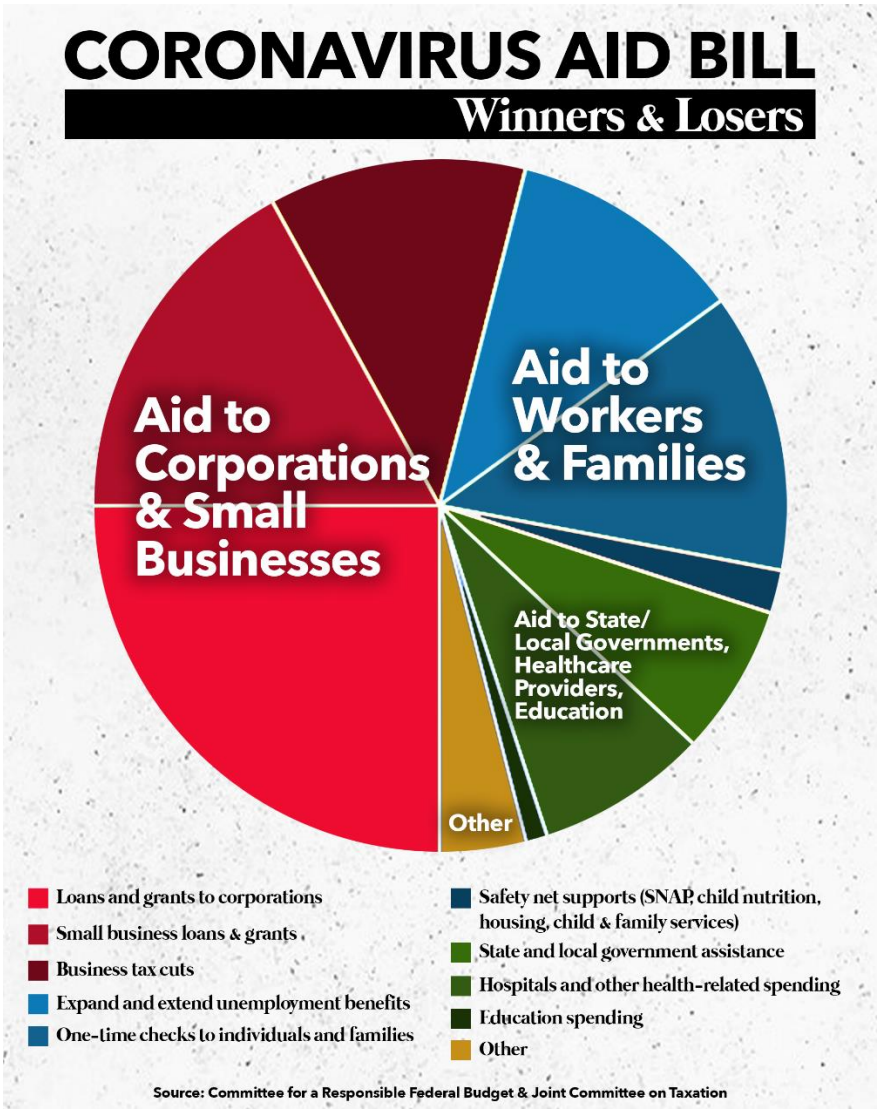
SUMMARY OF MAJOR TAX PROVISIONS IN THE SENATE AND HOUSE CORONAVIRUS STIMULUS BILLS

March 30, 2020 (Revised)

Senate Bill: Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")
Bill Text Section-by-section (taxes only)
Note: there is no Joint Committee on Taxation score of the tax provisions in the Senate bill.

House Bill, H.R. 6379: Take Responsibility for Workers and Families Act
Bill text Section-by-section One-pager

The Senate bill centers on several significant though mostly temporary tax-law changes that would benefit corporations and other businesses. The costs of these changes are $280 billion, according to the Joint Committee on Taxation, or 12% of the total $2.3 trillion package. [See table on page 6 of this analysis and also here.] The $2.3 trillion is allotted as follows:



The 2017 Trump-GOP tax law, the Tax Cuts and Jobs Act (TCJA), gave corporations a massive tax cut by slashing the corporate tax rate from 35% to 21%. To partially offset the cost, the law also included some corporate revenue raisers, including limitations on deductions for losses and interest payments. The Senate bill would temporarily roll back several of these revenue raisers and give other breaks to big corporations as well. The resulting tax relief is ill-focused and unnecessarily costly, spending a lot of taxpayer dollars to aid companies that may not be particularly impacted by the economic emergency.

The House bill, in contrast, better targets tax breaks at workers, not corporations, helping families better survive the current crisis.

Following are key tax features of the two bills, beginning with provisions they share:

- **Neither bill includes an employer or employee payroll tax cut, a favored and flawed proposal of President Trump's.** As pointed out in a recent letter to Congress from 72 national organizations, the incremental nature of payroll tax cuts takes too long to put enough money into workers' pockets and such cuts favor the most highly compensated when the real crisis is among the lowest-paid.

  Senate Bill (Sec. 2302): Frees up business revenue during the emergency by deferring current employer (and self-employed) payroll taxes, with half of the amount deferred in 2020 due by the end of 2021 and the other half by the end of 2022. The Social Security trust fund will be made whole in the meantime through general revenues.

- **Both bills provide substantial, fully refundable tax credits to employers to prevent layoffs; the House version is more generous and restricts benefits to smaller employers.**

  Senate Bill (Sec. 2301): This provision gives tax credits to employers who keep workers employed. Eligible employers (including non-profit organizations) would be able to credit 50% of an employee's eligible compensation, including health benefits, against the employer's share of Social Security taxes, up to $10,000 every three months (i.e., quarterly). To be eligible a business must have been ordered at least partially shut down as a coronavirus safety measure or have experienced a 50% reduction in gross sales in the same quarter compared to the prior year. The tax credits end when gross sales in a quarter exceed 80% of the comparable quarter in the prior year.

  The eligibility of employee wages depends on the size of the employer's workforce. Those with 100 or fewer workers can take the credit against all their wages, whether or not the employees have been idled by coronavirus business restrictions. Employers with over 100 workers can only take the credit against the wages of workers idled by the emergency.

  Wages eligible for the credit are those paid or incurred between March 13 and the end of 2020.

House Bill (Sec. 251):

- Eligible employers would be able to credit 80% of an employee's wages, up to $10,000 every three months (i.e., quarterly) against the employer share of Social Security taxes. To be eligible, a business must have experienced a 20% reduction in gross sales in the quarter compared to the prior year and must have no more than $41.5 million in gross sales or 1,000 full-time equivalent (FTE) employees.

- Allows hospitals to take a credit against their payroll taxes equal to 90% of the cost of providing care to coronavirus patients without insurance or the ability to pay; and for the expense of creating new facilities to treat coronavirus cases. The credit would be refundable if the costs exceeded payroll taxes in any quarter. This would cover care provided and facilities created between February 1 and the end of 2020. General government funds would replenish the Social Security trust fund so it wouldn't suffer a revenue loss.

- **Both bills give tax rebates (cash payments) to households, though the House version is much more generous.**

  Senate Bill (Sec. 2201): Gives eligible households "recovery rebates" of up to $1,200 per adult, plus $500 per child. Individuals with annual income up to $75,000 ($150,000 for married couples and $112,500 for single parents) qualify for the maximum payment. The Institute on Taxation and Economic Policy estimates the average rebate for households will be $1,720. The size of the rebate is reduced by 5% of the amount income exceeds those thresholds and eventually phases out. There is no minimum income to qualify. The bill provides immediate payments only to those who have filed a tax return for 2019 or 2018 or receive Social Security or railroad retirement benefits, which will be an impediment to getting assistance for those not earning enough to file tax returns.

  House Bill (Sec. 201): Gives households payments of $1,500 per person, capped at a total of $7,500. Higher income households (those that wind up with 2020 joint income above $150,000; head of household income above $112,500; or single income above $75,000) would be required to pay back all or part of the payments (depending on their income) over three years. There would be no requirement for existing household income to qualify, so the unemployed and others in deep poverty would be included. The payments would not count as income for the purpose of determining eligibility for other public assistance programs.

- **Both bills give a windfall to many undeserving businesses by allowing them to get rebates on previous taxes paid by retroactively lowering past income through net operating losses. But the House bill imposes several restrictions on which companies may participate.**

  Senate Bill (Sec. 2303): To reduce the revenue lost from slashing corporate taxes, the TCJA eliminated the ability of corporations and pass-through businesses (which include sole proprietorships, partnerships and S corporations) to "carry back" losses to previous years, though it extended their ability to subtract such current "net operating losses" (NOL) from future earnings. Corporations accepted limits on their use of NOLs in exchange for a much lower corporate income tax rate.

Section 2303 would temporarily restore "carry back" losses for corporations and extend from two to five the number of previous years' profits that current losses could be applied against. That extended carry back period includes years before the TCJA came into effect. Current losses are more valuable credited against gains made before the TCJA, when the corporate tax rate was 35%, then they are now, when it's 21%. In addition, under the 2017 tax law, corporations were limited to offsetting up to 80% of taxable income with a loss; the Senate bill removes that restriction for 2018-2020 so that income can be 100% fully offset. In 2021 and beyond it returns to 80%.

The expanded five-year carry back provision is a huge giveaway—costing $195 billion according to the Joint Committee on Taxation (see table on p. 6), with most of the tax break going to pass-through businesses. Presumably the cost of this tax break will be from large losses many businesses will suffer due to the pandemic. Those losses will easily wipe out many years' gains, transforming what were once tax liabilities into big refunds.

The bill also inexplicably allows companies that generated losses in 2018 and 2019—before the pandemic—to get rebates for taxes owed in prior years. While this provision will get liquidity (i.e., cash in the form of tax refunds) into the hands of companies during this economic crisis, it will also be a handout to businesses that weren't well enough managed to generate profits in the growing economy of 2018-2019.

House Bill (Sec. 241): Like the Senate bill, the House bill would give corporations the ability to subtract current "net operating losses" (NOL) from past earnings to receive rebates on taxes paid during prior years. Also like the Senate bill, the House bill would let corporations apply losses generated in 2018, 2019 and 2020 against income in any of the past five years, reducing taxes owed in those past years and even transforming what were once tax liabilities into big refunds.

However, unlike the Senate bill the House bill would impose some limits on participation in this benefit. "Pass-through" businesses—non-corporate entities which make up a big part of the economy and received a big tax cut from the Trump-GOP tax law—would not be eligible. To qualify a corporation must impose certain executive pay and "golden parachute" limitations. And any corporation that has returned to shareholders more than 5% of the business' fair market value via stock buybacks or dividends is disqualified from this tax break.

SENATE PROVISIONS NOT IN HOUSE BILL

- **Section 2304** temporarily removes a TCJA restriction that limits the ability of wealthy owners of pass-through businesses, such as the real estate businesses of President Trump and Jared Kushner, from using paper losses on their operations to offset unrelated gains from other sources and thereby lower their taxes or even generate refunds. For instance, owners of commercial buildings and other structures are allowed to write off, or "depreciate," a portion of the value of that property each year to reflect theoretical wear and tear. The TCJA limited the use of those theoretical losses to reduce unrelated investment gains. This provision would lift that limitation for 2020, and retroactively for 2018 and 2019. President Trump and his family have in the past made heavy use of real-

estate-related losses to avoid millions of dollars in taxes. It's estimated by Congressional scorekeepers that the temporary reopening of this loophole for wealthy business owners will lose $170 billion over 10 years (see table on p. 6).

- **Sec. 2306 would temporarily loosen new restrictions on the deduction of interest.** In the 2017 tax law, as a partial tradeoff for the temporary allowance of businesses to immediately write off big-ticket purchases ("expensing"), their ability to deduct interest was limited. The Senate bill would loosen the interest deduction limits for the 2019 and 2020 tax years, allowing businesses to deduct half their interest costs rather than just 30%. *And it would apply to all businesses, whether affected by the coronavirus pandemic or not—a costly and gratuitous handout.* At the time the tax law was enacted, the tighter interest rules were estimated to raise more than $250 billion over 10 years. This temporary relaxation will cost the government some part of that.

- **Sec. 2307 gives in to the restaurant industry demand to make a change to the 2017 tax law that it argues unfairly disadvantages it.** Restaurants and other retail establishments have long complained that they were left out of a temporary provision of the Trump-GOP tax law that allows businesses to immediately write off the cost of capital investments. This provision includes them in this expensive tax break for businesses. (It is estimated to cost about $15 billion a year, which was already built into the cost of the Trump-GOP tax law when it passed in 2017.) In the present crisis, restaurant owners should not receive relief unless restaurant employees do as well. This fix to the so-called "qualified improvement property" (QIP) glitch for restaurants should be paired with an economic boost of equal or greater size for working Americans, as was proposed in the Economic Mobility Act in the House. That measure would increase the earned income tax credit in 2019 and 2020 for individuals with no qualifying children and make the child and dependent care tax credits fully refundable during the same period.

HOUSE PROVISIONS NOT IN SENATE BILL

- **Sec. 211 expands the Earned Income Tax Credit (EITC) for childless adults.** The minimum age for a childless adult to qualify for the credit would drop from 25 to 19 (if not a full-time student), while the upper age for claiming the credit would be raised from 65 to 66. The amount of the credit would be doubled from 7.65% of earned income to 15.3%. The amount of income recipients are allowed to earn before the credit partially and completely phases out would both be more than doubled, and those phaseout amounts would be indexed to inflation.

- **Sec. 221 makes the Child Tax Credit (CTC) fully refundable in tax years 2020 through 2025, regardless of the level of earned income and even if the amount is over $1,400.** The credit would rise from $2,000 to $3,000 per child aged 6 and over and be $3,600 for children under 6. Residents of Puerto Rico and other territories would be better able to participate in the program.

- **Sec. 231 doubles the Child and Dependent Care Tax Credit (CDCTC) and increases the phaseout threshold from $15,000 to $120,000, with both amounts indexed to inflation.** The CDCTC would be made refundable and the phase-out calculation modified. The amount of employer-provided assistance that can be disregarded when calculating benefits would rise from $5,000 to $10,500.

WINNERS & LOSERS IN THE SENATE STIMULUS BILL		
	Amount $ Billions	**% of Total**
Loans & Grants to Corporations & Small Businesses		
Loans and loan guarantees for large businesses (and some governments)	510	22%
Small business loans and grants	377	17%
Grants to air carriers and airline contractors to avoid furloughs and pay cuts	33	1%
Additional infrastructure grants to transit providers (including state and local governments)	25	1%
Subtotal Loans & Grants to Corporations & Small Businesses	**945**	**42%**
Business Tax Cuts		
Loosen caps imposed under TCJA on net operating losses	195	9%
Loosen caps imposed under TCJA on interest deductibility	13	1%
Payroll tax credits for businesses who retain workers at a loss	55	2%
Delay employer payroll tax payments from 2020 to 2021 & 2022	12	1%
Suspend temporarily airline ticket, cargo, and fuel taxes	4	0%
Subtotal Business Tax Cuts	**280**	**12%**
Aid to Workers & Families		
Expand and extend unemployment benefits	260	11%
One-time checks ("rebates") to individuals and families	292	13%
Safety net supports (SNAP, child nutrition, housing, child & family services)	42	2%
Subtotal Aid to Workers & Families	**594**	**26%**
Aid to State & Local Governments, Healthcare Providers, Education		
Hospitals and other health-related spending	180	8%
State and local government assistance	150	7%
Education spending	32	1%
Grants to publicly owned commercial airports	10	0%
Subtotal Aid to State & Local Governments, Healthcare Providers, Education	**372**	**16%**
Other		
FEMA Disaster assistance	45	2%
Other spending	25	1%
Reduce individual taxes	10	0%
Subtotal Other	**80**	**4%**
TOTAL	**2,271**	**100%**

Sources: Committee for a Responsible Federal Budget, March 26, 2020

http://www.crfb.org/blogs/whats-2-trillion-coronavirus-relief-package

Tax savings from Joint Committee on Taxation, March 26, 2020

https://www.jct.gov/publications.html?func=startdown&id=5252