Income Tax Conformity and the CARES Act

Open Sky Policy Institute
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The CARES Act

• Signed into law on March 27th in response to COVID-19 pandemic

• Contained a number of provisions assisting taxpayers and state and local governments
  • PPP, EIP, grants, tax changes
CARES Act: Impact on Nebraska

• Nebraska has received billions in federal funds to assist with the pandemic
  • PPP: $3.4 billion in funds to Nebraska businesses
  • EIP: $1.6 billion to Nebraska residents
  • Over $1 billion in grants to help cities, counties, and businesses in need, including approx. $400M for agriculture and other business relief ($230M for small business stabilization)

• Federal tax cuts for certain taxpayers
Federal Tax Cuts ➔ Nebraska Tax Cuts

• Nebraska is a “rolling conformity” state

• Legislature delegates tax writing to Congress and has to affirmatively opt out

• DOR estimates that conformity to CARES Act provisions will cost Nebraska $250 million of tax revenue over the next three years
Nebraska and Conformity

- The big question: Should Nebraska give $250 million of income tax cuts in the midst of the pandemic?
Nebraska and Conformity

- The big question: Should Nebraska give $250 million of income tax cuts?
- All of those who get cuts will directly benefit and many of them will need assistance.
Nebraska and Conformity

• The big question: Should Nebraska give $250 million of income tax cuts?
  • What gets cut or whose taxes get raised?
  • Why would we do that?
    • If stimulus, is this the best way?
Major Tax Provisions in CARES Act

• Individual Income Tax:
  • ATL charitable deduction, increased deduction allowance
  • Temporary exclusion for certain student loan payments by employers
  • Special rules for retirement fund distributions / loans
  • Temporary waiver of RMD rules
  • Modified NOL rules
  • Expanded Excess Business Loss provision
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<th>Provisions</th>
<th>Estimated Revenue Change</th>
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<td>Charitable Contribution Changes</td>
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Excess Business Losses

• TCJA added limitation on “excess business losses”
  • No more than $500,000 (inflation adjusted) of losses from pass though businesses can be used to offset other income in any year
  • Needless to say, need to be at a very high income level to be impacted by this
Excess Business Losses

- CARES Act suspends that rule retroactively to 2018
  - For example, a taxpayer who generated a profit this year, but who had large losses in 2018 or 2019 would get to apply this provision and obtain a refund of taxes paid in earlier years.
Excess Business Losses

• CARES Act suspends that rule retroactively to 2018
  • For example, a taxpayer who generated a profit this year, but who had large losses in 2018 or 2019 would get to apply this provision and obtain a refund of taxes paid in earlier years.
  • That applies regardless of their 2020 income / losses or, obviously, what other aid they got under the CARES Act
Major Tax Provisions in CARES Act

- Corporate Income Tax:
  - Refundable employee retention credit
  - PPP Loan Forgiveness
  - Modified NOL Rules
  - Increased charitable deductions
  - Increased business interest limit
  - Retroactively expanded full expensing
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Other States

• Few states are in session right now

* Information from NCSL
Other States

- Few states are in session right now
- Of those, only DE, NY, and RI are rolling states
  - NY decoupled
  - RI losses estimated at $17.5M over two years

* Information from NCSL
**Other States**

- Few states are in session right now
- Colorado (rolling state) passed a decoupling bill last month

*Information from NCSL*
Other States

- Of the **static** states, unaware of any that have updated and conformed
  - But GA and NC have updated their dates and decoupled

* Information from NCSL
Recommendation

• Decouple from the changes to maintain status quo

• Consider whether individual changes make sense for Nebraska on our own schedule and with greater knowledge of need.
What about need?

• Impacted taxpayers will still get the much larger federal tax benefits

• The CARES Act provided billions of dollars of federal aid to Nebraska businesses and individuals who were impacted by the pandemic

• Non-targeted tax cuts have to be funded from some pool of resources
Questions?