

Many Alabama families and businesses that received federal coronavirus relief funds will be taxed by the state if legislative action isn't taken.

Several lawmakers told Alabama Daily News the Legislature has every intention of un-taxing the relief funds, including stimulus checks of up to \$1,200 per person and forgiven Paycheck Protection Program loans to businesses, but state statutes must be tweaked to match federal law. Now, with the Legislature not scheduled to meet again until February, it's a matter of exactly how and when to do that.

"No one intends to tax that money," said Sen. Dan Roberts, R-Mountain Brook. "The intention of these dollars is to stimulate the economy and help people make it through this epidemic. But legislation needs to be passed, so that's what we're doing."

Late in the 2020 legislative session, Roberts and others proposed clarifying in state law that the stimulus money and loan forgiveness are not taxable. His substituted Senate Bill 250 cleared committee but died when the House, in the coronavirus-shortened session, wanted to focus solely on state budget bills and local legislation.

Roberts is now working on new legislation that combines the tax exemptions with his previously filed SB250 to reduce Alabama's corporate income tax rate and eliminate the federal income tax deduction for businesses. He says it is logical to combine the two tax-related items into one bill.

The new legislation will likely be done within the week and ready to go, should Gov. Kay Ivey call a special session this year. If she doesn't, the bill will be pre-filed for the 2021 regular session that starts on February 2.

Some lawmakers said this issue should have already been resolved.

"There was the ability to fix this last session," Sen. Chris Elliott, R-Fairhope, said. He had a standalone bill addressing the stimulus tax issue in May.

"That is my frustration, something so basic that needed to happen wasn't allowed to be considered in the last session," he said.

Elliott said that while he's supportive of Roberts' bill, he will likely file his own legislation that only addresses the untaxing of coronavirus relief funds.

"If Sen. Roberts' bill passes, with the language I've put forth, I'm completely fine with it," Elliott said.

Rep. Arnold Mooney, R-Birmingham, also filed in May a two-page bill excluding relief funds from state taxes. If it's not taxed federally, it shouldn't be taxed at the state level, Mooney said. Though he's supportive of the work being done on the corporate tax reform legislation, Mooney said he plans to file his bill again in the next session.

“We thought it was something that needed to be done to tell the people of Alabama that it’s not our intent to tax this money,” Mooney said. “I like the idea of expressing that in a straight up and straightforward way.”

People who have lost jobs because of the pandemic should not have to worry about taxes on their stimulus money, Mooney said. He plans to file his bill again when the Legislature meets.

“People don’t need any more stress than they already have,” he said.

If lawmakers don’t act, some, but not all, Alabamians would be taxed on the stimulus checks, according to the Alabama Department of Revenue.

“Stimulus payments could potentially affect the calculation of Alabama taxable income because they could change the federal tax deduction,” an ADOR spokesman told Alabama Daily News in an email. “Depending on income level and deductions, some taxpayers may not see an actual change in Alabama taxable income, but others will. Each family’s tax situation is different, depending on the type of income and the various credits available.”

State legislation was needed when President Barack Obama’s administration sent stimulus checks to Americans in 2009.

A similar situation exists for thousands of businesses that received the Paycheck Protection Program loans. If employers meet the terms set by the Small Business Administration and the U.S. Department of Treasury, those loans will be forgiven.

“If that loan is forgiven, it’s revenue and if it’s revenue, it’s currently taxable,” Elliott said.

According to ADOR, under the federal CARES Act, any amount of a PPP loan that is eligible for debt forgiveness is not subject to federal income tax. But state legislation is needed to ensure that the entire amount of the PPP debt forgiveness would be excluded from Alabama income tax.

Separately, in July, Ivey announced a \$100 million Revive Alabama grant program to support small businesses in Alabama that have been impacted by COVID-19.

According to ADOR, those grant funds will be included as in gross income for state business taxes. However, the businesses will be entitled to deductions for the ordinary and necessary business expenses paid, such as mortgage interest, rent, payroll, and utilities, which will offset much of the impact.

Asked about the possible tax liability for Alabamians and what needed to be done to eliminate it, a spokeswoman for Ivey said the governor is aware of the situation.

“The governor is working to ensure that any of the relief money – whether in the form of a grant, loan or reimbursement – is providing the people of Alabama the much-needed assistance during these challenging times,” Gina Maiola said.

Meanwhile, many Alabamians likely assume their relief money is tax-free.

“That’s going to be a surprise to a lot of people,” said Bruce Ely, long-time partner at the Birmingham-based Bradley Arant law firm, who specializes in tax law. “I would bet that very few Alabama businesses know about this gotcha.”

Ely was a technical adviser to the Legislature’s recent task force on tax cuts, chaired by Roberts and Rep. Danny Garrett, R-Trussville. He’s also assisted Roberts with his bill. He said most state leaders agree that a fix is needed, it’s just a matter of when. Ely is still hopeful for a special session.

In the meantime, Ely said, those who pay their estimated income taxes quarterly should in theory be paying tax on the COVID-19 relief money.

“I guarantee you, most Alabamians have no idea these federal tax rebates or the PPP loan forgiveness are currently taxable,” he said.

Senate Minority Leader Bobby Singleton, D-Greensboro, said he needs to study the issue more, but thinks he’ll support legislation not to tax the relief money. He said many businesses are still trying to get back to pre-COVID operating levels.

“I am in favor of being able to help those businesses on the state side,” Singleton said.

“There are businesses that are struggling mightily.”

Alabama isn’t unique in needing legislation to align federal and state tax codes. Several other states have already approved bills, according to the nonprofit Tax Foundation. Virginia earlier this month introduced legislation to halt state taxes on forgiven PPP loans.

Rosemary Elebash, Alabama director of the National Federation of Independent Businesses, said her organization is aware of the need for legislation to fix the tax issue.

“But at this point, there are so many other issues to deal with, that one has not risen to the top,” Elebash said.

More immediate concerns, she said, include whether there will be a second round of PPP and whether it will be geared more to small businesses. Getting employees back to work and painting staff work places. School and child care for their children is also an issue right now for business owners, Elebash said.

Elebash said she understands the bill will be re-introduced in the 2021 session and made retroactive.

The Business Council of Alabama, which lobbies the Legislature for business-friendly policies, is also closely monitoring the situation.

“The business community looks forward to working alongside elected officials to ensure that the Alabamians who received CARES Act funding will not have to pay state income tax on the funds received,” said CEO Katie Boyd Britt. “The intended purpose of the CARES Act dollars was to keep businesses’ doors open and assist individuals with essential needs during these tough, tumultuous times, and it’s vital that we make sure it remains that way.”