

Key Tax Provisions Affecting Businesses Contained in the CARES Act

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The economic aid and recovery bill that has been the subject of heated debate within Congress and much coverage in the news media was signed into law by President Trump on March 27, 2020. The new law, known as the “Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act,” contains several important provisions affecting federal tax laws. A summary of the key tax provisions applicable to businesses follows:

- **Payroll Tax Credit for Employers.** The Act provides a refundable payroll tax credit for 50% of “qualified wages” paid by employers to employees after March 12, 2020 and before January 1, 2021, up to a maximum of \$10,000 of “qualified wages” for any employee. The credit is available to employers (1) whose operations were fully or partially suspended during any quarter due to a governmental order related to the coronavirus disease, or (2) whose gross receipts during a calendar quarter within the relevant period declined by more than 50% when compared to the same quarter in the prior year. The relevant period for this purpose is the period beginning with the first calendar quarter after December 31, 2019 in which the employer’s gross receipts declined by more than 50% and ending with the first calendar quarter after a quarter in which the employer’s gross receipts are greater than 80% of the gross receipts for the same quarter in the prior year. For employers whose average number of full-time employees during 2019 was greater than 100, “qualified wages” are wages paid to employees when they are not providing services due to circumstances described in (1) or (2) above. For eligible employers whose average number of full-time employees during 2019 was not greater than 100, all employee wages (up to the permitted maximum per employee) paid during the period described in (1) above or paid by an employer with respect to a quarter described in (2) above are “qualified wages,” whether the employer is open for business or closed as a result of a governmental order related to the coronavirus disease. Qualified wages include qualified health plan expenses that are properly allocable to such qualified wages. For purposes of this credit, certain persons will be aggregated and treated as a single employer. The credit generally will offset an eligible employer’s tax liability for old age, survivors, and disability insurance (OASDI), which is imposed on employers at a 6.2% rate, but if the credit exceeds the employer’s liability for such taxes, the excess will be paid to the employer.
- **Payroll Tax Deferral Period.** The Act provides a deferral of an employer’s payment obligation for its share of the OASDI tax for the period beginning on the date the Act was enacted (March 27, 2020) and ending before January 1, 2021. Similar relief is provided to self-employed individuals. The deferred taxes must be paid 50% by December 31, 2021 and the remainder by December 31, 2022. This deferral does not apply to employers who have had indebtedness forgiven under certain other provisions of the Act.
- **Net Operating Losses.** Net operating losses (NOLs) are currently subject to a taxable income limitation (only 80% of taxable income can be offset by NOLs) and cannot be carried back to reduce taxable income in prior taxable years. The Act will permit a corporation’s NOLs to fully reduce taxable income for taxable years beginning before January 1, 2021 and will permit a five-year carryback of NOLs from taxable years beginning after December 31, 2017 and before January 1, 2021. However, income includible under section 965 (the deemed repatriation provision for certain foreign income that was enacted in 2017) generally may not be offset by NOLs that are carried back. These changes should allow corporations to more easily utilize losses and amend prior year returns to obtain additional liquidity during the coronavirus crisis.

- **Excess Business Losses.** The Act will also provide relief to sole proprietorships and owners of pass-through entities by permitting excess business losses to be deductible for taxable years beginning before January 1, 2021, as opposed to the current law limitation on such losses in excess of \$250,000 for a single taxpayer and \$500,000 for a married couple filing jointly. These changes should allow sole proprietorships and owners of pass-through entities to more easily utilize losses and amend prior year returns to obtain additional liquidity during the coronavirus crisis.
- **Business Interest Expense Deductions.** For taxable years beginning in 2019 and 2020, the Act will generally increase the amount of business interest expense that taxpayers are allowed to deduct on their federal income tax returns by increasing the limitation on business interest expense deductions from 30% to 50% of adjusted taxable income. Taxpayers are permitted to elect out of this increased limitation and might consider doing so in cases where the carryover of the excess business interest expense to the succeeding taxable year might be more valuable than increasing an NOL carryover that will be usable under the Act in 2021 and later years only to the extent of 80% of the taxpayer's taxable income. In addition, the Act provides that for purposes of the above limitations, a taxpayer is permitted to substitute its 2019 adjusted taxable income for such amount in 2020, thus increasing the available deduction for the 2020 taxable year in circumstances where a taxpayer expects to be less profitable in 2020 than in 2019. In the case of partnerships, the new limitation applies only to taxable years beginning in 2020 (not for 2019), but partners may treat 50% of the excess business interest from taxable years beginning in 2019 as if it were paid or accrued in the partner's 2020 taxable year and as not subject to the limitation in 2020.
- **Immediate Expensing of Certain Costs.** The Act contains a retroactive technical correction to the 2017 Tax Act to correct an error that prevented businesses, particularly those in the hospitality industry, from immediately writing off the cost of certain improvements to qualified improvement property and instead required those costs to be depreciated over 39 years.
- **Acceleration of Credit for Corporate AMT Liabilities.** For taxable years beginning after December 31, 2017, the 2017 Tax Act repealed the alternative minimum tax ("AMT") to which corporations had been subject. Corporations could, however, continue to claim a minimum tax credit for the AMT taxes they had previously paid and carry forward that credit, subject to certain limitations, to offset the corporation's regular tax liability for any taxable year. The Act eliminates those limitations, thereby allowing corporations to claim additional refunds for their unused minimum tax credits for their first taxable year that began in 2018. A corporation that elects the application of this special relief provision must submit an application for a tentative refund prior to December 31, 2020. The Act provides that such application will be reviewed, a determination will be made with respect to the application, and a credit will be applied or a refund made to the corporation within 90 days from the date the application is filed.
- **Corporate Charitable Contributions.** To encourage charitable donations, the Act will increase the current 10% taxable income limitation on charitable contribution deductions by corporations to 25% of taxable income for cash contributions made during 2020.

Note that tax laws are complex and the above descriptions are general in nature. Each taxpayer's particular circumstances vary, which may impact the application of the tax laws, including those discussed above, to a particular taxpayer. You should consult with, and rely on, a tax attorney regarding the application of the above laws to your particular circumstances.

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