

CARES Act Provides Critical Tax Relief

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Congress passed, and President Trump signed into law on Friday, March 27, the [Coronavirus Aid, Relief, and Economic Security Act](#) (CARES Act). The act includes a significant number of tax provisions that apply to both businesses and individuals. Our Stinson tax team is working to keep you up to date on the act's tax provisions, some of which are described below.

PROVISIONS APPLYING TO BUSINESSES

The CARES Act includes several tax provisions that are intended to help businesses that are adversely impacted by the COVID-19 financial crisis, as well as a smattering of other business tax provisions. The following is a summary of the major business tax provisions of the CARES Act.

Employer Payroll Tax and Self-Employment Tax Delay

The CARES Act allows employers (and self-employed individuals) to defer paying their portion of the social security payroll tax (6.2 percent) otherwise due in 2020 for payments due after the date of enactment. The deferred amounts will ultimately have to be paid over to Treasury in two installments – 50 percent of the deferred payroll taxes will be due December 31, 2021, with the remaining 50 percent due December 31, 2022. However, certain employers who receive Small Business Act loans (which are used to fund payroll costs) that are forgiven under the CARES Act are not eligible for this payroll tax deferral.

Employee Retention Payroll Tax Credit

In an effort to induce companies to maintain employment levels, the CARES Act provides "eligible employers" with a refundable credit against applicable employment taxes for each calendar quarter in an amount equal to 50 percent of the "qualified wages" with respect to each employee of such employer for such calendar quarter. Eligible employers include employers carrying on a trade or business during the 2020 calendar year (1) whose business operations were fully or partially suspended in 2020 due to government orders associated with COVID-19 or (2) that experienced a significant decline in gross receipts (generally meaning that the gross receipts in a calendar quarter in 2020 are less than 50 percent of the gross receipts of the same calendar quarter in 2019). For purposes of the credit, the meaning of the term "qualified wages" depends on whether the employer has more than 100 full-time employees or not. For employers with more than 100 full-time employees, "qualified wages" are wages paid to employees when they are not providing services due to COVID-19 circumstances. For employers with 100 or fewer full-time employees, generally all wages qualify for the credit. The amount of the credit cannot be more than \$10,000 per employee.

Regarding the credit described above, the term "qualified wages" does not include amounts taken into account for purposes of the payroll tax credits, for required paid sick leave or required paid family leave in the Families First

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Coronavirus Act (part of P.L. 116-127), nor for wages taken into account for the Section 45S credit. For more information on the credits under the Families First Coronavirus Act, please see [our prior alert](#).

Net Operating Loss Changes

The CARES Act makes several temporary changes to the rules governing net operating losses (NOL). It allows taxpayers to carry back NOLs arising in tax years beginning after December 31, 2017 and before January 1, 2021 for five years. In addition, it allows NOLs to offset 100 percent of taxable income for tax years beginning before January 1, 2021. The CARES Act also eliminates the excess business loss limitation applicable to noncorporate taxpayers for taxable years beginning before January 1, 2021.

As a result of the 2017 Tax Cuts and Jobs Act (TCJA), which was enacted just over two years ago, taxpayers were generally no longer permitted to carry back NOLs to prior years (i.e., NOLs could only be carried forward) and, for NOLs arising in tax years beginning after December 31, 2017, the amount of NOL carryforwards that could be utilized in a given tax year was limited to 80 percent of taxable income. In addition, the TCJA added limitations on the ability of noncorporate taxpayers to offset nonbusiness income with operating losses. These changes to the rules governing NOLs were included as revenue raisers in the TCJA to help pay for the corporate rate tax reduction, but were criticized for their adverse tax impact on taxpayers that were suffering economic duress. Well, the chickens have come home to roost. In recognition of this defect and given the likelihood that many corporations could suffer NOLs as a result of COVID-19 financial crisis, Congress felt obligated to provide temporary relief.

The NOL provisions in the CARES Act will generally allow taxpayers that were recently profitable but suffer losses to carryback NOLs and obtain a tax refund (and, hence an infusion of needed cash). However, not all taxpayers are eligible to benefit from these new NOL provisions. Real estate investment trusts generally are not eligible to take advantage of the NOL carryback, and special rules apply to life insurance companies. In addition, multinational taxpayers may find their ability to benefit from the carryback to be limited. First, NOLs generally cannot be carried back to offset the "repatriation tax" imposed by Section 965 of the Code. Furthermore, multinationals with global intangible low-taxed income may also not fully benefit from any NOL carryback.

Business Interest Limitation Changes

The CARES Act also makes temporary changes to the limits on business interest deductions. First, the CARES Act increases the limit on interest deductions from 30 percent to 50 percent of adjusted taxable income (ATI) for tax years beginning in 2019 and 2020. This change should allow taxpayers to deduct more of their borrowing costs during these years. The limits on business interest deductions were enacted as part of the TCJA, which generally only allow interest to be deducted to the extent it does not exceed 30 percent of a taxpayer's "adjusted taxable income" (which is roughly comparable to EBITDA). In addition, since it is likely that many taxpayers will experience a decrease in income in 2020 due to the COVID-19 crisis, the CARES Act generally allow taxpayers an election to apply their 2019 ATI, rather than their 2020 ATI, to compute the business interest limitation in 2020. The CARES Act also contains special rules for partnerships to enable partners to deduct their allocable shares of excess business interest. The interest deduction limits were included in the TCJA as a revenue raiser, but were widely criticized for their adverse tax impact on corporations suffering economic duress and on highly leveraged corporations. Given the current economic crisis and the fact that many taxpayers will likely have drastically reduced amounts of taxable income that would otherwise result in limits on their deductions for their borrowing costs, Congress again felt obligated to take action to provide temporary relief.

Changes to Corporate Charitable Deduction Limits

The CARES Act increases the limits on corporate deductions for certain charitable donations. First for corporations that make cash contributions in 2020, the limit is increased from 10 percent of taxable income to 25 percent of

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taxable income. The CARES Act also increases the limit applicable to donations of food inventory made in 2020 from 15 percent to 25 percent of taxable income. Only cash contributions to public charities or foundations described in Section 170(b)(1)(A) are eligible for the increased limit. Those charitably inclined corporations that, notwithstanding the COVID-19 crisis, are actually profitable (i.e., have taxable income) in 2020 and have some extra cash (or food inventory) that they are willing to donate will be able to claim a greater deduction for such donations. Corporations that have more pressing business needs for their cash during 2020 will not be in a position to take advantage of this provision, which will also not provide a tax benefit to corporations that do not generate positive taxable income in 2020.

Corporate Alternative Minimum Tax Credits

The CARES Act also allow corporations to claim full refunds in 2018 and 2019 for unused alternative minimum tax (AMT) credits. The TCJA had repealed the AMT and provided that any AMT credits generated pre-TCJA could be carried forward and were refunded in 2018 through 2022. The CARES Act modifies the AMT credit so that it can be fully refundable in 2018 and 2019 instead.

"Retail Glitch" Fix

The CARES Act includes a correction of the so-called "retail glitch," which had prevented qualified improvement property (QIP) from being eligible for 100 percent bonus depreciation (and full expensing). As a result of a drafting error in the TCJA, retail businesses (including restaurants and other businesses in the hospitality industry) could not benefit from 100 percent bonus depreciation for QIP (which is generally defined as any improvement to an interior of a nonresidential building that is placed in service after the building was placed in service). The CARES Act includes QIP as "15-year property," which makes the QIP eligible for 100 percent bonus depreciation. This amendment is effective retroactively and applies to QIP placed in service after December 31, 2017. Taxpayers that placed QIP in service in 2018 may be able to seek a tax refund by filing an amended tax return.

Excise Tax Exception for Alcohol Used in Hand Sanitizers

Under the act, the federal excise tax does not apply to distilled spirits that are removed for use in or contained in hand sanitizer. The hand sanitizer must be produced and distributed in a manner that is related to the outbreak of COVID-19. The tax relief applies to distilled spirits removed after December 31, 2019 and before January 1, 2021. During the same period, certain labeling and bulk sales requirements and penalties also do not apply.

PROVISIONS APPLYING TO INDIVIDUAL TAXPAYERS

The CARES Act includes other provisions that are intended to help individuals generally, and specifically individuals that are adversely impacted by COVID-19. The following is a summary of the major individual tax provisions of the CARES Act.

Extensions for Federal Tax Filings and Payments

There is no provision in the act that addresses deadlines for filing federal tax returns or paying federal taxes. Instead, the IRS addressed those issues in Notice 2020-18 (issued on March 20, 2020) and Notice 2020-20 (issued on March 27, 2020).

Under Notice 2020-18, for any federal income tax return, or federal income tax payment, that is due on April 15, 2020, the due date is automatically extended until July 15, 2020. As indicated, the extension is automatic, so an affected taxpayer is not required to file extension forms in order to qualify for the extension. Further, there is no

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limit on the amount of a tax payment that may be postponed under Notice 2020-18. Finally, Notice 2020-18 clarifies that the payment extension applies to payments of self-employment tax, as well as estimated tax payments.

The relief under Notice 2020-18 applies only to federal income tax returns (and only to payments of federal income tax, federal self-employment tax and federal estimated tax) that are due on April 15, 2020. There is no extension under Notice 2020-18 for other types of taxes or tax returns. For example, the extension does not apply to excise taxes, federal information returns and federal income tax returns that were due on March 16, 2020 (including returns filed on Form 1065, 1065-B, Form 1066, and Form 1120-S for calendar year taxpayers).

Notice 2020-20 confirms that the extensions under Notice 2020-18 also apply to Form 709, United States Gift and Generation-Skipping Transfer Tax Return, and to federal gift tax or generation-skipping transfer tax payments, that are due on April 15, 2020. The due date for filing Form 709 and making the gift and generation-skipping transfer tax payments is automatically extended to July 15, 2020. Again, the relief is automatic; there is no requirement to apply for the extension.

Recovery Credits/Rebates

Under the CARES Act, each US resident individual with adjusted gross income (AGI) up to a \$75,000 threshold amount (\$150,000 threshold for married individuals) who has a social security number is entitled to receive a \$1,200 income tax credit for 2020 (\$2,400 if married filing jointly). In addition, each such individual is entitled to receive an additional \$500 credit per each qualifying child, if the child has a social security number. The credit will be paid immediately in the form of a rebate. An individual is entitled to receive this credit/rebate even if he or she has no income. The credit/rebate is reduced by 5 percent of the amount by which each individual's (or couple's) AGI exceeds the threshold amount. Thus, it appears that the credit/rebate will be completely phased-out for a single individual with AGI exceeding \$99,000, and for a married couple with AGI exceeding \$198,000.

In general, an individual will not be required to take any affirmative action in order to receive a rebate check. Instead, the IRS will use the individual's 2019 federal income tax return, if filed, or, if not, the individual's 2018 return, in order to determine the amount of the rebate payment (i.e., the amount of the rebate payment will be determined based on the individual's AGI for 2019, or 2018, as the case may be). If an individual has not filed a 2018 or 2019 tax return, the IRS may use information obtained from Social Security benefit statements in order to determine an individual's right to receive a rebate. Also, if—when an individual files his/her 2020 income tax return—it is determined, based on the individual's 2020 AGI, that the individual is entitled to an actual 2020 income tax credit that exceeds the amount of the rebate payment that he/she received, the individual will get the full benefit of the credit when he/she files the 2020 income tax return. On the other hand, if the individual's 2020 income tax return shows that the actual 2020 income tax credit amount is less than the amount of the previous rebate payment, the excess amount of the rebate will not be clawed back by the IRS.

New Charitable Deduction Rules

Under the act, an individual who does not itemize his/her deductions is entitled to claim an "above the line" charitable contribution deduction of up to \$300. If an individual does itemize his/her deductions, he/she may claim a charitable contribution deduction of up to 100 percent of his/her adjusted gross income. These new rules apply only to cash contributions made in 2020, and, in general, the contributions must be made to public charities (but not donor-advised funds).

Waiver of Certain Required Minimum Distributions from Qualified Retirement Plans

Under existing law, an individual is required to take required minimum distributions from certain qualified retirement plans starting at age 72 (or starting at age 70.5, if the individual reached that age prior to January 1,

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2020), or, if later, the year of retirement. The act waives this requirement for 2020 for certain defined contribution plans and IRAs.

Waiver of Early Withdrawal Penalty (and Deferral of Taxation) for Certain Qualified Retirement Plan Distributions

The act waives the 10 percent penalty that would otherwise apply to certain early withdrawals from a qualified retirement account. The waiver applies to distributions for coronavirus-related purposes (up to \$100,000). Further, a qualifying distribution is taxed over three years, rather than entirely in the year of the distribution. Also, a taxpayer may avoid tax on the distribution if he/she repays the distribution within the three-year period beginning on the date of the distribution. In general, a distribution is "coronavirus-related" if made to an individual (1) who is diagnosed with COVID-19 with a test approved by the CDC, (2) whose spouse or dependent is diagnosed with COVID-19, or (3) who experiences adverse financial consequences as a result of being quarantined, furloughed or laid off, having work hours reduced, or being unable to work due to a lack of child care due to COVID-19. This applies to distributions received in 2020.

Increased Limit on Loans from Qualified Plans

A participant in a qualified retirement plan who is eligible to receive a penalty-free early withdrawal under the preceding paragraph (i.e., meets the "coronavirus-related" test) also qualifies for additional plan loan relief under the act. The act increases the maximum plan loan amount from qualified retirement accounts from \$50,000 to \$100,000 for a period of 180 days after the enactment of act. The act also increases the percentage test limit for plan loans from 50 percent of the value of the participant's benefit, to 100 percent of the value of the participant's entire benefit under the qualified plan. Additionally, plan loan payments may be extended for one year, if the payment due date is after the act's enactment date, but before the end of 2020. Subsequent loan repayments, as well as interest which accrues during the plan loan extension, must be readjusted to reflect the extension in the plan loan's due date. The five-year limit for plan loan repayment is to be applied disregarding some or all of the period of delay, but further clarification is needed.

Student Loan Repayment Benefits for Employers/Employees

Under the act, an employer may make a tax-free student loan repayment (up to \$5,250) for the benefit of an employee. In order to qualify, the repayment must be made in 2020. The \$5,250 limit applies to both the student loan repayment as well as other educational assistance provided under Section 127 of the Internal Revenue Code. (Under existing Section 127, an employer may provide certain tax-free educational assistance benefits to an employee.)

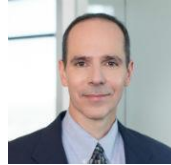
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CONTACT US

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