

SIGNIFICANT TAX PROVISIONS OF CARES ACT

April 1, 2020

On March 27, President Trump signed into law the Coronavirus Aid, Relief, and Emergency Security Act (the “CARES Act”). The key non-tax provisions and certain tax provisions of this Act have been summarized in our earlier Client Alert dated March 26, 2020 - Coronavirus Alert Update: The CARES Act – What You Need to Know (available [here](#)). This Client Alert summarizes the key tax provisions of the CARES Act.

Employer Retention Credit. If an employer is an eligible employer for any calendar quarter, the employer may be able to claim a refundable payroll tax credit for the quarter equal to 50 percent of the qualified wages paid to employees during that quarter. (The first \$10,000 of wages paid to an employee, inclusive of certain health insurance costs, will be deemed qualified wages; amounts paid to an employee under the Families First Coronavirus Response Act for sick leave or family medical leave, already subject to certain tax credits will not be deemed qualified wages.) An employer will be considered an eligible employer for any calendar quarter during which, either, its business was fully or partially suspended pursuant to a coronavirus-related governmental shutdown order, or during a calendar quarter that was within the “significant decline in revenue period” (the period starting with the first calendar quarter for which the employer’s receipts were less than 50 percent of its receipts for the corresponding calendar quarter of 2019 and ending with the first calendar quarter following a calendar quarter for which its receipts are greater than 80 percent of its receipts for the corresponding calendar quarter of 2019). In the case of an employer whose average number of employees during 2020 exceeded 100, only wages paid to employees who are not providing services due to the shutdown or decline will count as qualified wages. The IRS recently issued a draft Form 7200 (Advance Payment of Employer Credit Due to COVID-19). This draft can be found at www.irs.gov/DraftForms. This credit is not available to employers who take covered loans provided pursuant to the CARES Act.

Recovery Rebates. The CARES Act provides rebate checks (technically, payments of refundable credits) for eligible individuals (i.e., individuals who are U.S. citizens or permanent residents and who cannot be claimed as dependents on another individual’s tax return). The amount of the rebate is \$1200 (\$2400 in the case of individuals filing a joint return) plus \$500 for each qualified child under the age of 17. The amount of the rebate is reduced by five percent of an individual’s adjusted gross income in excess of \$75,000 (\$150,000 in the case of a joint return

and \$112,500 in the case of a head of household). The amount of the rebate will be based on 2019 tax returns (2018 if a 2019 tax return has not been filed). The taxpayer will not be required to take any action to receive the rebate. Rebates will be issued automatically. They will be directly deposited if direct deposit information was provided to the IRS on a 2018 or 2019 return. The timing of these payments presently is unclear. However, the Department of the Treasury has announced that it will be creating a website that will enable taxpayers who have not provided direct deposit information to the IRS on previously filed tax returns, to provide that information through the website.

Special Rules for Use of Retirement Funds. The CARES Act provides that the 10 percent penalty for early distributions from qualified retirement plans will not apply to coronavirus-related distributions of up to \$100,000 made during 2020. Any such distributions made to an individual will be includible in his or gross income ratably over three taxable years unless he or she elects otherwise. A taxpayer may recontribute any or all of the distributed funds within three years without regard to the annual contribution caps.

The CARES Act increases the amount that may be borrowed from qualified retirement plans during the 180-day period beginning on March 27, and extends the time for repaying any loan from a qualified retirement plan that otherwise would come due between March 27 and the close of 2020.

The CARES Act also waives required minimum distribution requirements for 2020.

Charitable Contributions. For 2020, an individual who claims the standard deduction can claim up to a \$300 above-the-line deduction (i.e., a deduction in computing adjusted gross income) for cash contributions to charities other than support organizations or donor advised funds.

For 2020, the 60 percent of adjusted gross income limitation for individuals is suspended for cash contributions to charities other than support organizations and donor advised funds. The 10 percent of taxable income limitation for corporations is increased to 25 percent for cash contributions to charities other than support organizations and donor advised funds.

Exclusion for Employer Payments of Student Loans. The existing provision that excludes from an employee's gross income up to \$5250 per year of certain "educational assistance" payments he or she receives from an employer, has been modified so as to expand the definition of "educational assistance" payments to include an employer's payment of an employee's student loan.

Deferral of Payment of Employer Payroll Taxes. Certain employers will be eligible to defer the employer portion of Social Security taxes. The deferred taxes will be paid in two equal installments, on December 31, 2021 and December 31, 2022. A similar deferral is provided for 50 percent of self-employment tax. While the deferral is not available to an employer who has had a covered loan forgiven, it is not clear how this disallowance will work in the case of an employer who has deferred payment and subsequently receives loan forgiveness.

Modifications to Net Operating Losses. Net operating losses arising in 2018, 2019 or 2020 can be carried back five years, and there is no 80 percent limitation on the use of net operating

losses until taxable years beginning after December 31, 2020. Special rules are provided for REITs, insurance companies and carrybacks to years to which Section 965 applies.

Modification to Excess Business Losses. Retroactive to 2018, business losses incurred by an individual can be used to offset non-business income without limitation. Previously, this limitation prohibited business losses from offsetting non-business income in excess of \$250,000 (\$500,000 in the case of a joint return). When the limitation returns, neither Section 199A deductions nor net operating loss carryovers will be taken into account in determining business losses and performing services as an employee will not be treated as a business.

Corporate Alternative Minimum Tax Credits. C corporations with remaining alternative minimum tax credits were allowed to claim these credits over several years ending in 2021. Under the CARES Act, C corporations will be allowed to accelerate use of these tax credits immediately. Guidance is needed, however, as to how to submit these refund claims, but such claims will have to be submitted by December 31, 2020.

Modification of Limitation on Business Interest. Taxpayers may elect to determine their 2020 business interest expense limitation based on their 2019 adjusted taxable income. Also, the applicable limitation is increased from 30 percent of adjusted taxable income to 50 percent. For 2019, this increase will not apply to partnerships. Instead, partners with excess business expense allocated to them from partnerships in 2019, would have the option to treat 50 percent of this excess business interest allocation as paid at the partner level in 2020.

Qualified Improvement Property. The CARES Act makes a technical correction of an error in the Tax Cuts and Jobs Act that required qualified improvement property to be 39-year property, thereby denying bonus depreciation to certain categories of assets that Congress had intended to benefit. This error has been corrected retroactively to January 1, 2018. As a result of this correction, property having a recovery period of 15 years or more will be treated as qualified improvement property.

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If you have any questions regarding tax provisions of the CARES Act, please contact [Barry Klingman](mailto:BarryKlingman) at (212) 873-1978 or baklingman@wbny.com.

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