

## **TAX STIMULUS PROVISIONS OF THE CARES ACT**

**Executive Summary:** In addition to the PPP loan program, the CARES Act has implemented various tax stimulus provisions for individuals and businesses, including retroactive temporary deferral, or modification of certain loss deduction limitations added by the Tax Cuts and Jobs Act. Taxpayers considering application for a PPP loan should understand that obtaining a PPP Loan, or forgiveness of the loan, will limit the availability of some of the business tax stimulus provisions.

### **Individual Tax Stimulus Provisions.**

1. **Recovery Rebates.** The CARES Act provides for recovery rebates of up to \$1,200 (\$2,400 for joint filers) for US taxpayers. The process for paying the rebates is an advance refundable tax credit. Amounts are increased by \$500 for each child; and amounts are phased out for taxpayers making \$75,000 (\$150,000 for joint filers, and \$112,500 for heads of household). The phaseout occurs at the rate of \$5 for every \$100 in income above the applicable threshold. Thus, the payment is fully phased out for individuals making \$99,000. For married couples the payment is fully phased out at combined income of \$198,000. No income is necessary to qualify, and no action is generally required to claim the rebates. The IRS will use the taxpayer's 2019 tax return, if filed, or in the alternative, their 2018 return. If no 2018 return then the IRS will use the individual's Social Security Benefit Statement. Individuals who can be claimed as a dependent by another individual do not qualify for a recovery rebate.
  
2. **Waiver of 10% Tax on Premature Plan Distributions.** The CARES Act waives the 10% additional tax for premature Plan distributions related to the coronavirus for amounts not to exceed \$100,000 from all plans of the controlled group, subject to the following rules:
  - The penalty free distribution provision covers retirement plans and IRAs; Amounts distributed may be repaid at any time over the three-year period commencing on the date the distribution was received (and there is no requirement that the repayment occur in one payment). Amounts can be paid to a qualified plan or an IRA so long as the account is one to which a rollover contribution could be made under the Code.
  - The distribution provision applies to individuals who have been diagnosed with SARS-CoV-2 or COVID-19 by a test approved by the Centers for Disease Control (CDC), their spouse or dependent who has been diagnosed by such a test, or a person who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, or suffered reduced working hours, or who is unable to work due to lack of child care.
  - A plan may rely on a certification provided by the participant.
  - To the extent that the amounts are not repaid, the income inclusion with respect to any coronavirus distribution can be included ratably over the three taxable

years beginning with the taxable year in which the distribution was received; and distributions will be deemed to meet the permissible distribution requirements of section 401(k), which essentially means that they will satisfy the hardship distribution provisions of the code. Such distributions will be treated as exempt from tax withholding and exempt from the trustee to trustee transfer rules (that require a plan to offer a trustee to trustee transfer to participants taking distributions).

3. Qualified Plan Loans. The dollar amount available for loans from qualified plans is increased from \$50,000 to \$100,000 and increases the percentage test limit for loans from half the present value of the participant's benefit to the present value of his entire benefit under the plan. Also, if the loan repayment is due between the date of the CARES Act's enactment and before the end of the year, the repayment is permitted to be delayed for one year from the original due date. Subsequent loan repayments must be adjusted to reflect the delay in the 2020 repayment and any interest accruing during that delay. The five-year limit on loan repayments in section 72(p) disregards the one-year delay for 2020. The individuals to whom this provision applies are the same as those covered by the provision permitting penalty-free distributions.
4. Delay in RMD's. The CARES Act adds a provision permitting a one-year delay in required minimum distributions (RMDs) for defined contribution plans described in Code section 401(a), as well as for defined contribution plans described in section 403(a) and (b), IRAs, and section 457 plans. The change does not appear to apply to defined benefit plans. The delay applies to both 2019 RMDs that needed to be taken by April 1, 2020 and 2020 RMDs. The CARES Act also adds a special rollover rule which is similar to the one enacted in 2009, allowing amounts subject to the RMD rules in 2020 to be rolled over.
5. Delayed Due Dates for Plan Amendments. The CARES Act delays the due date for amendments to plans, so long as the plan is operated as if the amendment is in effect and any subsequent writing is retroactive. Amendments required because of the Act need only be made by the last day of the plan year beginning on or after January 1, 2022; and in the case of governmental plans, that date is the last day of the plan year beginning on or after January 1, 2024. The Secretary of the Treasury can delay these dates. The Act makes clear that the retroactive amendment will not violate the cutback provisions of Employee Retirement Income Security Act of 1974 (ERISA) or the Code.
6. Delayed Qualified Plan Minimum Funding Contributions. The CARES Act also delays minimum funding contributions for qualified plans, including quarterly contributions until January 1, 2021. The amount of each such minimum required contribution shall be increased by interest accruing for the period between the original due date and the payment date, at the effective rate of interest for the plan for the plan year in which the payment is made. The amendments made by to the retirement provisions apply for calendar years beginning after December 31, 2019,

allowing participants who have already taken plan distributions the benefit of these provisions.

7. Individual Charitable Contributions. The CARES Act allows above-the-line charitable deductions of up to \$300 of cash contributions for taxpayers who do not elect to itemize deductions. The CARES Act also temporarily suspends the 50% of AGI charitable deduction limitation for individuals, with the result that up to 100% of AGI may be claimed as a deduction. These enhanced contribution rules apply to “qualified contributions” which are cash contributions during 2020 to an organization described in §170(b)(1)(A).
8. Treatment of Student Loans. The CARES Act suspends student loan payments of principal and interest through September 30, 2020 without penalty or interest accrual. Also, employers may provide a tax-free student loan repayment benefit through a contribution of up to \$5,250 annually toward the employee’s student’s student loans as well as other educational benefits, such as tuition, fees and books.
9. Extension of Filing Requirements. While not part of CARES, the IRS issued Notice 2020-18 extending tax filing and payment due dates from April 15, 2020 to July 15, 2020. Pursuant to IRS FAQs the due date for IRA contributions and plan contributions is also extended to July 15, under its authority in Code section 7805A. Notice 2020-20 has also extended the due date of Federal gift and GST tax returns due April 15, 2020 to July 15, 2020.

### **Business Tax Stimulus Provisions.**

1. Employee Retention Credit. The CARES Act provides eligible employers, including tax-exempt organizations but not governmental entities, a refundable credit against payroll tax (Social Security and Railroad Retirement) liability equal to 50% of the first \$10,000 in wages per employee (including value of health plan benefits). Eligible employers must have carried on a trade or business during 2020 and satisfy one of two tests:
  - Have business operations fully or partially suspended operations due to orders from a governmental entity limiting commerce, travel, or group meetings; or
  - Experience a year-over-year (comparing calendar quarters) reduction in gross receipts of at least 50% until gross receipts exceed 80% year-over-year.
  - For employers with more than 100 full-time employees, only employees who are currently not providing services for the employer due to COVID-19 causes are eligible for the credit. The employee retention credit is effective for wages paid after March 12, 2020, and before January 1, 2021.
  - The IRS website contains a detailed FAQ titled Employee Retention Credit under the CARES Act available at <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>.

[Note: Eligible employers who receive a PPP loan under Act § 1102 are not eligible for this credit].

2. Delay of Employer Payroll Tax Payments. The due date for depositing employer payroll taxes and 50% of self-employment taxes related to Social Security and Railroad Retirement and attributable to wages paid during 2020 is deferred. The deferred amounts would be payable over the next two years, with half due December 31, 2021, and half due December 31, 2022. The employer apparently doesn't have to be impacted by COVID-19 causes to any particular extent in order to qualify for this deferral of payroll tax payments.

[Note: These rules don't apply to any taxpayer which has had indebtedness forgiven under Act § 1106 with regard to a covered loan under § 1102, or indebtedness forgiven under Act § 1109.]

3. Temporary Repeal of Taxable Income Limitation for NOLS. The TCJA's 80% of taxable income limit on NOL deductions is suspended for three years, so that the limit would not apply to tax years beginning in 2018, 2019 and 2020.
4. Modification of NOL Carryback Rules. NOLs arising in 2018, 2019, and 2020 are permitted to be carried back five years. [Query whether taxpayers will be allowed an extension of time to file amended returns, particularly for 2018].
5. Suspension of Excess Business Loss and Excess Farm Loss Limitations. The CARES Act also suspends the §461(l) limitations on excess farm losses, and on excess business losses of passthroughs, and excess farm losses, for three years. Thus, the limits would not apply to tax years beginning in 2018, 2019, and 2020.

[Note: Like the NOL carryback provisions, this will, of course, result in many taxpayers filing amended returns for 2018, and possibly 2019.]

6. Accelerated Utilization of Corporate AMT Credits. The corporate AMT was repealed as part of the TCJA, but corporate AMT credits are allowed as refundable credits until 2021. The CARES Act accelerates the ability for companies to recover those AMT credits.
7. Limitation on Business Interest Expense. Under the TCJA, §163(j) limits the deduction of business interest to 30% of adjusted taxable income (ATI). The CARES Act increases the 30% of ATI threshold to 50% of ATI, for tax years beginning in 2019 and 2020.
  - Subject to adjustments for a short tax year, a taxpayer may elect to use the 2019 tax year ATI for the 2020 tax year. [NOTE: Assuming that 2019 ATI exceeds 2020 ATI this can provide greater benefits to the taxpayer for 2020].
  - In the case of partnerships, the threshold increase does not apply to a partner for 2019 absent an election to not have this partnership exception apply. Instead, 50% of the partner's 2019 excess business interest is treated as business

interest of the partner for 2020, which is not subject to the business interest limitations and 50% of such excess business interest shall be subject to the same limitations of 4(B)(ii) as any other excess business interest allocated to such partner.

- For the 2020 taxable year, a taxpayer may elect to use its 2019 ATI for purposes of determining its 2020 limitation, subject to short taxable year adjustments.
8. Business Charitable Contributions. The charitable contribution deduction limit for corporations is raised from 10% of taxable income to 25% of taxable income for contributions in 2020 of cash to an organization described in IRC §170(b)(1)(A). Also, the 15% limitation on contributions of food inventory is increased to 25%.
  9. Retail Glitch Correction. The CARES Act finally provides a fix for the “retail glitch” in the TCJA which mistakenly denied restaurants and retailers to a bonus depreciation deduction for their remodel costs in a taxable year. This retroactive technical correction makes Qualified Improvement Property eligible for the TCJA 100% bonus depreciation rules. However, procedural guidance is needed as to how taxpayers may take advantage of this retroactive relief, including those with electing real property businesses who elected full expensing of interest under § 163(j) in lieu of bonus depreciation.

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