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\$2 TRILLION CARES ACT SIGNED INTO LAW MARCH 2020

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On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief and Economic Security (CARES) Act (the Act), a \$2 trillion relief package which provides economic relief to taxpayers affected by COVID-19. The CARES Act is the third piece of legislation in a series of federal government aid related to COVID-19 and includes many tax and benefits-related provisions that are meant to provide economic relief to individuals and businesses. Notably, the Act modifies certain tax provisions that were enacted in the 2017 tax reform legislation known as the Tax Cuts and Jobs Act (the TCJA). Below is a summary of the significant tax and employee benefits provisions in the new legislation.

Individual Provisions

Expanded eligibility for unemployment benefits.

The law temporarily increases the amount of unemployment benefits by \$600 per week and also expands eligibility for unemployment benefits, and it provides relief for workers who are self-employed.

Refundable credit for individuals.

The Act provides that eligible individuals with incomes of up to \$75,000 (\$150,000 for a joint return) will receive checks from the United States Treasury in the form of a refundable credit of \$1,200 (\$2,400 for a joint return), plus \$500 per each qualifying child (under age 17 and lives with the eligible individual for at least half of the year) in a family. The amount of the payment phases down with higher incomes, and phases out completely at individual income levels of \$99,000 (\$198,000 for a joint return). The refund is determined based on the taxpayer's 2020 income tax return but is advanced to taxpayers based on their 2018 or 2019 tax return. If an eligible individual's 2020 income is higher than the 2018 or 2019 income used to determine the credit payment, the eligible individual will not be required to pay back any excess rebate. If your payment is based on your 2018 income and your 2019 income is higher, there is also no repayment obligation. However, if the eligible individual's 2020 income is lower than the 2018 or 2019 income used to determine the rebate payment such that the individual should have received a larger rebate, the eligible individual will be able to claim an additional credit generally equal to the difference of what was refunded and any additional eligible amount when they file their 2020 income tax return. Individuals who have not filed a tax return in 2018 or 2019 may still receive an automatic advance based on their social security benefit benefits.

Retirement plan distributions.



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Under the Act, no penalty is imposed on withdrawals of up to \$100,000 made in 2020 from qualified retirement plan accounts by individuals who face Covid-19-related hardships. Qualifying hardships include being diagnosed with COVID-19 by a CDC-approved test, having a spouse or dependent who is diagnosed with COVID-19 by a CDC-approved test, and adverse financial consequences from quarantine, furlough, lack of child care or loss of working or business hours. Any amount distributed will be included in taxable income ratably over a three-year period beginning with the year in which the funds are distributed. Taxpayers may (but are not obligated to) repay such withdrawn amounts during the same three-year period without regard for contribution limits. Any repayment of distributions during the next three years will be treated as tax-free rollovers of the distribution.

Increased Qualified Plan Loan Amounts and Delayed Repayment.

For retirement plan loans to qualified individuals made between March 27, 2020 and September 23, 2020, the Act increases the maximum loan amount to the greater of \$100,000 (previously \$50,000) or 100% (previously 50%) of a qualified individual's vested benefit.

The CARES Act also delays the due date for loan repayments for qualified individuals that are due between March 27, 2020 and December 31, 2020 for 1 year, and extends the maximum 5-year repayment period accordingly. This means that qualified individuals do not need to make any repayments on current plan loans until January 2021, at which time such plan loans will be reamortized for an additional year of payments.

Temporary waiver of required distributions from certain retirement plans.

Individuals do not have to take their 2020 required minimum distributions from their retirement funds.

Expanded charitable deductions.

For taxable years beginning in 2020, the Act permits eligible individual taxpayers who do not itemize deductions to take an above-the-line deduction of up to \$300 for qualified charitable contributions made during such taxable year, except for contributions to a non-operating private foundation or to a donor advised fund. A qualified charitable contribution is a charitable contribution (i) made in cash, (ii) for which a charitable contribution deduction is otherwise allowed, and (iii) that is made to certain publicly supported charities. The Act also allows taxpayers to affirmatively elect to disregard the limitation on the deductibility of charitable contributions (which deductions are currently limited to 60% of an individual's adjusted gross income) for contributions made in cash in 2020.

Business Provisions

Delayed deposit of employment taxes.

The Act treats an employer's share of Social Security taxes (but not Medicare taxes) and 50% of the Social Security component of self-employment taxes required to be deposited from the date of enactment through a period ending on or before Jan. 1, 2021, as timely deposited if 50% of such amounts are deposited by Dec. 31, 2021, and the remainder by Dec. 31, 2022. Thus, employers and self-employed individuals can significantly delay the deposit of such taxes. Note that the Act does not provide any extensions for filing or payment of other federal taxes. However, the IRS has separately extended to July 15, 2020, federal income and gift tax filings and payments due April 15, 2020. Note that this benefit is not applicable to any eligible company or individual that has had indebtedness forgiven under Section 1106 of the Act (Payroll Protection Program or an SBA loan described in the below paragraph).

Expanded Small Business Administration ("SBA") Loans.

The Act allows certain eligible companies and individuals to obtain loans of up to \$10 million or 2.5 times the average monthly payroll costs over the last year, whichever is less, from the SBA. This streamlined application provides for loans that can be forgiven if an eligible employer maintains its workforce at certain levels. To be eligible for a covered loan, a company must have been in operation on February 15, 2020 (the start date of the "covered period," which extends through June 30, 2020), and must have or have had employees for whom the company paid salaries and payroll taxes or independent contractors to which 1099s were issued. The company must also be an "eligible small business" (including their affiliates). There are multiple ways a small business can qualify for a loan. Under the CARES Act, eligibility has also been expanded to any company with no more than 500 qualifying employees that wouldn't otherwise qualify under its primary NAICS code. Finally, a higher threshold was put in place for restaurants and hotels. For those companies only, the relevant eligibility standard is whether they have fewer than 500 employees per physical location.

In addition to permitted uses under section 7(a) of the Small Business Act, loan funds can be used to pay payroll costs, mortgage loan interest for business property, interests on any other debt obligations that were incurred before the covered period, rent for business, utilities, and health benefits costs.

The loans are non-recourse, and no collateral or personal guarantee is required. However, applicants need to submit a certification attesting to their eligibility (including their size status), specifying that the loan is necessary to support ongoing obligations and asserting that the funds will be used for permitted purposes. Any requirement that the applicant not have access to credit elsewhere is waived during the covered period.



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The maximum interest rate that may be charged is 4% and the maximum maturity will be 10 years from the date on which borrower applies. The Act also contains a loan forgiveness program which allows a certain portion of the loans equal to payroll costs, rent, and mortgage payments to be forgiven, if certain requirements are met. Dilworth Paxson has established a specialized team, TeamVentilator, responsible for assisting clients with these specific loan applications.

Employment tax credit.

The Act provides certain employers affected by the pandemic who retain their employees will receive a credit against payroll taxes for 50% of eligible employee wages paid or incurred from March 13 to December 31, 2020. For employers that make use of the delayed deposit of employment taxes discussed above, the credit can be deducted from the amount due. This employee retention credit would be provided for as much as \$10,000 of qualifying wages, including health benefits. Eligible employers may defer remitting employer payroll tax payments that remain due for 2020 (after the credits are deducted), with half being due by December 31, 2021, and the balance due by December 31, 2022.

An eligible employer is one which was carrying on a trade or business during 2020 and, with respect to any calendar quarter, either (i) the operation of such trade or business is partially or fully suspended as a result of a governmental order due to the coronavirus pandemic (a “Covered Business Suspension”) or (ii) the employer suffers a significant decline in gross receipts (a “Significant Decline”). A Significant Decline period commences with the first calendar quarter beginning after Dec. 31, 2019, during which the employer realizes less than 50% of gross receipts for the same calendar quarter during the prior year and ends with the calendar quarter beginning after the first quarter during which such employer’s gross receipts are greater than 80% of gross receipts for the same calendar quarter during the prior year. Tax-exempt organizations experiencing the suspension of operations akin to a Covered Business Suspension may also qualify as eligible employers.

For eligible employers whose average number of full-time employees during 2019 exceeded 100 (Eligible Large Employers), qualified wages are those wages paid to employees who are not performing services for such employer due to a Covered Business Suspension or a Significant Decline (and, presumably, qualified wages are only those wages paid during the relevant period). For eligible employers whose average number of full-time employees during 2019 was not greater than 100, qualified wages are (i) any wages paid by such employer to an employee during a Covered Business Suspension (apparently without regard to whether such employee is still performing any services for the employer) or (ii) wages paid to an employee during a Significant Decline period. Qualified wages with respect to any eligible employer include certain health care expenses of such employer as are properly allocable to such wages. The credit is determined after reduction by (*i.e.*, is net of) certain credits allowed against the applicable employment taxes under

Section 3111 of the Internal Revenue Code and under sections 7001 and 7003 of the Families First Coronavirus Response Act enacted earlier this month (relating to pandemic-related paid sick leave and paid child care leave).

The provision authorizes the Secretary of the Treasury to issue regulations or other guidance as may be necessary to, among other things, allow an advance payment to eligible employers of the employee retention credit and provide rules for employers who recently entered into business.

Net operating losses.

The Act temporarily relaxes the taxable income limitations on a taxpayer's use of net operating losses (NOLs), and temporarily reinstates the ability to carry back NOLs. The CARES Act provides for an elective five-year carryback of net operating losses (NOLs) generated in taxable years beginning after December 31, 2017, and before January 1, 2021. Taxpayers may elect to relinquish the entire five-year carryback period with respect to a particular year's NOL, with the election being irrevocable once made. (The TCJA had eliminated the ability to carry back NOLs generated in taxable years beginning after Dec. 31, 2017.) The Act also temporarily allows all NOLs carried forward or back to taxable years beginning before Jan. 1, 2021, to offset 100% of taxable income (rather than 80% with respect to post-2017 NOLs as provided by the TCJA) in such years. For taxable years beginning after Dec. 31, 2020, the changes made by the TCJA generally continue to apply.

Excess business losses.

Section 461(l) limits non-corporate taxpayers in their use of net business losses to offset other sources of income. As enacted by the TCJA in 2017, this limitation was effective for taxable years beginning after 2017 and before 2026, and applied after the basis, at-risk, and passive activity loss limitations. The CARES Act defers the effective date of Section 461(l) for three years, but also makes important technical corrections that will become effective when the limitation on excess business losses once again becomes applicable. Accordingly, net business losses from 2018, 2019, or 2020 may offset other sources of income, provided they are not otherwise limited by other provisions that remain in the Code. Beginning in 2021, the application of this limitation is clarified with respect to the treatment of wages and related deductions from employment, coordination with deductions under Section 172 (for net operating losses) or Section 199A (relating to qualified business income), and the treatment of business capital gains and losses. The Act also provides new rules for calculating excess business losses.

Net interest expense.

The TCJA generally provided that net interest expense could only be deducted to the extent of 30% of adjusted taxable income (ATI) under Code section 163(j). With the exception of partnerships,

and solely for taxable years beginning in 2019 and 2020, taxpayers may deduct business interest expense up to 50% of their ATI, unless an election is made to use the lower limitation for any taxable year. Further, taxpayers may elect to use their 2019 ATI in place of their 2020 ATI for purposes of determining business interest deductibility in 2020. With respect to partnerships, the increased Section 163(j) limit from 30% to 50% of ATI only applies to taxable years beginning in 2020. However, in the case of any excess business interest expense allocated from a partnership for any taxable year beginning in 2019, 50% of such excess business interest expense is treated as not subject to the Section 163(j) limitation and is fully deductible by the partner in 2020. The remaining 50% of such excess business interest expense shall be subject to the limitations in the same manner as any other excess business interest expense so allocated.

Qualified improvement property.

The Act contains a technical correction to a drafting error in the TCJA that unintentionally subjected “qualified improvement property” to depreciation over 39 years, rendering such property ineligible for bonus depreciation. Under the Act, “qualified improvement property” is treated as “15-year property” for purposes of depreciation and retroactive to the effective date of the TCJA, and thus is eligible for 100% bonus depreciation. “Qualified improvement property” generally means any improvement made by the taxpayer to a building’s interior; however, improvements do not qualify if they are attributable to the enlargement of a building or the internal structural framework of a building. This will provide immediate current cash flow benefits and relief to taxpayers, especially those in the retail, restaurant, and hospitality industries.

Expanded charitable deductions.

For C-corporations, the CARES Act temporarily increases the limitation on the deductibility of cash charitable contributions during 2020 from 10% to 25% of the taxpayer’s taxable income. The CARES Act also increases the limitation on deductions for contributions of food inventory from 15% to 25%.

Alternative Minimum Tax (AMT) Credit Refunds.

The corporate AMT was repealed by the TCJA. However, corporate AMT credits were made available as refundable credits over several years, ending in 2021. The CARES Act accelerates the ability of companies to recover those refundable AMT credits immediately for years beginning after December 31, 2018.

For more information about this article, the CARES Act or any other tax or benefits matters contact [Stephanie S. Vogel](#), [Matthew I. Whitehorn](#), or [John W. Schmehl](#).