



Summary of Tax Provisions of the CARES ACT Passed on March 27, 2020

Below is a summary of the individual and business tax provisions of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, signed by President Trump on March 27, 2020. For provisions relating to retirement plans, please click [here](#) for a summary by Spencer Fane's Employee Benefits Group.

Rebates for Individuals

The CARES Act added §6428, which provides for a recovery rebate for eligible individuals in the amount of \$1,200 (\$2,400 for married filing jointly), plus \$500 per qualifying child (who has not attained the age of 17). An eligible individual is any individual other than a nonresident alien, a dependent of another taxpayer, and an estate or trust. The rebate is phased out at a rate of 5% of the individual's adjusted gross income ("AGI") over \$75,000 (single and married filing separately), \$122,500 (head of household), and \$150,000 (married filing jointly). Thus, taxpayers with AGI of less than: (i) \$99,000 for single taxpayers, (ii) \$148,500 for head of household taxpayers, and (iii) \$198,000 for married filing jointly taxpayers, will receive a partial rebate.

Rebates, which are payable whether or not tax is owed, will be paid out automatically by check or direct deposit (to an account authorized after January 1, 2018). The rebate will be computed based on a taxpayer's 2019 tax return (or 2018 return if the 2019 return has not yet been filed). If a 2018 return has not been filed, the rebate will be based on 2019 social security or railroad retirement benefit statements.

Above-the-Line Deduction for Charitable Contributions

For years beginning in 2020, the CARES Act added an above-the-line deduction of up to \$300 to the calculation of gross income for qualified charitable contributions by an eligible individual. An eligible individual is an individual who does not elect to itemize deductions. A qualified charitable contribution is a charitable contribution that is:

1. Made in cash;
2. In which a deduction is allowed under §170; and
3. Made to an organization described in §170(b)(1)(A), but not to:
 - A supporting organization, or
 - A new or existing donor advised fund.

However, this deduction does not include carryovers.

Modification of Limits on Charitable Contributions

The CARES Act provided for modification of the limitations on charitable contributions that are qualified contributions. Qualified contributions are charitable contributions if:

1. Paid in cash during calendar year 2020 to a §170(b)(1)(A) organization, but not to a supporting organization or a donor advised fund; and
2. The taxpayer has elected to apply this provision with respect to the contribution.

In the case of a partnership or S corporation, the election in item 2, above, is made separately by each partner or shareholder.

Modifications for Individuals. Generally, an individual's cash contributions to a public charity are limited to 60% of the individual's AGI. Under the CARES Act, qualified contributions are deductible up to 100% of the individual's AGI. Any excess contributions can be carried forward for 5 years.

Modifications for Corporations. Generally, a corporation's cash contributions are limited to 10% of its taxable income. Under the CARES Act, qualified contributions are deductible up to 25% of the taxpayer's taxable income. Any excess contributions can be carried forward for 5 years.

Contributions of Food Inventory. In the case of a charitable contribution of food during 2020, the current limitation is 15% of taxable income (for C corporations) or aggregate net income from all trades or business (for taxpayers other than C corporations). The CARES Act increases this limitation to 25%.

Student Loans

Generally, an employer can make \$5,250 of deductible educational payments on behalf of an employee. The CARES Act keeps the maximum of educational payments the same, but adds eligible student loan repayments made before January 1, 2021, to the types of educational payments that can be made by an employer and excluded from the employee's gross income. Eligible student loan repayments are payments made by the employer on any qualified higher education loan of the employee, and can be payments of principal or interest, paid to the employee or a lender.

Employee Retention Credit for Employers Subject to Closure Due to COVID-19

The CARES Act added a refundable credit against applicable employment taxes on qualified wages for eligible employers that are harmed by COVID-19, but retain their employees. An eligible employer is any employer (including a tax-exempt organization) that is:

1. Carrying on a trade or business during calendar year 2020; and
2. With respect to any calendar quarter:
 - a. The operation of the trade or business is fully or partially suspended during the calendar quarter due an governmental order limiting commerce, travel, or group meetings due to COVID-19; or
 - b. Has suffered a significant decline in gross receipts, beginning with the 1st calendar quarter after December 31, 2019, in which gross receipts are less

than 50% of the gross receipts for the same calendar quarter in the prior year, and ending with the calendar quarter in which gross receipts of the employer are greater than 80% of gross receipts for the same calendar quarter in the prior year.

The following employers are ineligible to receive this credit: (1) any employer who receives a loan by virtue of the Small Business Act as extended by this Act, and (2) employers whose small business loan debt has been forgiven under §1106 of this Act.

The applicable employment taxes are the employer portion of the social security tax of 6.2% on the qualified wages. Qualified wages taken into account for an eligible employee cannot exceed \$10,000 per employee. The \$10,000 cap includes employer health plan expenses, but not: (i) required paid sick leave and family leave paid pursuant to The Families First Coronavirus Response Act; or (ii) wages taken into account for the §45S employer credit for paid family and medical leave; or (iii) wages taken into account for the Work Opportunity Credit under §51. The credit against applicable employment taxes is based on 50% of the qualified wages paid to employees for a calendar quarter between March 12, 2020 and December 31, 2020, up to a maximum credit of \$5,000 per employee (\$10,000 qualified wages x 50%). Employers with more than 100 full-time employees (on average in 2019) would receive the credit for qualified wages paid to employees who are furloughed or have reduced hours. Employers with 100 or fewer employees would receive the credit for all wages paid to employees, whether or not the employee is furloughed.

The credit shall not exceed the applicable employment taxes, which is the 6.2% social security tax, on the wages paid with respect to the employment of all the employees of the eligible employer for such calendar quarter, reduced by credits allowed under the Families First Coronavirus Response Act. If the amount of credit exceeds this limit, such credit shall be refundable.

The IRS has announced that eligible employers can advance the benefit of the credit. This is done by reducing the amount of their current payroll tax deposits (which includes federal income tax withholding, social security, and Medicare which is applicable to all employees), by the amount of the credit they are entitled to in a calendar quarter.

Delay of Payment of Employer Payroll Taxes

The CARES Act permits employers and self-employed individuals to defer payment of the employer portion of Social Security tax (6.2%) that would otherwise be due and payable from March 27, 2020 through December 31, 2020. Employers and self-employed individuals would be required to pay the deferred amount as follows:

- 50% of the deferred amount is due on December 31, 2021; and
- 50% of the deferred amount is due on December 31, 2022.

During the period of deferral, the employer or self-employed individual will be treated as having made timely deposits or estimated payments of applicable taxes as long as payments are made when due under the schedule noted above.

Taxpayers who have small business loan debt forgiven under §1106 of the CARES Act are ineligible for this deferral.

Modifications for Net Operating Losses

Under present law, net operating losses ("NOL") cannot be carried back (with the exception of farming losses and some insurance company NOLs), and the limitation on net carryforwards is limited to 80% of taxable income. The CARES Act provides relief to businesses by temporarily repealing this taxable income limitation on NOL deductions and allowing NOL carrybacks for tax years 2018, 2019, and 2020 to each of the 5 taxable years preceding the NOL. Taxpayers may elect to forego the entire 5 year carryback period with respect to a particular year NOL.

For taxable years beginning before 2021, §172(a)(1), as amended, allows the aggregate amount of NOL carrybacks and carryforwards to be deducted without any limitation on the amount of taxable income for the carryback or carryforward tax year. For taxable years beginning in 2021 and going forward, any carryforward of NOLs to such years will be subject to the 80% taxable income limitation.

Taxpayers may amend their prior year returns and offset income that was taxed at higher rates before the tax rate reduction enacted by the 2017 Tax Cuts and Jobs Act ("TCJA") by carrying back NOLs from 2018, 2019, and 2020. This may generate tax refunds and provide needed cash flow for companies negatively impacted by COVID-19. The election to carry back 2018 and 2019 NOLs must be made by the due

date (including extensions of time) for filing the taxpayer's return for the first taxable year ending after the date of enactment of the CARES Act.

Modification of Limitation on Losses for Taxpayers other than Corporations

The CARES Act temporarily suspends the limitation on the deduction of excess business losses imposed by TCJA for tax years 2018 through 2020. Excess business losses are the amounts by which a taxpayer's aggregate trade or business deductions exceed the sum of the taxpayer's aggregate trade or business gross income and gain plus \$250,000 (or \$500,000 for a joint return).

Under the TCJA, excess business losses converted to an NOL which had to be carried forward to a subsequent year. The CARES Act amendment effectively rolls back the TCJA limitation on excess business losses until 2021 and the tax treatment of excess business losses is the same as before the enactment of the TCJA.

Modification of Credit for Prior Year Minimum Tax Liability of Corporations

The CARES Act amends §53(e) and accelerates a corporations ability to unlock its refundable alternative minimum tax (AMT) credits as a source for cash flow. The TCJA repealed the AMT tax regime and provided that any existing AMT credit carryforward could be used to reduce regular corporate income taxes for tax years 2018 through 2020. Under the TCJA, any AMT credit that does not reduce regular taxes are eligible for a 50% refund in tax years 2018 through 2020 and a 100% refund in 2021. The CARES Act amends §53(e) to provide that 100% of the AMT credit will be refundable in tax year 2019 and allows a taxpayer to make an election to recover the full credit in 2018 and to file a tentative refund claim no later than December 31, 2020.

Modification of Limitation on Business Interest

The CARES Act amends §163(j) to increase the adjustable taxable income limit for deductible business interest expense from 30% to 50% for tax years 2019 and 2020. Prior to the amendment, §163(j) limited the deduction of business interest expense to the sum of:

1. The business interest income of such taxpayer to the taxable year,
2. 30% of the adjusted taxable income of such taxpayer for such taxable year,
plus
3. The floor plan financing interest of such taxpayer for such taxable year.

The amount of business interest expense not allowed as a deduction for any taxable year is treated as business interest expense paid or accrued in the succeeding calendar year. In addition, the amendment allows a taxpayer to elect to use its 2019 adjusted taxable income to determine its 2020 business interest deduction.

The amendment provides special rules for partnerships, and the increase does not apply to the partnership until the 2020 tax year. For tax year 2019, 50% of the excess business interest allocated to a partner from a partnership will be treated as paid in 2020 and not subject to the business interest deduction limitation. The remaining 50% will continue to be subject to the 30% limit but carried forward. A partner may elect out of tax treatment under this provision, but the election may only be revoked with the consent of the Secretary.

Technical Correction of Bonus Depreciation for Qualified Improvement Property

The CARES Act amends §168(e) by assigning a 15-year depreciable life to qualified improvement property ("QIP"), thereby allowing it to be characterized as qualified property eligible for bonus depreciation under §168(k). In general, QIP consists of interior, nonstructural improvements to a nonresidential building. When drafted, the TCJA inadvertently excluded QIP from bonus eligible property by failing to assign it an accelerated recovery period. This amendment fixes what has been referred to as the "retail glitch" and the correction is effective retroactively. Companies may amend their prior year tax returns and claim bonus depreciation on QIP. In addition, this fix lowers the cost of investment in QIP going forward.

In addition, Section 2307 amends §168(e)(6)(A) by adding the language to the definition of "qualified improvement property" which clarifies that the QIP improvements must be constructed by the taxpayer, and not previously constructed QIP which was purchased by the taxpayer.

Temporary Exception from Excise Tax for Alcohol Used to Produce Hand Sanitizer

The CARES Act amends §5214(a) by adding a section that provides a tax exemption from excise tax for distilled spirits (ethanol) used or contained in hand sanitizer produced and distributed in accordance with guidance issued by the Food and Drug Administration that is related to the outbreak of COVID-19. Distilled spirits meant for human consumption are subject to federal excise taxes at the rate of \$2.70 per gallon for the first 100,000 gallons and \$13.34 per gallon until more than 22 million gallons are made, and afterwards, \$13.50 per gallon. This amendment allows distillers to produce hand sanitizer using these distilled spirits without having to pay a heavy excise tax burden.

For provisions relating to retirement plans, please click [here](#) for a summary by our Employee Benefits Group.

This post was drafted by Spencer Fane attorneys [Kim Bushek](#), Crawford Moorefield, [Jalaine Wheeler](#), and [David Zimmerman](#). For more information, visit www.spencerfane.com.