

Coronavirus Aid, Relief, and Economic Security (CARES) Act Provisions for Businesses

Provided by Gary Albert, CPA

Business Tax Relief

Employee Retention Credit

The CARES Act grants eligible employers a credit against employment taxes equal to 50 percent of qualified wages paid to employees who are not working due to the employer's full or partial cessation of business or a significant decline in gross receipts. The credit is available to be claimed on a quarterly basis, but the amount of wages, including health benefits, for which the credit can be claimed is limited to \$10,000 in aggregate per employee for all quarters. The provision contains several requirements defining qualified wages, qualified employees, and qualified employers. The credit applies to wages paid after March 12, 2020, and before January 1, 2021.

COMMENT: *This is very similar to the paid leave credits granted to employers under the Families First Coronavirus Response Act signed into law on March 18, 2020, with some changes to the requirements. Most significantly, neither the employee nor the employer have to be directly impacted by infection.*

COMMENT: *This is also similar to the employee retention credits Congress provides after major disasters, but with different requirements and limitations.*

Payroll Tax Deferral

In order to free up employers' cash flow and retain employees during times of quarantine or shutdown, the CARES Act defers the payment of payroll taxes. Payroll taxes due from the period beginning on the date the CARES Act is signed into law and ending on December 31, 2020, are deferred. The 6.2 percent OASDI portion of payroll taxes incurred by employers, and 50 percent of the equivalent payroll taxes incurred by self-employed persons qualify for the deferral. Half of the deferred payroll taxes are due on December 31, 2021, with the remainder due on December 31, 2022.

Net Operating Losses

The Act allows for a five-year carryback of net operating losses (NOLs) arising in 2018, 2019, or 2020 by a business. Businesses will be able to amend or modify tax returns for tax years dating back to 2013 in order to take advantage of the carryback. Under current law, only farming NOLs are allowed to be carried back, and the carryback is limited to two years.

COMMENT: *The Tax Cuts and Jobs Act (TCJA) eliminated the carryback of NOLs for tax years ending after 2017 and allowed for the indefinite carry forward for NOLs. Prior to the TCJA, an NOL could be carried back two years, with longer carryback periods for NOLs arising from a casualty or declared disaster or farming losses.*

The Act also eliminates loss limitation rules applicable to sole proprietors and passthrough entities to allow them to take advantage of the NOL carryback.

Additionally, the Act allows for NOLs arising before January 1, 2021, to fully offset income. Under current law, NOLs are limited to 80 percent of taxable income.

Minimum Tax Credits

The TCJA eliminated the alternative minimum tax for corporations for tax years after 2017, but allowed corporations to claim a refundable portion of any unused minimum tax credits through 2021. The amount of the refundable credit is limited to 50 percent of any excess minimum tax in 2018 through 2020, before being fully

refundable in 2021. The Act accelerates the year for which a fully refundable credit can be claimed to 2019, and allows corporations to elect to claim the fully refundable minimum tax credits in 2018.

Business Interest Expense Limitation

The TCJA limited the amount of allowable deductions for business interest (regardless of the type of entity) for tax years beginning after 2017. The limitation is generally the amount of business interest income for the year plus 30 percent of the taxpayer's adjusted taxable income for the year. The limitation does not apply to taxpayers with average annual gross receipts for the prior three year below an inflation-adjusted amount. For 2020, this amount is \$26 million or less.

The Act increases the limitation amount to 50 percent of the taxpayer's adjusted taxable income for 2019 and 2020 (with a special allocation election required for partnerships for 2019). In calculating the limitation for 2020, the taxpayer may elect to use adjusted taxable income for 2019.

COMMENT: *The option to use 2019 adjusted taxable income in calculating the limitation is meant to counteract the likelihood that incomes will not be higher in 2020 because of the economic environment, whereas 2019 was generally a very high revenue year for businesses.*

Qualified Improvement Property

When Congress drafted the TCJA, it allowed for 100-percent bonus depreciation rules to apply to all MACRS property with a recovery period of 20 years or less. Before TCJA, qualified improvement property was depreciated as 39-year residential real property, unless it separately qualified as 15-year qualified leasehold improvement property, 15-year retail improvement property, or 15-year restaurant property. Congress eliminated the three separate categories of 15-year improvement properties with the intention of making *all* qualified improvement property 15-year property. However, it failed to do so, and as a result, qualified improvement property is depreciated as 39-year property and not qualified for bonus depreciation.

COMMENT: *This is known in tax circles as the "retail glitch." A technical amendment has long been promised and had been included in early drafts of several pieces of legislation since the TCJA became law in December 2017. However, it never made it into the final version of any piece of significant legislation voted on by either chamber of Congress.*

The CARES Act corrects this Congressional oversight by defining qualified improvement property as 15-year property, thus allowing 100 percent of improvements to be deducted in the year incurred. The change is made as if included in the TCJA and, thus, is effective for property acquired and placed in service after September 27, 2017.

IMPACT: *The closures and quarantines related to the coronavirus/COVID-19 pandemic have been especially hard on small businesses, which includes restaurants and local retail stores. This technical correction allows any expenses incurred by owners to make improvements to the physical premises related to these businesses to be accelerated into the 2017 or 2018 tax year on an amended return or the 2019 tax year on a return due July 15, 2020.*

Excise Tax Relief

The Act also provides a temporary exception from alcohol excise taxes for alcohol for use in or contained in hand sanitizer produced or directed by the Food and Drug Administration related to the pandemic. The Act also suspends excise taxes on aviation and kerosene used in aviation fuel. The exception and suspensions are applicable to 2020 only.

ADDITIONAL PROVISIONS

The CARES Act is a massive Act, however, some smaller, but no less significant, provisions impacting federal tax are sprinkled outside of the tax-related division of the Act. These provisions include:

- The exclusion from tax of any forgiven small business loans, mortgage obligations, or other loan obligations forgiven by the lender during the applicable period;
- A safe harbor from the definition of a high deductible health plan permitting telehealth services to be included, even though such services do not carry a deductible;
- The inclusion of over-the-counter menstrual products as qualified medical expenses for purposes of distributions from health savings accounts and health flexible spending arrangements;
- Pension funding relief for failures to meet contribution requirements to defined benefit plans during 2020;
- Allowing certain charitable employers whose primary exempt purpose is providing services to mothers and children to use small employer charity pension plan rules.



Source: Gary Albert, CPA

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