

CARES Act Provides Temporary Federal Tax Benefits

By William Manne

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The recently signed Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) contains over 800 pages of changes designed to provide financial relief to Americans and their business enterprises. There are a number of changes, some of which may be implemented immediately to reduce tax payments or claim credits or refunds retroactively, and some of which are forward looking. Specific federal tax changes include the following.

INDIVIDUAL PROVISIONS

Changes to Retirement Plan Rules

Special Retirement Fund Distributions and Loans. The Act makes it easier for individuals to access their retirement plan savings by adding a provision granting favorable tax treatment to special “coronavirus-related distributions” of up to \$100,000 per individual from certain retirement plans. One way it does this is by eliminating the 10% additional tax otherwise applicable to early distributions and by shielding the retirement plan from violating any requirement of the Internal Revenue Code (IRC) merely because it makes the distribution. It also permits any individual receiving such a distribution to repay the distribution within three years of the date of distribution and treat the repayment as a qualified rollover, thereby avoiding imposition of income tax on the amount distributed.

“Coronavirus-related distributions” may be made during calendar 2020, to an individual (i) diagnosed with SARS-CoV-2 or COVID-19 by a CDC approved test; (ii) whose spouse or dependent is diagnosed with those illnesses by similar test; (iii) who experiences adverse financial consequences as a result of being quarantined, furloughed, or laid off, or having work hours reduced due to such illnesses, being unable to work due to lack of child care due to such illnesses, closing or reducing hours of a business owned or operated by the individual due to such illnesses, or other factors to be determined by the Secretary of the Treasury.

Those individuals who receive qualified distributions and choose not to repay them later as a qualifying rollover, will be permitted to include them ratably in taxable income over three years, beginning with the tax year of the distribution.

In addition, the Act expands the permitted loan limitations of certain retirement plans from \$50,000 to \$100,000 and expands the mathematical limitation for loans made within 180 days of the CARES Act date of enactment. The Act also extends the date for repayment of new loans made after the date of enactment for any repayments required before December 31, 2020, by one year (or two years for government plans).

The Act provides additional guidance with respect to amending retirement plans to allow for the above distributions or loans.

Temporary Waiver of Required Minimum Distribution Rules. The CARES Act further modifies retirement plan rules by temporarily waiving the required minimum distribution (RMD) rules for calendar 2020 for certain defined contribution plans and individual retirement accounts. This waiver also applies to any distribution required to be made in calendar 2020 by reason of a required beginning date occurring in that year and the distribution not having been made before January 1, 2020. Special rules impact whether eligible rollover

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distributions can be treated as such for all purposes, if the distribution would not have been treated as an eligible rollover distribution if the RMD rules had applied. This provision is effective after December 31, 2019 and specific rules govern the timing of plan amendments to effect this change.

Expansion of Charitable Income Tax Deductions

“Above the Line” Charitable Income Deductions. For tax years beginning in 2020, eligible individuals may deduct up to \$300 of qualified charitable contributions from their adjusted gross income. This deduction applies only to individuals who do not itemize and is for cash contributions to specific types of charities, with some exceptions.

Suspension of Charitable Contribution Limitations for 2020. Certain cash contributions made to specific categories of charitable organizations during calendar 2020 will, in the case of individual taxpayers, not be subject to traditional limitations that were based on adjusted gross income, or in the case of corporate taxpayers subject to a higher limitation (25% instead of 10%). In the case of partnerships and s corporations, the election to treat certain cash contributions as being excluded from the limitations will be made at the partner or shareholder level. There is also a specific increase in the limitation applicable to charitable contributions of food.

Student Loan Payments

Exclusion from Taxable Income for Student Loan Payments or Reimbursements by Employers. Payments on student loans made by employers to lenders, or to reimburse employees, including both principal and interest on any qualified education loan made after the date of enactment and before January 1, 2021 are excluded from gross income of the employee, up to \$5,250. Other exceptions and rules apply. No deduction is allowed by the employee for interest paid under this provision.

BUSINESS PROVISIONS

Payroll Tax Credits and Deferred Payment

Employee Retention Tax Credit. Employers carrying on a trade or business and tax exempt organizations who, during 2020, experience full or partial suspension of the operation of their business in any calendar quarter due to orders from a governmental authority limiting commerce, travel, or group meetings because of COVID-19 will be eligible for a payroll tax credit equal to 50% of “qualified wages” paid to employees, not to exceed \$5,000 per employee for the year, based on wages paid after March 12, 2020 and before January 1, 2021. Similar to the structure used in the recently passed Families First Coronavirus Response Act, the credit will first be applied against employer payroll taxes due and, if the credit exceeds those taxes, a refund will be issued.

Businesses will also be eligible for the credit if in any calendar quarter there is a decline in gross receipts, compared to the same calendar quarter one year ago. The period covered by this test begins with the first calendar quarter in 2020 in which the business experiences a 50% or more decline in gross receipts, for the reasons stated above, and ends at the end of the first calendar quarter in which gross receipts exceed 80% of the prior year’s quarter. The credit applies to all operations of tax exempt organizations, and such organizations are only required to meet the first test (not the decline in gross receipts test).

“Qualified wages” for an employer who had an average of more than 100 full-time employees during 2019 are wages paid to employees who are not providing services due to the full or partial suspension of operation of the business as a result of orders from a governmental authority. For employers who had an average of fewer than

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100 full-time employees during 2019, qualified wages are all wages paid to employees. In all cases, qualified wages paid may not exceed the amount such employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period. Qualified wages can also include the cost of employer provided group health plan coverage for the employee for the applicable periods.

There are additional special rules that apply in certain situations to limit the credit and avoid the possibility of double benefits. Of particular note is a provision that limits employers to either utilizing this credit or receiving an SBA Paycheck Protection loan, but not being able to qualify for both. The credit is not available to governmental employers, including the government of any state or political subdivision, or any agency or instrumentality thereof.

Payment of Employer Payroll Taxes Postponed. Employers will be allowed to delay payment of a portion of applicable payroll taxes without penalty or interest, except in certain circumstances, for payroll taxes due beginning on the date of the bill's enactment and ending before January 1, 2021, provided 50% of the amounts deferred is paid before December 31, 2021 and the balance is paid before December 31, 2022. Employers who have indebtedness forgiven under the SBA Payroll Protection Loan program (see below) are not eligible for payroll tax deferral under this provision.

Expanded Use of Net Operating Losses

Temporary Repeal of Net Operating Loss Limitations. Rules that limit the use of net operating losses, including those incurred in tax years beginning after December 31, 2017 (and carried forward), to reduce taxable income in current periods are modified to allow full offset of taxable income for the tax year beginning after January 1, 2020. Limitations on net loss carrybacks arising in tax years beginning after December 31, 2018 and before January 1, 2021 have also been modified, permitting a carryback to each of the five years preceding the tax year of the loss. Limitations impacting non-corporate taxpayers are also favorably modified for losses arising in 2018, 2019, and 2020.

Accelerated Refund of Corporate Minimum Tax Credits

The corporate alternative minimum tax, repealed for tax years after 2017, had provided for a full refund of prior year minimum tax credits over the period 2018–2021, weighted heavily to 2021. The refund is modified by the Act to accelerate the timing of the refund, allowing 100% refund in 2019 or an election to take the refund in 2018.

Increased Deductions for Interest Expense

The 2017 Tax Cuts and Jobs Act generally limited the amount of business interest expense deduction to 30%. The Act increases that to 50%, for tax years beginning in 2019 and 2020. For partnerships, the change will only apply to partners in 2020.

Bonus Depreciation Technical Correction

The 2017 Tax Cuts and Jobs Act intended to allow a 15 year recovery period for certain “qualified improvement property.” The final language of the act, however, failed include that provision. The Act corrects that mistake and specifically designates “qualified improvement property as 15 year property, which also makes it eligible for 100% bonus depreciation. This affects property placed in service after December 31, 2017.

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

Alcohol that would otherwise be subject to an excise tax if otherwise used, will be exempt from such tax if, after December 31, 2019 and before January 1, 2021, it is used in hand sanitizer produced and distributed in a manner consistent with FDA guidance related to the outbreak of SARS-CoV-2 or COVID-19.

For more information about ongoing developments related to COVID-19, visit [Miller Nash Graham & Dunn's resource library](#).

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