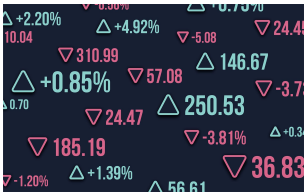

Mar 27, 2020

Categories:

Blogs
Coronavirus Response Team
Tax Law Defined™ Blog

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CARES Act Aims to Help Health Sector and Stabilize Economy

The House gave final passage to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). President Donald Trump quickly signed the bill.

Some mistakenly call this bill a stimulus, but that's not accurate. The bill has two aims. The first is to provide additional funds to help our health sector battle the pandemic. The second is to stabilize the economy in the wake of the economic harm from the COVID-19 pandemic.

This client update will focus on this second aim. So, instead of shovel-ready projects like we saw in the stimulus bill that Congress passed in the wake of the Great Recession, the CARES Act focuses on trying to help businesses and individuals ride out the economic shutdown.

As a result, the bill gives employers forgivable loans to allow them to keep employees on the payroll. Many individuals will receive checks to help them make a mortgage or rent payment, so they can remain in their homes. Unemployment benefits are been enhanced and expanded. And hard-hit sectors, such as airlines, are given targeted financial assistance. The overall price tag is in excess of $2 trillion.

What follows is a brief summary of items that we believe are the most interesting and relevant to clients:

Business Provisions

Loans

The Act creates the Paycheck Protection Program. The program creates loans, which can be forgiven, to pay for payroll costs, mortgage interest, lease payments, and utility payments. Small businesses with 500 or fewer employees, veterans organizations, 501(c)(3) non-profits, sole proprietors, independent contracts, and self-employed individuals are eligible. To qualify an organization must have been in business on February 15, 2020 and must have

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paid employees (or independent contractors). Organizations can borrow 250% of their average monthly payroll costs up to a total of ten million dollars. If the loans are used for proper purposes they can be forgiven based upon the amount spent on approved purposes during the time period February 15, 2020 through June 30, 2020. However, reductions to the forgiven amount will occur based upon reduced workforce or reduced wage payment. Unforgiven loan amounts will convert to a loan with a 10 year term and up to a 4% interest rate.

Tax Provisions Related to Businesses

Employment Tax Credit

Employers that were forced to fully or partially suspend the operation of their business in a calendar quarter due to a governmental order limiting commerce because of COVID-19, or that experienced a significant decline in gross receipts in a quarter (less than 50% of gross receipts for the same quarter in 2019), are entitled to a receive a credit against Federal Insurance Contributions Act (FICA) taxes for each quarter in an amount equal to 50 percent of the first $10,000 of wages that the employer paid to each employee during that quarter. The credit is also available to qualifying tax-exempt organizations. Businesses with more than 100 fulltime employees can only claim the credit with respect to employees that are not providing services. Businesses with less than 100 employees can claim the credit with respect to any wages paid during the affected quarter. The credit allowed for any specific quarter cannot exceed the total FICA taxes paid by the employer for all employees during that quarter. To the extent the credit exceeds the employer's portion of FICA taxes for that quarter; the excess amount is refunded to the employer. The credit only applies to wages paid after March 12, 2020, and before January 1, 2021.

Additional Time to Pay Employment Taxes

For periods beginning with the enactment of the legislation and ending before January 1, 2021 (Deferral Period), employers will have

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additional time to pay employment taxes. 50 percent of the employment taxes for the Deferral Period will be due on December 31, 2021. The remaining amount will be due on December 31, 2022. This deferral also applies to self-employment taxes owed as part of an individual's estimated income tax liability.

Temporary Increase of Net Operating Loss Deduction

For net operating loss (NOL) arising in tax years ending after December 31, 2017, the 2017 Tax Cuts and Jobs Act (2017 TCJA) limited a taxpayer's NOL deduction to 80% of taxable income. The CARES Act eliminates that limitation for the 2020 tax year and provides a modified limitation for tax years beginning after December 31, 2020. As a result, for the 2020 tax year, taxpayers will be permitted to offset 100% of their taxable income with available NOL.

Temporary Carryback of NOL

Additionally, the 2017 TCJA also limited the ability of taxpayers to carryback NOL arising in tax years ending after December 31, 2017 to preceding tax years. Under the CARES Act, taxpayers other than REITs can now carryback NOL arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, to each of the five years preceding the tax year the NOL was generated. As a result, taxpayers may be able to obtain a refund of taxes paid in a prior year.

Temporary Relaxing of Limitation on Excess Business Losses

The 2017 TCJA precluded non-corporate taxpayers from deducting excess business losses against non-business income for tax years beginning after December 31, 2017. The CARES Act applies the limitation on excess business losses only to tax years beginning after December 31, 2020. As a result, taxpayers may be able to seek refunds of taxes paid in preceding tax years impacted by the limitation on excess business losses. Coupled with the ability of taxpayers to now carryback NOL up to five years, individual taxpayers with excess business losses from passthrough entities or

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sole proprietorships may be able to significantly offset their taxable income in the 2020 tax year and/or recapture taxes paid in previous tax years.

Accelerated Corporate AMT Credit

The 2017 TCJA repealed the corporate alternative minimum tax (AMT), but corporations were still permitted to utilize refundable AMT over several years, ending in 2021. The CARES Act permits corporate taxpayers to accelerate their ability to recover AMT credits.

Temporary Increase of Business Interest Expense Deduction

The CARES Act temporarily increases the limitation on the deductibility of business interest expense from 30% to 50% of taxable income for 2019 and 2020, with certain modifications for businesses taxed as a partnership. Additionally, a business can elect to use its 2019 adjusted taxable income to calculate its business interest expense limitation for the 2020 tax year. The assumption is that the 2019 amount would result in a larger deduction.

Qualified Improvement Property Fix

An unintended consequence of the 2017 TCJA was that certain improvements to real property known as "qualified improvement property" were not eligible to favorable increases to bonus depreciation and property deductions under the 2017 TCJA. The CARE Act corrects that "error" and now permits taxpayers to immediately write off costs associated with qualified improvement property rather than depreciating the costs over a 39-year period. Additionally, the Act makes the change retroactive to January 1, 2018, permitting taxpayers to potentially recover lost bonus depreciation and deductions for prior tax years affected by the 2017 TCJA.

Temporary Waiver of Federal Excise Tax for Hand Sanitizer Production

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The CARES Act waives the federal excise tax on distilled spirits removed during the 2020 calendar year for use in or contained in hand sanitizer produced and distributed in a manner consistent with any FDA guidance related to the COVID 19 outbreak.

Economic Stabilization

The Act is also designed to provide further support for sectors of the economy that have been "severely distressed" as a result of the spread of COVID-19; in particular it provides for direct lending to the air carrier industry, but it also seeks to provide relief for a broader range of businesses by providing for a contribution of $500 billion to the Treasury's Exchange Stabilization Fund. This allows the Secretary of the Treasury to provide loans, loan guarantees, and other investments.

While this portion of the Act is mostly directed at aircraft companies, its definition of "eligible businesses" is somewhat broader. In addition to "air carriers," the Secretary is able to grant loans to a "United States business that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under this Act." The bill also gives broad discretion to the Secretary of the Treasury in overseeing the distribution and application procedures for the loans.

While the Act grants the Secretary of the Treasury significant discretion, it also provides some requirements the Secretary must adhere to when issuing these loans.

Additionally, the Act specifically addresses assistance for mid-sized businesses. It provides that the Secretary must seek to implement a special facility through the Federal Reserve that provides financing to non-profit organizations and businesses with between 500 and 10,000 employees.

The remainder of this section of the Act addresses various issues associated with lending in efforts to make the issuance of relief expedited and efficient.

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Amendments to the Families First Coronavirus Response Act (FFCRA)

The CARES Act amends the FFCRA by:

- Clarifying that the statutory caps are per employee;
- Adding a rule that rehired employees qualify for benefits under the FFCRA if they were laid off not later than March 1, 2020 and had worked for the employer for not less than 30 of the 60 days prior to that layoff; and
- Providing for advances of the anticipated tax credits for family leave costs.

Individual and Employee Provisions

Housing

The CARES Act contains several funding and regulatory provisions that impact the housing industry. First, the Act provides for over $12 billion in funding to combat the spread of coronavirus in multifamily housing facilities and offset reduced rent payments and other lost revenue as a result of the pandemic for tenants, housing agencies, and property owners. In addition, the Act establishes specific prohibitions and forbearance periods designed to protect tenants from eviction and to protect owners and landlords with federally-backed mortgage loans from foreclosure.

Unemployment Compensation

Under the CARES Act, payments are available for individuals who would not otherwise qualify for unemployment benefits, including independent contractors or those who are self-employed, because they are unemployed, partially employed, or unable or unavailable to work the following reasons:

- The individual has been diagnosed with COVID-19 or is seeking a medical diagnosis for symptoms of COVID-19;

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- A member of the individual's family has been diagnosed with COVID-19;
- The individual is providing care for a family or household member who has been diagnosed with COVID-19;
- A child or other person in the household for whom the individual has primary care-giving responsibility is unable to attend school or another facility because it closed as a result of COVID-19, and the school or facility is required for the individual to work;
- The individual is unable to reach his or her place of employment because of a quarantine
- The individual is unable to reach his or her place of employment because a health care provider has advised the individual to self-quarantine;
- The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency
- The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- The individual has to quit his or her job as a direct result of COVID-19; or
- The individual's place of employment is closed as a direct result of the COVID-19 public health emergency.

The Act also increases the amount of unemployment compensation by $600 per week in addition to any state-based unemployment benefits a person would otherwise receive for up to four months, increases the maximum length of benefits to 39 weeks, and waives any waiting period to receive such benefits. The increased entitlements under the Act will expire December 31, 2020.

Rebates

The CARES Act establishes a tax credit of up to $1,200 for individuals or $2,400 for joint filers, plus an additional $500 for each qualifying child.

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These rebates will be reduced until eventually phased out, based on the taxpayer's income, beginning at $75,000 for single filers, $112,500 for heads of household, and $150,000 for joint filers.

Individual Tax Provisions

Coronavirus-Related Distributions from Retirement Funds

Under the Act, individuals may withdrawal up to $100,000 from qualified retirement accounts (IRA, 401(k) plan) during the 2020 calendar year without being subject to the 10% early withdrawal penalty as long as such distributions qualify as a "coronavirus-related distribution." The Act defines a coronavirus-related distribution as a distribution made in 2020 to an individual that was either diagnosed with COVID 19 or has a spouse or dependent that was diagnosed with COVID 19, or that experiences adverse financial consequences related to COVID 19. Additionally, any income related to the qualifying distributions would be subject to tax over a three-year period, rather than in the year received. Finally, the Act increases the amount that individuals can borrow from certain qualified retirement plans to $100,000 and provides repayment flexibility related to an outstanding loan from a qualified plan that comes due in 2020.

Temporary Waiver of Required Minimum Distribution Rules

The Act temporarily waives minimum distribution requirements for certain defined contribution plans and IRAs for the calendar year 2020.

Partial Above The Line Deduction for Charitable Contributions

The Act permits taxpayers who do not itemize their deductions to take an above-the-line charitable contribution deduction in tax years beginning in 2020 of up to $300 for cash contributions made to qualified charitable organizations.

Modification of Limitations on Charitable Contributions During 2020

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For individuals who itemize their deductions, the 50% of adjusted gross income limitation on deductions for cash contributed to qualified charitable organizations is temporarily lifted for 2020. For corporations, the 10% limitation on the deduction of cash contributions is increased to 25% of taxable income and the limitation on deductions for contributions of food inventory is increased from 15% to 25%.

Exclusion of Employer Payments of Student Loans

Payments by an employer of up to $5,250 made before January 1, 2021 to repay an employee's qualified student loans are excluded from the employee's income.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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