



**CLIENT ALERT
 NOTIFICATION**

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CARES Act: Important Tax Code Changes

March 30, 2020

The following is a high-level summary of the pertinent tax changes to the Internal Revenue Code (the "Code") contained in the Coronavirus Aid, Relief, and Economic Security Act or the "CARES Act" (H.R. 748) (the "Act"), which was signed into law by President Donald J. Trump on March 27, 2020 (the "Act Passage Date"). Please note that this is being distributed as a reference for your convenience. It is for general informational purposes only. This summary is not (and is not intended to be) complete, omits various details and other pertinent information, and is qualified in its entirety by reference to the complete text of the Act.

For additional COVID-19-related business information, we invite you to visit our [COVID-19: Legal Insights](#) page.

Title	Description	Comments
Subtitle B of the Act – Rebates and Other Individual Provisions		
Recovery Rebates for Individuals <i>(New Code § 6428)</i>	<p>\$1,200 Credit for Eligible Individuals (\$2,400 for married filing jointly ("MFJ")) plus \$500 per qualifying children.</p> <p>Credit on 2020 return.</p> <p>Credit is reduced by 5% of taxpayers adjusted gross income ("AGI") that exceeds:</p> <ul style="list-style-type: none"> \$150,000 for MFJ; \$112,500 for head of household; and \$75,000 for anybody else. <p>Eligible Individuals means any individual other than an NRA, an individual for whom an exemption is claimed on another person's tax return, or an estate or trust.</p>	<p>The tax credit is phased out completely at the following AGI levels for persons with no qualifying children:</p> <ul style="list-style-type: none"> MFJ: \$198,000; Head of household: \$136,500; and Everyone else: \$99,000. <p>For example, a married couple filing jointly with two qualifying children, their tax credit would phase out at AGI of \$236,000.</p> <p>This credit can be applied to 2019 tax obligations for an advance refund.</p>
Special Rules for Use of Retirement Funds – Tax-Favored Withdrawals from Retirement Plans <i>(Code § 72(t))</i>	<p>The 10% penalty for early withdrawals shall not apply to any coronavirus-related distribution (not to exceed \$100k) from a retirement plan during calendar year 2020 by an Eligible Individual.</p> <p>Distributions are taxable income. Taxpayer can elect to report ratably over 3 years. Taxpayer may repay within 3 years of the date of the first withdrawal.</p> <p>Eligible Individual means an individual (i) who is diagnosed with COVID-19, (ii) whose spouse or dependent is diagnosed with COVID-19, or (iii) who suffers adverse financial consequences due to fallout from COVID-19.</p> <p>Borrowing base for loans from retirement plans increased to lesser of \$100,000 or 100% present value of nonforfeitable accrued benefit.</p> <p>Due date for loans from retirements extended for 1 year where otherwise due after the Act Passage Date and before 12/31/20.</p>	<p>Given the amount of losses taxpayers are expected to sustain in 2020, combined with taxpayer friendly loss and deduction provisions provided by the Act (discussed below), it may be best to include 100% of the eligible distribution in income provided there are sufficient losses to offset (rather than include in income ratably over 3 years).</p>
Temporary Waiver of Required Minimum Distribution Rules for Certain Retirement Plans and Accounts <i>Code § 401(a)(9)</i>	<p>Required minimum distributions for calendar year 2020 shall not apply to:</p> <ul style="list-style-type: none"> A defined contribution plan; A defined contribution plan which is an eligible deferred compensation plan; and Individual retirement plan 	<p>Waiver applies without regard to whether taxpayer affected by COVID-19.</p>
Allowance of Partial Above the Line Deduction for Charitable Contributions <i>(Code § 62(a)(22))</i>	<p>Above the line deduction allowed for charitable contributions for taxable years beginning in 2020 in an amount not to exceed \$300.</p> <p>Only for eligible individuals, or individuals who do not elect to itemize deductions.</p>	

Modification of Limitations on Charitable Contributions During 2020 (Code § 170)	<p>Temporary suspension of limitations on certain cash charitable contributions to certain charitable organizations.</p> <p>Elective – taxpayer must opt into this regime (and opt out of default rules).</p> <p><i>For individuals:</i></p> <p>Aggregate amount of qualified contributions is allowed as a deduction to the extent it does not exceed the excess of adjusted AGI over the amount of other charitable deductions allowed.</p> <p>Excess is carried over for 5 years.</p> <p><i>For corporations:</i></p> <p>Aggregate amount of qualified contributions is allowed as a deduction to the extent it does not exceed the excess of 25% of taxpayer’s taxable income over the amount of all other charitable contributions.</p> <p>Excess is carried over for 5 years.</p>	This may permit a taxpayer to claim a larger charitable deduction for cash charitable contributions to permissible charities than would otherwise be permitted under the limitations imposed by the Code (i.e., 50% of adjusted AGI for individuals).
Exclusion for Certain Employer Payments of Student Loans (Code § 127(c))	Excludes payments by an employer made before January 1, 2021 to an employee or a lender of principal or interest on any qualified education loan (student loan).	
Title	Description	Comments
Subtitle C of the Act – Business Provisions		
Employee Retention Credit for Employers Subject to Closure due to COVID-19 (Code § 3111)	<p>Credit allowed against Eligible Employer’s share of certain employment taxes for each calendar quarter in an amount equal to 50% of the qualified wages with respect to each employee of such employer for such calendar quarter.</p> <p>Limitations – qualified wages limited to \$10,000 per employee for all calendar quarters.</p> <p>Eligible Employer is an employer carrying on business in 2020 and suffered certain financial harms as a result of COVID-19 during any calendar quarter in 2020.</p>	<p>The criteria for employers to be eligible for employment tax credits under the Act is broader than under the Families First Coronavirus Response Act (“FFCRA”) enacted on March 18, 2020.</p> <p>Only applies to the employer’s share; not employee’s share that is withheld by the employer.</p> <p>No double-dipping allowed. If an employer received a tax credit under the FFCRA, it reduces the credits such employer is eligible for under this section of the Act.</p> <p>If an employer receives an SBA loan covered by the Act, such employer is not eligible for these employment tax credits.</p>
Delay of Payment of Employer Payroll Taxes	<p>Payment of employer’s share of employment taxes for 2020 is deferred and shall be due as follows:</p> <p>50% by December 31, 2021 50% by December 31, 2022</p> <p>After making the deposits, an employer is treated as having timely made all deposits of applicable employment taxes that are required to be made for the payroll tax deferral period if all deposits are made by the due dates mentioned above.</p>	<p>If an employer has had a loan forgiven under the Act, such employer is not eligible for this deferral benefit.</p> <p>Only applies to the employer’s share; not employee’s share that is withheld by the employer.</p>
Modifications for Net Operating Losses (“NOLs”) (Code § 172)	<p>Taxable income limitations on use of NOLs that were added by the Tax Cuts and Jobs Act of 2017 (“TCJA”) are repealed for years 2018 through 2020.</p> <p>For years 2021 and thereafter, permit NOL deduction equal to sum of (i) aggregate NOL arising prior to 2018 and carried to the current year, plus (ii) lesser of (A) aggregate NOL arising after 2017 and carried to the current year, or (B) 80% excess of adjusted taxable income over aggregate NOL arising prior to 2018 and carried to the current year.</p> <p>For any NOL arising during 2018, 2019 or 2020, it can be carried back 5 years</p>	<p>This amendment is effective for taxable years beginning after December 31, 2017 and for prior taxable years to the extent NOLs are carried back.</p> <p>Start filing your refund claims!</p>
Modification of Limitation on Losses for Taxpayers Other Than Corporations (Code § 461(l)(1))	Repeals excess loss limitation, which previously disallowed excess business losses of noncorporate taxpayers, if the loss exceeded \$250,000 (or \$500,000 for MFJ).	
Modification of Credit for Prior Year Minimum Tax Liability of Corporations (Code § 53(e))	Allowance of alternative minimum tax refundable credit for 2018 and 2019 tax years.	

Title	Description	Comments
Subtitle C of the Act – Business Provisions		
Modifications of Limitations on Business Interest <i>(Code § 163(j))</i>	For taxable years beginning in 2019 and 2020, cap on business interest deduction increased to 50% of adjusted taxable income. Taxpayer can elect out. Taxpayer can elect to use 2019 adjusted taxable income for purposes of computing the 50% limitation (as opposed to 2020 adjusted taxable income).	Permits greater business interest deductions for taxpayers.
Technical Amendments Regarding Qualified Improvement Property <i>(Code § 168)</i>	Qualified improvement property is now 15-year property. Qualified improvement property is any improvement to an interior portion of an already existing nonresidential building.	This fixes the “retail glitch” in the TCJA that eliminated qualified improvement property from being eligible 100% deductibility.
Temporary Exception from Excise Tax for Alcohol Used to Produce Hand Sanitizer <i>(Code § 5214(a))</i>	Exemption on excise tax for alcohol ultimately used for the production of hand sanitizer for calendar years 2020 and 2021.	

The COVID-19 pandemic is creating rapidly changing issues for businesses, and government aid processes and measures designed to assist businesses may also change materially from when this Client Alert is issued. We therefore encourage you to monitor our website, review our future Client Alerts and generally remain alert for additional updates or modifications to laws and regulations.

Please contact the Berger Singerman Crisis Response Team at alert@bergersingerman.com should you need any assistance navigating this new and complex business landscape.