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CARES Act

BUSINESS AND INDIVIDUAL TAX PROVISIONS
Signed into law March 27, 2020

BUSINESS TAX PROVISIONS:

EMPLOYEE RETENTION CREDIT FOR EMPLOYERS SUBJECT TO CLOSURE DUE TO COVID-19 (SECTION 2301)

Eligible employers can claim a refundable payroll tax credit equal to 50% of qualified wages paid to employees, limited to $10,000 per employee for all quarters. An employer is not eligible for the credit if it receives a loan under the Paycheck Protection Program.

Eligible employers

1) Must have carried on a trade or business during 2020 and
2) For each calendar quarter, must have either:
   a) Fully or partially suspended operations due to a COVID-19-related governmental shut-down order, or
   b) Experienced a significant decline in gross receipts.

      The period of significant decline begins with the first calendar quarter in 2020 in which gross receipts* are less than 50% of the gross receipts for the same calendar quarter in 2019. The significant decline in gross receipts ends with the first calendar quarter that follows the quarter in which gross receipts are more than 80% of gross receipts for the same calendar quarter in 2019, or with the first calendar quarter of 2021.

* Aggregation rules apply for purposes of determining gross receipts.

Qualified wages

1) The credit is on the first $10,000 of compensation (including health benefits) per eligible employee, paid or incurred from March 13, 2020 through December 31, 2020, assuming the employer qualified during the respective calendar quarter.
2) For eligible employers with 100 or fewer full-time employees in 2019, all employee wages qualify. For employers with an average of > 100 full-time employees (those who work on average at least 30 hours/week) in 2019, qualified wages only include wages paid to employees who are not actually working.
3) Qualified wages also include health care costs that are not taxable wages to employees.
4) Wages paid to a dependent or relative of the employer, or to a greater than 50% owner do not qualify. If the employer is an estate or a trust, wages paid to the grantor, beneficiary, or fiduciary or dependents of the grantor, beneficiary, or fiduciary also do not qualify.
5) Wages included in the calculation of the paid sick leave and paid family leave credits do not qualify.

<u>Claiming the credit</u>

There are a couple ways to take advantage of the credit prior to filing quarterly payroll returns:

1) Retain the following employment taxes rather than depositing them:
    - Federal income taxes withheld for all employees;
    - The employee's share of Social Security and Medicare taxes (but only for the employee who received the paid benefits or qualified wages); and
    - The employer's share of Social Security and Medicare taxes for all employees
2) Request an advance payment of the tax credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19.

DELAY OF PAYMENT OF EMPLOYER PAYROLL TAXES (SECTION 2302)

1) Employers can defer payment of the employer's portion of Social Security taxes (6.2%) during the deferral period as follows:
    - 50% is deferred until December 31, 2021
    - 50% is deferred until December 31, 2022
2) Similar rules apply to half of the taxes paid by self-employed individuals related to Social Security tax.
3) The deferral period begins on March 27, 2020 and ends before January 1, 2021.
4) **The deferral does not apply to employers who have loans forgiven under the CARES Act as part of the Paycheck Protection Program (PPP) or the U.S. Treasury Program Management Authority. However, employers who have received a PPP loan may defer the remittance of the employer's share of Social Security tax through the date the lender issues a decision as to the forgiveness of any portion of the loan.**

MODIFICATIONS TO NET OPERATING LOSSES (SECTION 2303)

1) NOLs carried to tax years 2018, 2019, and 2020 can be used to offset 100% of the taxable income of those years (rather than being limited to 80%).
2) NOLs generated in tax years 2018, 2019 and 2020 can be carried back 5 years. This does not apply to REITs.

MODIFICATION OF EXCESS BUSINESS LOSS LIMITATION (SECTION 2304)

Business losses can now be taken without limitation for tax years 2018, 2019, and 2020.

MODIFICATIONS OF CREDIT FOR PRIOR YEAR MINIMUM TAX LIABILITY OF CORPORATIONS (SECTION 2305)

Corporate AMT credits are fully refundable in 2019.

MODIFICATION OF LIMITATION ON BUSINESS INTEREST EXPENSE (SECTION 2306)

1) For taxpayers other than partnerships, business interest expense for tax years 2019 and 2020 are limited to 50% of Adjusted Taxable Income (ATI) instead of 30%. Taxpayers can elect for the 30% of ATI limitation to continue to apply instead.
2) For partnerships, business interest expense in tax year 2020 is subject to the higher 50% of ATI limitation unless the partnership elects for the 30% limitation to apply instead.
3) A taxpayer can elect to use its ATI from tax year 2019 to calculate the business interest expense limitation for tax year 2020.
4) Special rule for partners of a partnership: 50% of 2019 excess business interest expense allocated from a partnership to a partner can be deducted by the partner in 2020 without limitation.
5) The IRS is giving qualifying real property and/or farming trades or businesses a second pass at deciding whether to elect out of the business interest expense limitation. Such businesses can either make a late 163(j) election or revoke a previously-made 163(j) election for tax years 2018 and 2019. The deadline for most taxpayers to make or revoke the 163(j) election is October 15, 2021.

TECHNICAL AMENDMENTS REGARDING QUALIFIED IMPROVEMENT PROPERTY (SECTION 2307)

The TCJA inadvertently assigned Qualified Improvement Property (QIP) a 39-year life under the General Depreciation System (GDS) and 40-year life under the Alternative Depreciation System (ADS) beginning tax year 2018. The CARES Act fixes this widely-recognized "retail glitch" and retroactively assigns QIP its intended 15-year life under GDS and 20-year life under ADS. As a result, 100% bonus depreciation can be taken on QIP, assuming bonus depreciation is otherwise allowed.

QIP includes any improvement made by a taxpayer to an interior portion of a nonresidential building if the improvement is placed in service after the date that building was first placed in service. However, QIP does not include the following:

- building enlargements,
- any elevator or escalator, or
- the internal structural framework of the building.

INDIVIDUAL TAX PROVISIONS:

RECOVERY REBATES FOR ELIGIBLE INDIVIDUALS – ECONOMIC IMPACT PAYMENTS (SECTION 2201)

1) Eligible individuals are entitled to an economic impact payment of $1,200 for single filers / $2,400 for joint filers plus $500 per qualifying child (a dependent under 17 years old), subject to an adjusted gross income (AGI) phase-out.
2) The payment is a 2020 tax credit that is being paid in advance and will be reconciled on the 2020 tax return. Taxpayers eligible for a higher rebate based on 2020 AGI will receive the remainder on their 2020 tax returns. If the rebate based on your 2020 income turns out to be smaller than the amount actually paid to you, you will not have to give back the difference.

Eligible individuals

1) Eligible individuals are those with a valid Social Security Number and anyone other than a nonresident alien, dependent of another, or estate/trust.
2) Taxpayers with ITINs are not eligible.
3) Dependents between the ages of 18 and 24 are not eligible.

AGI limitation

The credit is reduced by $5 for every $100 a taxpayer's AGI exceeds the following thresholds*:

1) $75k for single filers (fully phased out at $99k)
2) $150k for joint filers (fully phased out at $198k)

*The thresholds are increased by $10k for each qualifying child.

Additional information

The IRS has deposited the rebate into the bank accounts of taxpayers who had refunds directly deposited on either their 2018 or 2019 tax return, and has started sending out physical checks to other taxpayers (but projects it could take until September to complete). Eligible individuals will receive a letter within 15 days of payment informing them of the amount and method of payment.

For eligible individuals who did not use direct deposit on their 2018 or 2019 tax return and have not received a check, the IRS has set up a web-based application for individuals to provide their bank account information. The website can be found at: https://www.irs.gov/coronavirus/economic-impact-payments. People who provide their bank information to the IRS by Thursday of a given week using the portal can expect to receive their rebate the following week. **As a reminder, please beware of phishing emails asking you to click on links or go to any other website to provide your personal information.**

Eligible individuals not required to file 2018 or 2019 tax returns ("non-filers") will need to go to the website to provide some basic information to get their payments. Recipients of Social Security retirement, disability (SSDI), Supplemental Security Income (SSI), Veterans Affairs, or Railroad Retirement or Survivor benefits will automatically be mailed a rebate check.

SPECIAL RULES FOR USE OF RETIREMENT FUNDS (SECTION 2202)

1) Typically, distributions from a qualified plan or IRA made before age 59½ trigger a tax penalty, in addition to regular income tax. The CARES Act carves out a new exception to allow up to $100k of "coronavirus-related" distributions from retirement accounts in 2020 that will not be subject to the 10% early withdrawal penalty or withholding.
    - An eligible retirement account includes an IRA, 401(k), pension plan, and profit sharing plan.
    - Such distributions are still taxable, but the income can be spread out over 3 years. Alternatively, tax may be avoided completely by redepositing the same amount in a qualified plan or IRA within 3 years (instead of the usual 60 days) to count as a tax-free rollover.
    - A "coronavirus-related" distribution is one made between January 1, 2020 and December 31, 2020 to a qualified individual, which is defined as someone who meets any of the following criteria:
        - has been diagnosed or has a spouse or dependent who was diagnosed with the virus SARS-CoV-2 or with the COVID-19 disease ("the coronavirus");
        - has experienced adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, or being unable to work due to lack of child care due to the coronavirus; or
        - has experienced adverse financial consequences as a result of closing or reducing hours of a business owned or operated by the individual due to the coronavirus.
    - Consider the timing of any withdrawals, as money would be pulled out at a time when the market is low.

2) The CARES Act also relaxes the rules for hardship loans from qualified employer plans made between March 27, 2020 and September 23, 2020.
    - It doubles the maximum loan amount from $50k to $100k and allows participants to take 100% instead of the usual 50% of their vested balance as a loan.
    - It extends the due date for loan repayments otherwise due in 2020 by one year.
    - Note that such loans are not available from IRAs or IRA-based plans like SEP-IRAs.

3) Retirement plans may adopt these provisions immediately even if hardship distributions or loans aren't currently permitted, as long as the plan is amended by 2022.

WAIVER OF REQUIRED MINIMUM DISTRIBUTIONS (SECTION 2203)

Required minimum distributions (RMDs) from certain retirement plans have been waived for 2020 regardless of whether the individual is impacted by COVID-19. Retirees who can afford to skip their 2020 distribution can now leave that money in their account an extra year instead of being required to sell while the market is low.

In addition, taxpayers are generally required to take their RMDs by December 31st of the year for which it is due. However, a taxpayer's first RMD can be deferred until April 1st of the following year. Taxpayers who elected this deferral for tax year 2019 can skip the RMD otherwise required to be made by April 1, 2020.

The waiver is allowed for most retirement plans including 401(k)s, defined contribution plans, IRAs, SEP-IRAs, and SIMPLE IRAs.

ABOVE THE LINE DEDUCTION FOR CHARITABLE CONTRIBUTIONS (SECTION 2204)

Taxpayers that do not itemize deductions are allowed to deduct up to $300 of cash contributions made in 2020. The contributions cannot be made to a donor advised fund or a non-operating private foundation.

MODIFICATIONS TO LIMITATIONS ON CHARITABLE CONTRIBUTIONS MADE DURING 2020 (SECTION 2205)

Individual taxpayers can make cash contributions of up to 100% of their AGI in 2020. Such contributions were previously limited to 60% of AGI.

Corporate taxpayers also get an increased cash contributions limit, from 10% of adjusted taxable income (ATI) to 25% of ATI.

The increased limits only apply to contributions made in cash in 2020 and does not apply if made to a donor advised fund or a non-operating private foundation.

EXCLUSION FROM CERTAIN EMPLOYER PAYMENTS OF STUDENT LOANS (SECTION 2206)

Employer payments made before January 1, 2021 towards a qualified education loan incurred by an employee for his or her education, subject to an annual cap of $5,250, will not be taxable to the employee.