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LEGAL UPDATES

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A Summary of CARES Act Tax Relief Provisions

Service

Tax

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On March 27, 2020 the Coronavirus Aid, Relief and Economic Security Act (CARES) was signed into law. We have summarized below some of the more significant tax provisions in CARES applicable to businesses and individuals.

BUSINESS PROVISIONS

Employee retention credit

CARES allows a payroll tax credit for 50% of wages paid by "eligible employer" to certain employees. Eligible employers include those:

Whose operations have been fully or partially suspended as a results of government order; or

Suffered a greater than 50% drop in quarterly gross receipts measured on a year-over -year basis.

For employers with less than 100 employees, all employees are eligible. For those with greater than 100 employees, only furloughed employees or those with reduced hours are eligible. The amount is capped at $10,000 of wages, including health benefits, and the payroll tax credit is disallowed if the employer receives a loan under the Paycheck Protection Program. Additionally, wages are to be adjusted if other credits are taken. The Internal Revenue Service (IRS) can make advance payments of the credit.

Delay of employer payroll taxes

This provision allows employers to delay payment of the employer portion of the social security tax (i.e., 6.2% of payroll up to annual limit). Payments are deferrable from the date of enactment through January 1, 2021. Half of the payment is due December 31, 2021, and the remainder is due December 31,

2022. The provision also allows 50% deferral of self-employment taxes. The deferral cannot be used if the taxpayer had certain indebtedness forgiven under CARES.

Net Operating Loss (NOL) limitations

The 2017 Tax Cut in Jobs Act (TCJA) limited the use of NOLs to 80% of taxable income before the NOL. CARES removes the limitation for all years beginning after December 31, 2017 and also temporarily repeals the rule that NOLs cannot be carried back. NOLs arising in a tax year beginning after December 31, 2017 and before January 1, 2021 can now be carried back for five years.

Limitation of losses for non-corporate taxpayers

The TCJA temporarily suspended non-corporate taxpayer trade or business losses in excess of $250,000. CARES allows the deductions in 2018, 2019 and 2020.

Minimum tax credit

The TCJA replaced the alternative minimum tax applicable to corporations. Corporations may still have certain “minimum tax credits” available. Prior law allowed the use of the credit subject to certain limitations. CARES accelerates the ability to take the credit now and allows the taxpayers to make a refund claim for the credit.

Charitable contributions

A corporation’s charitable deductions are limited to a percentage of its taxable income before the deductions. CARES increases the limit for cash contributions from 10% to 25% of its taxable income. For food donations, the limitation is increased from 15% to 25% of the corporation’s taxable income.

Excise tax to distillers

Distillers around the country have mobilized to take their distilled spirits and make hand sanitizer. CARES removes excise tax on alcohol used in the production of hand sanitizer.

Raised interest deduction limits

For most business taxpayers, TCJA limited the amount of allowable interest deductions to 30% of adjusted taxable income. CARES temporarily and retroactively increases the limitation on the deductibility of interest expense to 50% for tax years beginning in 2019 and 2020, except that for partners in partnerships, where the increase applies only in 2020. Taxpayers may elect out of the increased limit and can also elect to calculate their 2020 allowable interest using their 2019 adjusted taxable income.

Bonus depreciation technical correction for qualified improvement property

Due to a drafting error, TCJA caused qualified improvement (QI) property to be classified as nonresidential real property with a 39-year recovery period for depreciation purposes. CARES implements a technical correction to provide that QI property is subject to a 15-year recovery period for depreciation purposes, making it eligible for 100% bonus depreciation. The change is applicable to all property placed in service after Dec. 31, 2017.

INDIVIDUAL PROVISIONS

Individual recovery rebate/credit

For 2020 CARES provides that eligible individual taxpayers will receive an income tax credit for 2020 equal to $1,200 ($2,400 for a couple) plus $500 for each qualifying child. The credit begins to phase out at $150,000 of adjusted gross income (AGI) for a joint return, $112,500 for a head of household, and $75,000 for all other taxpayers. The credit completely phases out at $198,000 of AGI for a joint return, $145,000 for head of household, and $99,000 for an individual return.

Each individual who was an eligible individual in 2019 will receive an advance refund in the amount of their credit as quickly as possible by direct deposit or mail; if an individual has not yet filed a 2019 return, the 2018 return will be used to determine eligibility. If a payment is made via direct deposit, the taxpayer will be notified no later than 15 days after distribution.

Retirement plan distributions – waiver of 10% additional tax

CARES provides that the 10% tax penalty for taking an early distribution from a qualified retirement plan is waived for coronavirus-related distributions of up to $100,000 in any tax year. A coronavirus-related distribution is one made to a qualified individual from an eligible retirement plan. A qualified individual is an individual:

diagnosed with SARS-CoV-2 or COVID-19, via a CDC-approved test,

whose spouse or dependent is so diagnosed, or

who experiences adverse financial consequences as a result of being furloughed, laid off, or having work hours reduced due to such virus or disease, or being unable to work due to lack of child care due to such virus or disease, or closing or reducing hours of the individual's owned business due to the virus or disease, or other factors to be determined by the Secretary of the Treasury.

Plan administrators may rely on an employee's certification as to the last of the conditions above.

The distribution may be re-contributed to the retirement plan at any time in the following three years. Alternatively, the distribution may be included in income over a three-year period, rather than being recognized in the year of distribution. In addition, CARES expands retirement plan loan availability.

Waiver of retirement plan required minimum distribution requirements for 2020

CARES waives the required minimum distribution requirements of Sec. 401(a)(9) for the 2020 taxable year with respect to most retirement plans.

Exclusion of employer-paid education expenses and student loan payments

An employee's gross income doesn't include up to $5,250 per year of employer payments—in cash or kind—made under an educational assistance program for the employee's education. CARES expands the type of educational payments that are excluded from the employee's gross income by allowing payments of principal or interest on any qualified education loan (i.e. student loan payments).

Individual deductions for charitable contributions

CARES adds an "off the top" deduction not to exceed $300 of qualified charitable contributions made by an individual who does not elect to itemize deductions. Individuals are allowed a deduction for cash contributions to certain charitable organizations (such as churches, educational organizations, hospitals, and medical research organizations) up to 60% of their contribution base (generally, AGI). Any amount exceeding 60% of the individual's contribution base is carried forward. CARES provides for taxpayers to disregard the 60% limitation if such contributions are made during 2020 and the taxpayer elects to apply such provision. Note that in the case of a partnership or S Corporation, the election is made separately by each partner or shareholder.

Contact us

Husch Blackwell's Tax practice group will continue to monitor developments on the federal and state levels throughout tax season and during this unprecedented public health crisis. If you have questions regarding the CARES Act or other tax-law issues, please contact Dan Geraghty, Robert Romashko, Rachel Scott or your Husch Blackwell lawyer.

COVID-19 resource

Husch Blackwell has launched a COVID-19 response team providing insight to businesses as they address challenges related to the coronavirus outbreak. The page contains programming and content to assist clients and other interested parties across multiple areas of operations, including labor and unemployment, retailing, and supply chain management, among others.

CARES Act updates

Husch Blackwell's CARES Act resource team has reviewed the Act carefully and is developing content to help clients determine how best to access the available assistance. The team will add new content frequently as the Act is implemented through a number of agency rulemakings over the coming weeks.