



CFA News Flash

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Congress Passes Coronavirus Relief Law

On March 27, Congress passed the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act). The law provides significant relief and opportunities. Regulatory guidance on implementing the law and addressing questions that arise will be highly anticipated in the days ahead. Following are highlights of provisions affecting businesses and employers.

Corporate and Business Tax

Net operating loss (NOL) carrybacks. The CARES Act restores NOL carrybacks that were eliminated by 2017 tax reform known as the *Tax Cuts and Jobs Act* or TCJA for businesses and individuals. The new carryback provisions allow for a five-year carryback of NOLs incurred by corporations and individuals in the 2018, 2019, and 2020 tax years. The act also provides for a two-year NOL carryback for losses incurred in fiscal years beginning in 2017 and ending in 2018. The act temporarily removes the 80% limitation on the amount of income that can be offset by post-2017 NOLS through the 2020 tax year. It also provides that an NOL carryback will not affect the 2017 IRC Section 965 transition tax amount.

Refundable alternative minimum tax (AMT) credits . The TCJA repealed the corporate AMT and provided that credits for prior year minimum tax would be refunded over a four-year period from 2018 through 2021. The CARES Act accelerates the refund of these credits under one of two options:

- The default option gives the balance of the refundable credit to taxpayers with their 2019 tax return.
- An election is available to allow taxpayers to claim a refund of the entire credit in 2018

Business interest expense limitation. The TCJA added a limitation on the deductibility of business interest. Interest expense deductions were capped at 30% of adjusted taxable income (ATI). The CARES Act increases the deduction to 50% of ATI for the 2019 and 2020 tax years. The act also allows taxpayers to make an election to use their 2019 ATI in the computation of the 2020 interest expense limitation. This increased deduction and election will benefit taxpayers that have a significant decline in 2020 income.

Qualified improvement property. In the TCJA, Congress intended to treat certain real estate improvements called qualified improvement property (QIP) as having a 15-year life that was eligible for 100% bonus depreciation. Due to an apparent drafting error, the statute did not make QIP eligible for bonus depreciation. The CARES Act restores bonus depreciation for QIP retroactively to enactment of the TCJA.

Paycheck Protection Program

Loan program for retaining employee and pay levels. The law establishes a Small Business Administration (SBA) Paycheck Protection Program to provide government loans between Feb. 15, 2020, and June 30, 2020, for eligible businesses and not-for-profit organizations with 500 or fewer employees that maintain certain employment

and employee wage levels. The loan amount (capped at \$10 million) is tied to payroll costs. The loan (or a portion) may be forgiven if used during the permitted period for specified and capped payroll costs, interest payments on any mortgage incurred prior to Feb. 15, 2020, payment of rent on any lease in force prior to Feb. 15, 2020, and payment on any utility for which service began before Feb. 15, 2020. The loan forgiveness amount is reduced if the employee force is reduced or if employee wages (for wages up to \$100,000 per employee) are reduced more than 25%. Loan forgiveness is not treated as taxable income. The law also provides for the U.S. Department of the Treasury to establish criteria for certain lenders to participate in SBA lending programs and to receive Paycheck Protection Program loans and related loan forgiveness. Businesses that participate in the Paycheck Protection Program are ineligible to take advantage of the employee retention credit added to the law, and those that have been discharged from a loan under the program are ineligible for the employer payroll tax deposit deferral added to the law.

Employer Tax Credits and Payroll Relief

Employee retention credit. Certain employers might be eligible for a refundable and advanceable payroll tax credit (reduced by other payroll tax credits) against the employer 6.2% Social Security tax. The credit generally is equal to 50% of qualified wages paid from March 13, 2020, through Dec. 31, 2020. Eligible employers are those with operations that are fully or partially suspended due to a COVID-19-related government shutdown order or whose gross receipts declined by more than 50% compared to the same quarter in the prior year. The credit is based on qualified wages paid to nonworking employees of an employer with more than 100 full-time employees and on qualified wages paid to working and nonworking employees of an employer with 100 or fewer full-time employees. Qualified wages are capped at \$10,000 per employee (including expenses allocable to the employee for health benefits). Qualified wages cannot include wages required to be paid under the *Families First Coronavirus Response Act* (FFCRA) enacted on March 18. The credit is not permitted if the taxpayer has received an SBA loan under the Paycheck Protection Program.

Employer payroll tax deposit deferral. Businesses can defer the deposit due date for the employer 6.2% Social Security tax (reduced by other payroll tax credits, including those under the FFCRA) otherwise due from March 27, 2020, through Dec. 31, 2020. Half of the deferred amount is due by Dec. 31, 2021, with the balance due by Dec. 31, 2022. No deferral is available for the employer 1.45% Medicare tax. Certified professional employer organizations also are eligible for the deposit deferral. Self-employed individuals may defer 50% of the 12.4% self-employment tax but not the 2.9% Medicare portion of the self-employment tax. However, the deposit deferral is not permitted if a taxpayer has been discharged from an SBA loan under the Paycheck Protection Program.

Changes to the FFCRA-mandated leave and payroll tax credits. The law amends the legislation enacted on March 18 requiring paid leave and permitting related payroll tax credits for certain employers to permit advance refunds of the credits and create the regulatory authority to do so (rather than requiring employers to wait until filing tax returns as originally enacted). Other modifications and technical corrections also are made to the FFCRA.

Individual Income Taxation

Trade or business losses of noncorporate taxpayers. The TCJA added Section 461(l) to the IRC. Under this provision, an individual's trade or business losses in a taxable year were capped at \$500,000 for married joint tax filers (\$250,000 for all other tax filers). The amount in excess of the cap was available as a net operating loss in subsequent years. The CARES Act retroactively delays the effective date of this provision to the 2021 tax year.

Recovery rebates. Eligible individuals will receive a check for \$1,200 (\$2,400 for married joint tax filers) plus \$500 for each qualifying child (as defined) who has not reached the age of 17 by the end of 2019. Eligible individuals include any individual other than a nonresident alien, a dependent, an estate, or a trust. The rebate amount phases out by 5% of adjusted gross income exceeding \$150,000 in the case of married joint tax filers, \$112,500 for head of household taxpayers, and \$75,000 for all other taxpayers, with full phase-out at \$198,000, \$136,500, and \$99,000 respectively. The

IRS has been directed to provide an advanced refund of this amount as rapidly as possible, but no later than Dec. 31, 2020, based on an individual's adjusted gross income reported on his or her 2019 Form 1040, "U.S. Individual Income Tax Return." If the 2019 Form 1040 has not been filed as of the date the IRS determines eligibility, the 2018 Form 1040 will be used.

Charitable Contributions

Expanded charitable contribution deductions. The CARES Act allows nonitemizers a charitable contribution deduction for up to \$300 of cash contributions beginning in 2020. The law also relaxes the overall limitation on cash contributions. In 2020, the 50% limitation on cash contributions by an individual will not apply. This relaxation does not apply to cash contributions to private foundations or to contributions to donor advised funds. Corporate charitable contributions typically are limited to 10% of taxable income. The law increases the limitation to 25% of taxable income for 2020.

Exchange Stabilization Fund

Funding to targeted industries. The CARES Act adds \$500 billion to Treasury's Exchange Stabilization Fund to provide funding to targeted industries as a mix of loans and equity. The law indicates that any loans under the program will be considered debt for federal income tax purposes, and the law also provides that any equity issued under the program should be disregarded for purposes of IRC Section 382. Various nontax restrictions apply to fund recipients during the loan term plus one additional year, including prohibitions on increases in executive compensation.

Employee Benefits

Income exclusion for employer payments of student loans. The law amends IRC Section 127 to provide an income tax exemption to an employee for student loan payments made by an employer on the employee's behalf after March 27, 2020, and before Jan. 1, 2021, up to \$5,250.

Employer Health Plans and Accounts

Telehealth permitted as predeductible service in high deductible health plans (HDHPs). For plan years beginning on or before Dec. 31, 2021, the law permits telehealth services to be provided under HDHPs prior to satisfying the plan's deductible so that individuals in HDHPs still can establish and contribute to health savings accounts (HSAs).

Permanent expansion of HSA, health reimbursement arrangement (HRA), and health flexible spending account (FSA) uses. As of Jan 1, 2020, the law exempts from taxation HSA distributions as well as HRA and health FSA reimbursements for amounts related to the purchase of over-the-counter medical products and menstrual care products.

Retirement Plans

Loans to employee stock ownership plans (ESOPs). During the 2020 calendar year, ESOPs with 500 or fewer employees are eligible to receive certain loans under Section 7(b)(2) of the *Small Business Act*, along with the waiver of certain requirements that would otherwise apply.

Retirement plan distribution relief. The law exempts coronavirus-related distributions (as defined) up to \$100,000 that are made before Dec. 31, 2020, from eligible retirement plans (401(a) qualified retirement plans, 403(b) plans, governmental 457(b) plans, and individual retirement accounts (IRAs)) from the 10% early withdrawal penalty. Such distributions are taxed ratably over a three-year period unless the recipient elects otherwise and can be repaid within three years after the distribution date. A plan may immediately permit coronavirus-related distributions but must be amended before the end of its plan year that begins in 2022.

Retirement plan loan relief. Relaxed limitations apply to loans made within 180 days after March 27, 2020, from eligible retirement plans (other than IRAs) to qualified individuals. The permitted loan amount is the lesser of \$100,000 (rather than \$50,000) or 100% (rather than 50%) of a participant's vested account balance. A one-year delay of payment due dates applies to affected loans. A plan may generally apply these rules to affected loans as of March 27, 2020, but it must be amended before the

end of its plan year that begins in 2022.

Required minimum distribution relief. The law relieves plans and taxpayers from 2020 required minimum distributions from eligible retirement plans. A plan immediately can apply this relief but must be amended before the end of its plan year that begins in 2022.

Single-employer defined benefit plan funding relief. The law extends to Jan. 1, 2021, the deadline for minimum funding contributions otherwise due in 2020. However, interest will accrue from the original due date. In addition, for purposes of applying certain restrictions on payments, benefit increases, or future benefit accruals, the adjusted funding target attainment percentage for the last plan year ending before Jan. 1, 2020, also can be treated as the adjusted funding target attainment percentage for plan years that include the 2020 calendar year.

For more Information please contact:

Jay Mangel | jay.mangel@crowe.com | (818) 501-5200
<https://www.crowe.com/>

California Fashion Association

444 South Flower Street, Los Angeles, California 90071 | Tel: 213 688 6288 | Fax: 213 688 6290
email: info@calfashion.org | Website: www.californiafashionassociation.org

