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Practice Update

Summary of Key Tax Provisions in Historic $2.2 Trillion CARES Act Law

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By David C. Blum, Stefi N. George, and Bill Sullivan

On March 27, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), legislation intended to help Americans and businesses survive a public health and economic crisis due to COVID-19. This article provides a summary of key tax provisions in the CARES Act.

Rebates and Other Individual Tax Provisions

2020 Recovery Rebates for Individuals. Under the CARES Act, all U.S. residents with adjusted gross income of up to $75,000 ($112,500 for head of household and $150,000 for married individuals) who are not a dependent of another taxpayer and have a work-eligible social security number are eligible for a $1,200 rebate check ($2,400 for married individuals), plus an additional $500 per child. The rebate amount is reduced by $5 for each $100 that a taxpayer's income exceeds the phase-out threshold.

Special Rules for use of Retirement Funds. Individuals facing COVID-19-related challenges may withdraw funds up to $100,000 from their retirement plans without incurring the 10% early withdrawal penalty. In addition, income attributable to such distributions would be subject to tax over three years (unless the taxpayer elects otherwise), and the taxpayer may recontribute in an amount up to the distributed amount to an eligible retirement

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plan within three years without regard to that year's cap on contributions. Eligible retirement plans include individual retirement accounts (IRAs), 401Ks and other qualified trusts, certain deferred compensation plans, and qualified annuities.

Changes to Charitable Contributions. The CARES Act increases the available itemized deductions for charitable contributions by suspending the 50% of adjusted gross income limitation for 2020. Individuals (whether or nor they itemize the deductions) are also permitted to deduct up to $300 in cash contributions made to churches and charitable organizations in 2020.

Exclusion for Certain Employer Payments of Student Loans. Employers may provide a tax-free student loan repayment benefit up to $5,250 annually, which is excludible from the employee's income. This $5,250 cap applies to the student loan repayment benefit as well as any other educational assistance (e.g., tuition, fees, books) provided by the employer during the year under current law. The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.

Business Tax Provisions

Employee Retention Credit for Employers Subject to Closure Due to COVID-19. The legislation provides a refundable payroll tax credit equal to 50% of qualified wages for certain eligible employers for wages paid or incurred between March 13, 2020 and December 31, 2020. "Eligible employer" means any employer whose (1) operations were fully or partially suspended due to a COVID-19-related governmental order, or (2) gross receipts for the calendar quarter are less than 50% when compared to the same quarter in the prior year. For employers with more than 100 employees in 2019, the credit is generally available only for wages paid to employees that are furloughed (i.e., retained, but are not currently providing services), due to the crisis. For employers with 100 or fewer full-time employees, all wages are eligible for the credit. “Qualified wages” include any “qualified health plan expenses” allocable to the wages, and the amount of qualified wages for each employee for all quarters may not exceed $10,000. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020. The credit is not available for employers that receive a small business interruption loan.

Delay of Payment of Employer Payroll Taxes. Employers generally are responsible for paying a 6.2% Social Security tax on employee wages. Under the CARES Act, employers and self-employed individuals may delay the employer portion of Social Security tax payments, with 50% of the amount to be paid by December 31, 2021, and the other 50% by December 31, 2022.

Modifications for Net Operating Losses. Net operating losses (NOL) are currently subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year. The legislation relaxes such limitations, allowing companies to carry back NOL from 2018, 2019, or 2020 for up to five years. The NOL limit of 80% of taxable income is also suspended, which allows the companies to use their NOL to fully offset their taxable income. The legislation also modifies loss limitations for non-corporate taxpayers and makes a technical correction to the treatment of NOL for the 2017 and 2018 tax years.

Modification of Credit for Prior Year Minimum Tax Liability of Corporations. The corporate alternative minimum tax (AMT) was repealed as part of the Tax Cuts and Jobs Act, but corporate AMT credits were made available as refundable credits over several years, ending in 2021. The CARES Act allows companies to claim larger refundable tax credits now than they otherwise could.

Modification of Limitation on Business Interest. The current net interest deduction limitation, which limits the ability of businesses to deduct interest paid on their tax returns to 30% of adjusted taxable income is temporarily increased to 50% of adjusted taxable income for 2019 and 2020 to allow the business to increase leverage or at least benefit from higher deductions. Although the rule above does not apply to partnerships for 2019, any interest disallowed at the partnership level will be allocated to the partners, and carried forward at the partner level under the current law. In 2020, 50% of the interest will be fully deductible, while the other 50% will remain subject to the current law.

Technical Amendment Regarding Qualified Improvement Property. The Act provides a long-awaited technical correction to the Tax Cuts and Jobs Act relating to "qualified improvement property," (generally, interior improvements to nonresidential buildings). The correction is *retroactive* to January 1, 2018, and provides for immediate expensing of certain improvements to real property through bonus depreciation. Additionally, to the extent not immediately expensed, it allows for a 15 year recovery period (as opposed to the current the 39-year deprecation life of the building).

Temporary Exception from Excise Tax for Alcohol Used to Produce Hand Sanitizer. Waives the federal excise tax on any distilled spirits used for or contained in hand sanitizer that is produced and distributed in a manner consistent with guidance issued by the Food and Drug Administration is effective for calendar year 2020.

Suspension of Certain Aviation Excise Taxes. The waiver of certain federal excise tax on any amount paid for transportation by air and kerosene used in commercial aviation is effective after date of enactment and ending before January 1, 2021.

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recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.