

## THE BOTTOM LINE

- >> The CARES Act offers a number of tax benefits for both individuals and businesses with the aim to enhance taxpayer cash flow for 2020.
- >> Both classes of taxpayers need to pay close attention to these tax provisions as a number of them will have an immediate impact on both personal and business taxes.

## >> COVID-19 ALERT

# Tax Provisions Contained in the CARES Act

## Congress has recently enacted the Coronavirus Aid, Relief and Economic Security Act (CARES Act).

The CARES Act contains a number of income tax-related provisions, the goal of which are to enhance the cash flow of individuals and businesses during the COVID-19 outbreak.

Below is a summary of the key tax provisions.

### EMPLOYER CREDIT FOR WAGES PAID

For certain companies affected by the coronavirus outbreak, 50 percent of all qualified wages paid to affected employees will be creditable against the employment taxes typically paid by the employers (which is typically the 6.2% social security rate required to be deposited by the employer). The amount of qualified wages (including certain qualified health plan expenses) with respect to any employee that may be taken into account by an employer for all calendar quarters shall not exceed \$10,000. It is only available for qualified wages paid from March 13, 2020 through December 31, 2020.

Additional details include the below.

Employers eligible for the credit are those who:

- 1) Have been partially or totally shut down by government order; or
- 2) Have revenues in any quarter in 2020 that were less than 50 percent of the revenues in the same quarter in 2019. The relief remains available for future quarters, as long as the revenues are less than 80 percent compared to the same quarter in 2019.

Wages for which such credit may be taken are:

- 1) Wages paid by an employer that had an average of more than 100 full-time employees in 2019 to those employees who are unavailable to provide services to the employer due to coronavirus-related circumstances set forth in (1) or (2) above; and
- 2) Wages paid by an employer that had an average of less than 100 full-time employees in 2019 to all employees regardless of whether those employees are unable to provide services to the employer during the applicable period due to the corona virus related circumstances set forth in (1) and (2) above.

Wages taken into account for other payroll credits, for required paid sick leave or required paid family leave in the Families First Coronavirus Act are not included.

### Denial of Credits

An eligible employer that receives a Small Business Interruption Loan (SBA loan) due to the CARES Act will not be eligible to claim these credits.

### Limitation on Wages

For employers with over 100 full-time employees, the employee is only qualified for the wages they would have been paid for working an equivalent duration during the 30 days immediately preceding this period.

### Employers in a Controlled Group

For purposes of determining the “employer” under these rules, all employers of the same controlled group of corporation are treated as one single employer and therefore affiliated corporations will need to analyze the application of these rules on a combined basis and not on a separate company basis.

The relief may be valuable to an employer that suffers a very sharp one quarter downturn since, during this initial quarter, the \$10,000 per employee cap can be fully utilized. The relief will not apply to employers with less than very sharp downturns.

In addition, due to the cap, the relief will also be of limited overall help to employers that suffer sharp downturns over extended periods. For those employers, the provisions would seem to be a relatively minor amount tossed into a listing ship.

### DEFERRAL OF EMPLOYMENT TAXES AND DEPOSITS

All employer-side social security taxes (currently at 6.2%) and certain deposits related to unemployment and other employee insurance funds may be deferred until December 31, 2021. The deferred amounts must be repaid in two installments, on December 31, 2021 and on December 31, 2022.

Employers are protected from third-party liability for failure to pay into otherwise required trust funds. Any shortfall in the trust funds due to the deferrals will be covered by the U.S. Treasury.

The payment of 50 percent of the self-employment taxes owed by a self-employed individual from March 27, 2020 through December 31, 2020 may be similarly deferred. However an employer will not be able to take advantage of this deferral if the employer has certain indebtedness (including certain SBA loans) forgiven, as provided for in the CARES Act.

### INDIVIDUAL CREDIT

A \$1,200 credit is extended to each individual taxpayer (\$2,400 for joint filers) with a valid social security number who:

- 1) Cannot be claimed as a dependent on another person's tax return; or
- 2) Is a nonresident alien individual.

In addition, each individual taxpayer is eligible for an additional \$500 per child.

The credit appears to be refundable, so checks will be issued even if they otherwise have no current tax to pay. The credit is reduced for single individuals with 2019 adjusted gross incomes over \$75,000 and \$150,000 for joint filers. The tax credit goes to zero at \$99,000 for individual filers and at \$198,000 for joint filers. If the 2019 return for the individual has not yet been filed, the phase out is based on the 2018 tax return.

### BUSINESS INTEREST LIMITATION

The severe limitation on deductible business interest, now 30% of adjusted taxable income, will be increased to 50 percent for the 2019 and 2020 tax years. For tax years beginning in 2020, businesses may elect to compute the interest expense limitation based on their 2019 adjusted taxable income which will likely be higher.

The rules are slightly different for partnerships where the business interest deductions for 2019 will still be limited to 30 percent of the 2019 adjusted taxable income.

However, if a partner gets suspended excess interest expense allocated to them in 2019, 50 percent of the suspended interest would be available to be used in 2020, with the utilization of the other 50 percent of the suspended excess interest expense remaining subject to the current rules on utilization.

## NET OPERATING LOSSES

The net operating loss (NOL) limitations currently in effect, which limits a corporate taxpayer to utilization of net operating losses against 80 percent of their net income for the year, will be eased on a temporary basis:

- 1) NOLs can be deducted in full, rather than limited to a percentage of net income.
- 2) NOLS for 2018, 2019, and 2020 may be carried back five years to offset income for those years, generating a tax refund. Under current law, since the 2017 Tax Cuts and Jobs Act, no carrybacks are permitted.

## ALTERNATIVE MINIMUM TAX (AMT)

Corporate refundable AMT credits through 2021 can now be claimed immediately, rather than over time.

## NON-CORPORATE TAXPAYER LOSSES

Under the CARES Act, the current limits on the deductibility of non-corporate taxpayer losses from all trades or business in excess of \$250,000 will be eliminated for the 2018, 2019 and 2020 tax years.

## CAPITAL IMPROVEMENTS

A technical correction to the Tax Cut and Jobs Tax Act will be made permitting the current write off of certain capital improvements related to real estate. This provision will be particularly beneficial to businesses in the hospitality industry.

## EARLY WITHDRAWAL PENALTY SUSPENSION AND PLAN LOAN CHANGES

The ten percent early withdrawal penalty on distributions up to \$100,000 from IRAs and other qualified plans made on or after January 1, 2020 and before December 31, 2020 will be eliminated for a coronavirus-related distribution.

A “coronavirus related distribution” is to an individual:

- 1) Who is diagnosed with SARS-CoV-2 or COVID-19 through a qualifying test;
- 2) Whose spouse or dependent is diagnosed with SARS-CoV-2 or COVID-19; or
- 3) Who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, work hours reduced, unable to work due to lack of child care, closing or reducing hours of a business operated by the individual due to SARS-CoV-2 or COVID-19 or other factors to be prescribed by the Internal Revenue Service (IRS).

The administrator of an eligible retirement plan may rely on an employee’s certification that the employee satisfies these requirements in determining whether any distribution qualifies.

Income required to be reported with respect to such amounts can be subject to tax over three years, except

that the taxpayer could re-contribute those funds to an eligible retirement plan within three years without regard to that year’s cap on contributions and likely avoid the recognition of any income. If the funds are re-contributed at the end of three years, no income should be reportable, and, presumably, the taxpayer would file amended tax returns to reverse the income inclusion in earlier years. Presumably future administrative guidance will deal with this issue.

Qualified plans will also have the ability to raise participant loan limits for these individuals up to the lesser of \$100,000 or the participant’s entire vested benefit. Additionally, there can be a delay for these participants of the repayment of new and existing loans for one year.

## MINIMUM DISTRIBUTION WAIVER

The CARES Act waives minimum distribution requirements for defined contribution plans in 2020.

## EMPLOYEE’S STUDENT LOANS: EMPLOYER PAYOFF

Any employer repayments of an employee’s student loans, as well as other educational expenses (*e.g.* tuition, fees and books) during 2020 are excluded from the employee’s income up to a per-employee cap of \$5,250. Normally, the dollar amount of any such payments would be included in the income of the employee as normal wages.

## CHARITABLE DEDUCTIONS

Individual charitable contributions in cash, up to a maximum of \$300 will be “above the line” and, thus, fully deductible without being subject to the itemized deduction phase outs and limitations.

In addition, an:

- 1) Individual’s ability to deduct contributions in any one year

which is currently limited in most instances to 50 percent of adjusted gross income for individuals will be suspended; and

- 2) The percentage limit for corporate donors will be increased from 10 percent to 25 percent.

This provision applies to all charitable gifts made during 2020.

## FOR MORE INFORMATION

Stephen P. Foley  
Partner  
212.468.4893  
sfoley@dglaw.com

Brian Gallagher  
Partner  
212.468.4816  
bgallagher@dglaw.com

or the D&G attorney with whom you have regular contact.

Davis & Gilbert LLP  
212.468.4800  
1740 Broadway, New York, NY 10019  
[www.dglaw.com](http://www.dglaw.com)

© 2020 Davis & Gilbert LLP