NFIB

Tax Provisions for Businesses and Individuals

The CARES Act (COVID-III), which was signed into law on March 27, 2020, provides tax relief that will help certain small businesses with cashflow and liquidity needs, including deferred tax payments and direct payments. It is important to recognize that utilizing other provisions of the law disallows the use of some of these provisions, including the Paycheck Protection Program (forgivable loans).

Business Provisions

Delay of payment of employer payroll taxes.

- The CARES Act allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax through December 31, 2020.
- By December 31, 2022, all employers are responsible for paying the deferred 6.2% Social Security tax on employee wages. Half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.
- This delay does not apply to employers whose Paycheck Protection Program SBA 7(a) loans – offered through this legislation – are forgiven. (Sect. 1102, or U.S. Treasury Program Management Authority, Sect. 1109.)
- The Social Security Trust Funds will be held harmless under this provision.

Employee retention credit for employers subject to closure due to COVID-19.

- The CARES Act creates a payroll tax credit for 50% of eligible wages, up to $10,000 per employee, for 2020 during the COVID-19 pandemic.
- Excess of credit over payroll tax liability is refundable.
- Business eligibility –
  - The business's operations are partially or fully suspended due to Federal, State, or Local government orders related to the COVID-19 pandemic, or
  - Gross receipts from the calendar quarter (started on January 1, 2020) are less than 50% of gross receipts from the same calendar quarter in 2019.
- What are qualified wages?
  - For eligible employers with 100 or fewer full-time employees, qualified wages include all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for the first $10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.
  - For employers with more than 100 full-time employees, qualified wages include wages paid to employees who are unable to work due to the COVID-19-related circumstances

described above. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

- Important caveats:
  - Employers that receive a Paycheck Protection Program forgivable loan or a Small Business Interruption loan are not eligible for the credit.
  - Qualified wages do not include wages taken into account for purposes of the payroll credits for required paid sick leave or required paid family leave, nor for wages taken into account for the employer credit for paid family and medical leave (IRC sec. 45S).
- Credit expires on December 31, 2020.

Modifications for net operating losses.

- The CARES Act restores the ability to carry back net operating losses (NOLs).
- If a business's deductions for the year are more than income for the year, a NOL may occur. This loss is carried forward in future to set off future profits, thus reducing the tax liability of the business.
- The Tax Cuts and Jobs Act (TCJA) eliminated the option for most businesses to carry back NOL. Under TCJA, most businesses can only carry NOL arising from tax years after 2017 to a later year.
- This legislation revises TCJA to allow for a loss from 2018, 2019, or 2020 to be carried back five years, and allows NOL to fully offset taxable income.
- These changes will allow companies to use losses and amend prior years' returns, which will provide critical cashflow and liquidity.
- Further, this bill modifies the loss limitation applicable to pass-through businesses and sole proprietors, so they can benefit from the NOL carryback rules described above and access critical cashflow to maintain operations and payroll for their employees.

Modifications of limitation on business interest.

- The CARES Act temporarily increases the amount of interest expense businesses can deduct on their tax returns, by increasing the 30% limitation to 50% of the taxable income (with adjustments) for 2019 and 2020.
- This provision allows businesses to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.
- This section applies to tax years beginning after December 31, 2018.

Technical amendments regarding qualified improvement property (also known as the "Retail Glitch Fix").

- The CARES Act enables businesses in the hospitality industry to immediately write off costs associated with improving facilities instead of having to depreciate those improvements over the 39 years.
- This correction is retroactive to the enactment of TCJA, December 22, 2017; "the amendments made by this section shall take effect as if included in section 13204 of Public Law 115-97 [TCJA]."

- The provision, which corrects an error in TCJA, increases companies' access to cashflow by allowing them to amend a prior year return and incentivizes them to continue to invest in improvements.

Advance refunding of credits.

- The CARES Act allows Treasury to advance emergency paid leave tax credits to employers. Employers will be able to receive credit earlier, instead of waiting to be reimbursed on the back end.

Individual Provisions

2020 recovery rebates for individuals.

- The Federal Government will provide $1,200 rebates to Americans with adjusted gross income up to $75,000. Married couples who file a joint tax return, with adjusted gross income up to $150,000, are eligible for $2,400. Those amounts increase by $500 for every child.
- The IRS will base these amounts on the taxpayer's 2019 tax return if filed, but if the taxpayer has not yet filed, the rebate will be based on the taxpayer's 2018 filed return.
- The rebate amount is reduced by $5 for each $100 a taxpayer's income exceeds the phase-out threshold. The amount is completely phased-out for single filers with incomes exceeding $99,000 and $198,000 for joint filers.
- Timing: "The Secretary shall, subject to the provisions of this title, refund or credit any overpayment attributable to this section as rapidly as possible."
- No refund or credit shall be allowed after December 31, 2020.

Special rules for use of retirement funds.

- This provision allows distributions up to $100,000 from qualified retirement accounts for COVID-19 related purposes. Further, this provision waives the 10% early withdrawal penalty for these distributions.
- Income attributable to distributions would be taxable over three years.
- Taxpayers will be allowed to contribute the loan amount into eligible retirement plans within three years – regardless of the annual cap on contributions.
- A coronavirus-related distribution is a distribution made to an individual: (1) who is diagnosed with COVID-19, (2) whose spouse or dependent is diagnosed with COVID-19, or (3) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury Secretary.
- The distribution may be made between January 1 and December 31, 2020.