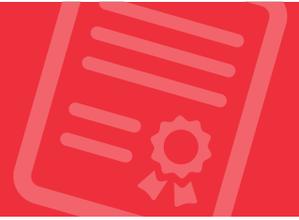


CARES Act



March 25, 2020

Highlights

- ✓ \$2.2 Trillion Stimulus Package Includes Vast Amounts of Relief
- ✓ \$1,200 “Recovery Rebate” Provided for Most American Adults
- ✓ Individual Relief Includes Enhanced Charitable Deductions
- ✓ Business Tax Relief Provides Increased Liquidity

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SPECIAL REPORT

Senate Passes \$2.2 Trillion Bill to Support Economy During Virus Pandemic

As COVID-19 continues to upend nearly every aspect of life in the United States, Congress has been working to relieve suffering Americans. Having passed the Families First Coronavirus Response Act on March 18 in an effort to limit the spread of the pandemic and support relief efforts, Congress turned to stabilizing the economy. After days of furious negotiations between Republicans and Democrats on the Hill and Trump Administration officials, the Senate passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act. With a \$2.2 trillion price tag, the bill is the most expensive piece of legislation ever passed.

The bill passed in the Senate late on March 25, 2020 and now goes to the House. While protracted negotiations were ongoing in the Senate, the House began writing its own bill. Whether the House takes up the Senate bill as is and is able to approve it quickly, or makes changes by incorporating its version remains to be seen. The President has indicated we would sign the bill “immediately.”

The Senate bill looks to make a significant impact on the economy by providing loan forgiveness, supporting small businesses, enhancing unemployment insurance, and providing federal loans to industries severely impacted by the pandemic. In addition, it provides tax relief and tax incentives for individuals and businesses alike. The majority of the tax relief is designed to increase liquidity in the economy, largely through the relaxation of limitations on business deductions and the deferral of taxes, but also with the introduction of recovery rebates for individuals.

INDIVIDUAL TAX RELIEF

Recovery Rebates

The most well-publicized provision is the \$1,200 recovery rebates for individual taxpayers. The rebate amounts are advance refunds of credits against 2020 taxes, and equal to \$1,200 for individuals, or \$2,400 for joint filers, with a \$500 credit for each child. The amount of each rebate is phased out by \$5 for every \$100 in excess of a threshold amount. This threshold amount is based upon 2018 adjusted gross income (unless a 2019 return has already been filed), and the phaseout begins at \$75,000 for single filers, \$112,500 for heads of households, and \$150,000 for joint filers. Thus, the rebates are completely phased out for



single filers with 2018 (or 2019, if applicable) adjusted gross income over \$99,000, heads of household with \$136,500, and joint filers with \$198,000.

In order to be eligible for a recovery rebate, the individual must not be: (1) a nonresident alien, (2) able to be claimed as a dependent on another taxpayer's return, (3) an estate or trust, and (4) must have included a Social Security number for both the taxpayer, the taxpayer's spouse, and eligible children (or an adoption taxpayer identification number, where appropriate). The bill includes additional rules for the application of the credit.

The Secretary of the Treasury is directed to provide the rebate as rapidly as possible.

“The bill is the most expensive piece of legislation ever passed.”

Retirement Plans

The bill also waives the 10-percent penalty on early withdrawals up to \$100,000 from qualified retirement plans for coronavirus-related distributions. For purposes of the penalty waiver, a coronavirus-related distribution is one made during the 2020 calendar year, to an individual (or the spouse of an individual) diagnosed with COVID-19 with a CDC-approved test, or to an individual who experiences adverse financial consequences as a result of quarantine, business closure, layoff, or reduced hours due to the virus. Any income attributable to an early withdrawal is subject to tax over a three-year period, and taxpayers may retribute the withdrawn amounts to a qualified retirement plan without regard to annual caps on contributions if made within three years.

 **COMMENT.** *This relief is commonly granted by Congress in the wake of major disaster declarations, such as those made after a major hurricane.*

The bill also waives all required minimum distributions for 2020, regardless of whether the taxpayer has been impacted by the pandemic.

Charitable Contributions

The bill enhances tax incentives for making charitable contributions for the 2020 tax year. First, it allows an above-the-line deduction of up to \$300 for charitable contributions made by individuals.

 **IMPACT.** *This allows an individual to claim a deduction for a charitable contribution, even if the individual does not itemize deductions.*

Additionally, the percent-of-adjusted gross income (AGI) limitations are increased for all taxpayers as well as for specific types of contributions. For the 2020 tax year, individuals can claim an unlimited itemized deduction for a charitable contribution, which is normally limited to 50 percent of AGI. In the case of corporations, the usual 10-percent-of-AGI limitation is increased to 25 percent for the 2020 tax year. Finally, the contribution of food inventory, the deduction for which is normally limited to 15 percent of AGI, is increased to 25 percent for the 2020 tax year.

Student Loans Paid by Employers

The bill provides for an exclusion of up to \$5,250 from income for payments of an employee's education loans. In order for the exclusion to apply, the loan must have been incurred by the employee for the education of the employee (so, for example, the loan must not have been incurred to pay for the education of the employee's child). The payment can be made to the employee or directly to the lender. The exclusion only applies for payments made by an employer after the date of enactment and before January 1, 2021.

 **COMMENT.** *The \$5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employee.*

BUSINESS TAX RELIEF

Employee Retention Credit

The CARES Act would grant eligible employers a credit against employment taxes equal to 50 percent of qualified wages paid to employees who are not working due to the employer's full or partial cessation of business or a significant decline in gross receipts. The credit is available to be claimed on a quarterly basis, but the amount of wages, including health benefits, for which the credit can be claimed is limited to \$10,000 in aggregate per employee for all quarters. The provision contains several requirements defining qualified wages, qualified employees, and qualified employers. The credit applies to wages paid after March 12, 2020, and before January 1, 2021.

 **COMMENT.** *This is very similar to the paid leave credits granted to employers under the Families First Coronavirus Response Act signed into law on March 18, 2020, with some changes to the requirements. Most significantly, neither the employee nor the employer have to be directly impacted by infection.*

 **COMMENT.** *This is also similar to the employee retention credits Congress provides after major disasters, but with different requirements and limitations.*

Payroll Tax Deferral

In order to free up employers' cash flow and retain employees during times of quarantine or shutdown, the CARES Act defers the payment of payroll taxes. Payroll taxes due from the period beginning on the date the CARES Act is signed into law and ending on December 31, 2020, are deferred. The entirety of payroll taxes incurred by employers, and 50 percent of payroll taxes incurred by self-employed persons qualify for the deferral. Half of the deferred payroll taxes are due on December 31, 2021, with the remainder due on December 31, 2022.

Net Operating Losses

The bill allows for a five-year carryback of net operating losses (NOLs) arising in 2018, 2019, or 2020 by a business. Businesses will be able to amend or modify tax returns for tax years dating back to 2013 in order to take advantage of the carryback. Under current law, only farming NOLs are allowed to be carried back, and the carryback is limited to two years.

 **COMMENT.** *The Tax Cuts and Jobs Act (TCJA) eliminated the carryback of NOLs for tax years ending after 2017 and allowed for the indefinite carry forward for NOLs. Prior to the TCJA, an NOL could be carried back two years, with longer carryback periods for NOLs arising from a casualty or declared disaster or farming losses.*

The bill also eliminates loss limitation rules applicable to sole proprietors and passthrough entities to allow them to take advantage of the NOL carryback.

Additionally, the bill allows for NOLs arising before January 1, 2021, to fully offset income. Under current law, NOLs are limited to 80 percent of taxable income.

Minimum Tax Credits

The TCJA eliminated the alternative minimum tax for corporations for tax years after 2017, but allowed corporations

to claim a refundable portion of any unused minimum tax credits through 2021. The amount of the refundable credit is limited to 50 percent of any excess minimum tax in 2018 through 2020, before being fully refundable in 2021. The bill accelerates the year for which a fully refundable credit can be claimed to 2019, and allows corporations to elect to claim the fully refundable minimum tax credits in 2018.

Business Interest Expense Limitation

The TCJA limited the amount of allowable deductions for business interest (regardless of the type of entity) for tax years beginning after 2017. The limitation is generally the amount of business interest income for the year plus 30 percent of the taxpayer's adjusted taxable income for the year. The limitation does not apply to taxpayers with average annual gross receipts for the prior three year below an inflation-adjusted amount. For 2020, this amount is \$26 million or less.

The bill increases the limitation amount to 50 percent of the taxpayer's adjusted taxable income for 2019 and 2020. In calculating the limitation for 2020, the taxpayer may elect to use adjusted taxable income for 2019.

 **COMMENT.** *The option to use 2019 adjusted taxable income in calculating the limitation is meant to counteract the likelihood that incomes will not be higher in 2020 because of the economic environment, whereas 2019 was generally a very high revenue year for businesses.*

Qualified Improvement Property

When Congress drafted the TCJA, it allowed for 100-percent bonus depreciation rules to apply to all MACRS property with a recovery period of 20 years or less. Before TCJA, qualified improvement property was depreciated as 39-year residential real property, unless it separately qualified as 15-year qualified leasehold improvement property, 15-year retail improvement property, or 15-year restaurant property. Congress eliminated the three separate categories of 15-year improvement properties with the intention of making **all** qualified improvement property 15-year property. However, it failed to do so, and as a result, qualified improvement property is depreciated as 39-year property and not qualified for bonus depreciation.

 **COMMENT.** *This is known in tax circles as the "retail glitch." A technical amendment has long been promised and had been included in early drafts of several pieces of legislation since the TCJA became law in December 2017. However, it never made it into*

the final version of any piece of significant legislation voted on by either chamber of Congress.

The CARES Act corrects this Congressional oversight by defining qualified improvement property as 15-year property, thus allowing 100 percent of improvements to be deducted in the year incurred. The change is made as if included in the TCJA and, thus, is effective for property acquired and placed in service after September 27, 2017.

 **IMPACT.** *The closures and quarantines related to the coronavirus/COVID-19 pandemic have been especially hard on small businesses, which includes restaurants and local retail stores. This technical correction allows any expenses incurred by owners to make improvements to the physical premises related to these businesses to be accelerated into the 2017 or 2018 tax year on an amended return or the 2019 tax year on a return due July 15, 2020.*

Excise Tax Relief

The bill also provides a temporary exception from alcohol excise taxes for alcohol for use in or contained in hand sanitizer produced or directed by the Food and Drug Administration related to the pandemic. The bill also suspends excise taxes on aviation and kerosene used in

aviation fuel. The exception and suspensions are applicable to 2020 only.

ADDITIONAL PROVISIONS

The CARES Act is a massive bill, the majority of which does not have a tax impact. However, some smaller, but no less significant, provisions impacting federal tax are sprinkled outside of the tax-related division of the bill. These provisions include:

- The exclusion from tax of any forgiven small business loans, mortgage obligations, or other loan obligations forgiven by the lender during the applicable period;
- A safe harbor from the definition of a high deductible health plan permitting telehealth services to be included, even though such services do not carry a deductible;
- The inclusion of over-the-counter menstrual products as qualified medical expenses for purposes of distributions from health savings accounts and health flexible spending arrangements;
- Pension funding relief for failures to meet contribution requirements to defined contribution plans during 2020;
- Allowing certain charitable employers whose primary exempt purpose is providing services to mothers and children to use small employer charity pension plan rules.