

March 30, 2020

CARES Act Provides Tax Relief to Individuals, Businesses Impacted by COVID-19



Jennifer Tolsky

Tax Planning & Structuring

Enacted into law last Friday, March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) included numerous provisions providing tax relief to individuals and businesses who have been impacted by the COVID-19 pandemic.

Following is a high-level overview of many of the significant provisions in the CARES Act. If you have questions or would like to discuss these matters further, please don't hesitate to contact one of the attorneys in Gould & Ratner's [Tax Planning and Compliance Practice](#).

Tax Relief for Individuals

While much of the media coverage of the CARES Act tax relief for individuals has focused on the \$1,200 rebate checks that will be sent to taxpayers, there are a few other important benefits in the legislation, especially relating to charitable contributions:

Allowance of partial above the line deduction for charitable contributions : For taxable years beginning in 2020, cash contributions up to \$300 to public charities may be claimed as an above-the-line deduction. This provision is only applicable to taxpayers who do not itemize their deduction and does not expire. Donations to private foundations or donor-advised funds are not included in this allowance.

Modification of limitations on charitable contributions during 2020 : Under current law, charitable contributions of cash to public charities are limited to 60% of a taxpayer's adjusted gross income (AGI). The CARES Act temporarily suspends the limitation for cash contributions made to a public charity (not private foundations or donor advised funds) during calendar year 2020. Thus, taxpayers may make qualified contributions up to 100% of their AGI.

However, the ability to deduct qualified contributions are limited to the excess of the qualified contributions over the amount of other nonqualified charitable contributions the taxpayer makes. The taxpayer must make an affirmative election to apply this provision with respect to its qualified contributions.

Use of retirement funds and minimum distribution rules : The CARES Act made several changes to rules regarding these issues, which is covered in a separate Gould & Ratner client alert, [COVID-19 Considerations for Retirement Plans During the Pandemic](#).

Tax Relief for Businesses

While much of the tax relief for businesses in the CARES Act focuses on the short-term impact of government-ordered shutdowns and their effect on employment, there are several other provisions affecting how business losses are handled:

Employee retention credit for employers subject to closure due to COVID-19 : Employers whose operation of trade or business was (a) fully or partially suspended due to COVID-19, or (b) whose gross receipts for a calendar quarter beginning after Dec. 31, 2019 are less than 50% of its gross receipts in the same calendar quarter for the prior year, are eligible for a credit against employment taxes up to 50% of wages paid to its employees after March 12, 2020, and before Jan. 1, 2021, not to exceed \$10,000 with respect to any employee for all calendar quarters.

Employers with greater than 100 full-time employees are eligible for the credit for wages paid to employees who are not providing services due to suspension or slowdown of business. Employers with less than 100 full-time employees are eligible for the credit for wages paid to employees during such times, and are not limited to wages paid to those employees who are not performing services. Wages may also include qualified health plan expenses, which are those amounts paid or incurred by an employer to provide and maintain a group health plan. An employer who receives certain loans under the CARES Act are not eligible for the credit.

Modification of limitations on charitable contributions during 2020 : Under current law, a corporation's charitable deduction cannot exceed 10% of its taxable income, with certain modifications. The CARES Act allows a corporation to take a charitable deduction up to 25% of its taxable income, with certain modifications, if the charitable contribution is a cash contribution to public charities (not private foundations or donor advised funds).

Delay of payment of employer payroll taxes : An employer's share of Social Security taxes on employee wages (which is equal to 6.2% of employee wages) required to be paid for the period beginning with the date of enactment of the CARES Act and ending before Jan. 1, 2021, may be deferred for up to two years. The Act provides that 50% of such payroll taxes are due by Dec. 31, 2021, and the other 50% of such payroll taxes are due by Dec. 31, 2022. This provision also applies to self-employed individuals as to 50% of their Social Security taxes required to be deposited with IRS. The deferral for payroll taxes would not apply if the taxpayer took advantage of certain loan forgiveness provisions of the CARES Act.

Modifications for net operating losses:

- ***Temporary repeal of taxable income limitation***: Under current law, a taxpayer's ability to utilize a net operating loss (NOL) was limited to 80% of taxable income. For a taxable year beginning before Jan. 1, 2021, the 80% limitation is lifted and the taxpayer may utilize its full NOL. The 80% taxable income limitation will continue to apply for a taxable year after Dec. 31, 2020.
- ***Modification of rules relating to carrybacks***: Under current law, a taxpayer may not carry back an unused NOL to offset taxable income in any prior taxable year, and is only able to carry forward the unused NOL. The current law is modified by the CARES Act to provide that an NOL arising in taxable year 2018, 2019 and 2020 may be carried back to each of the five taxable years preceding the taxable year of such loss. This will provide an opportunity for the taxpayer to amend prior year returns for a refund.

Modification of limitation on losses for taxpayers other than corporations : The Tax Cuts and Jobs Act of 2017 (TCJA) imposed a limitation on taxpayers other than corporations to take a deduction for an excess business loss, which is the excess of (i) the taxpayer's aggregate trade or business deductions over (ii) the sum of the taxpayer's aggregate trade or business gross income or gain plus \$250,000 (\$500,000 if married filing joint), subject to inflation. The limitation applied for tax years beginning after Dec. 31, 2017, and before Jan. 1, 2026.

The CARES Act modifies the current law and lifts the limitation for tax years 2018, 2019 and 2020. This will provide an opportunity for taxpayers other than corporation to amend prior year returns for a refund.

Modification of credit for prior year minimum tax liability of corporations: The TCJA repealed alternative minimum tax for corporations. Corporations were previously able to recover their refundable alternative minimum tax credits (AMT Credits) over a 4-year period.

Under the CARES Act, the ability to recover refundable AMT credits is now accelerated.

Modification of limitation on business interest: The TCJA limited the amount of business interest expense allowed as a deduction to 30% of adjusted taxable income. For taxable years beginning before Jan. 1, 2022, adjusted taxable income is generally

equal to EBITDA. For taxable years beginning after Jan. 1, 2022, the adjusted taxable income is generally equal to EBIT.

The CARES Act modifies the 30% limitation to 50% for tax years beginning in 2019 and 2020. However, for partnerships, the increase in the limitation does not apply to its partners beginning in 2019. Instead, 50% of the excess business interest expense will be allowed as a deduction, without limitation, in 2020, and the remaining 50% will be subject to the usual limitations. In addition, taxpayers may elect to calculate their 2020 business interest expense limitation by using their adjusted taxable income for their last tax year beginning in 2019.

Technical amendments regarding qualified improvement property: Prior to the TCJA, improvement property that was considered qualified improvement property was subject to a 15-year depreciable life. When changes were being made under the TCJA to the depreciation provisions in the Internal Revenue Code, qualified improvement property was inadvertently subject to a 39-year depreciable life, although the intent was that they would have a 15-year depreciable life. By virtue of being a 39-year life property, qualified improvement property was unable to take advantage of 100% bonus depreciation.

The CARES Act corrects this mistake to provide that qualified improvement property is a 15-year property, and makes this provision retroactive as if the provision had been included in the TCJA. Thus, taxpayers have the ability to amend prior year returns to take advantage of bonus depreciation on qualified improvement property.

If you have questions or would like to discuss these matters further, please don't hesitate to contact one of the attorneys in Gould & Ratner's [Tax Planning and Compliance Practice](#).