

On March 27, 2020, the President signed the Coronavirus Aid, Relief and Economic Security (CARES) Act. The Act will cost \$2.2 trillion, the most expensive piece of legislation ever passed, and will provide various tax relief provisions for individuals as well as businesses. Below are some of the highlights that will affect businesses.

Payment Protection Loans

The CARES Act allows for “Payment Protection Loans” through the Small Business Administration for businesses, including nonprofits, with fewer than 500 employees. These loans can be used for payroll costs as well as other specified expenses. The Act eliminates the requirement that businesses are unable to obtain credit elsewhere. Applicable loans made from February 15, 2020 to June 30, 2020 may qualify for forgiveness if used to pay the following expenses:

- Payroll costs
- Interest on any covered mortgage obligation
- Rent obligation and
- Utility payments

The amount forgiven will be reduced if the employer reduces its workforce or its employees’ salaries and wages. Any debt cancelled is excluded from gross income.

Delayed Payment of Certain Employer Payroll Taxes

In order to help businesses free up cash and retain employees, the CARES Act allows for the delay of certain payroll tax payments. Employers may delay payment of the **employer** portion of social security taxes (6.2%) for periods beginning on the date of enactment, March 27, 2020 through December 31, 2020. The payment delay also applies to 50% of the equivalent payroll taxes incurred by self-employed persons. Half of the payment of the deferred tax is due by December 31, 2021 and the remaining 50% is due by December 31, 2022.

Employee Retention Credit

The CARES Act grants eligible employers a credit against the **employer** portion of social security (6.2%) taxes equal to 50% of qualified wages paid to employees who are not working due to the employer’s full or partial suspension of business or a significant decline in gross receipts. The credit can 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. Eligible employers are defined as employers, including non-profits:

- Whose trade or business is fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority due to COVID-19; or
- An employer that experiences a 50% decline in gross receipts for the calendar quarter compared to the same quarter in the prior year.

The credit applies to qualified wages paid after March 12, 2020 and before January 1, 2021. If the employer has more than 100 full-time employees, qualified wages are wages paid to employees who cannot work during the COVID-19 related circumstances described above. If the employer has 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. Qualifying wages do not include wages already included for payroll tax credits for required sick leave or required family leave under the Families First Coronavirus Act.

Net Operating Losses (NOLs)

The CARES Act temporarily removes the taxable income limitation in computing deductible net operating losses. Previously, a net operating loss could only offset 80% of taxable income but can now fully offset taxable income. This provision applies to net operating losses arising before January 1, 2021.

The Act also allows for a five-year carryback of NOLs arising in a tax year beginning after December 31, 2017 and before January 1, 2021. Businesses will be able to amend or modify tax returns for years dating back to 2013 in order to take advantage of the carryback.

Loss Limitations for Noncorporate Taxpayers

Excess business losses arising in 2018, 2019, and 2020 are now fully deducted. Previously, net deductible business losses were capped at \$250,000 or \$500,000 depending on filing status and the excess was carried forward as a NOL. The new provision applies to tax years beginning after December 31, 2017.

Qualified Improvement Property

When the Tax Cuts and Jobs Act of 2017 was enacted, there was an error in the depreciable life assigned to qualified improvement property. Congress intended for qualified improvement property to have a 15-year depreciable life and to qualify for bonus depreciation. The law as written with the legislative error, treated qualified improvement property with a depreciable life of 39 years and therefore, the improvement property did not qualify for 100% bonus depreciation. The CARES Act corrects this error. Qualified improvement property placed in service after September 27, 2017 now has a 15-year depreciable life and qualifies for 100% bonus depreciation.

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