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# Key Tax Provisions of the CARES Act Affecting Businesses

The CARES Act, signed into law on March 27, 2020, is a massive economic relief package with numerous tax breaks. For businesses, the key tax-related provisions include a payroll tax credit to encourage employee retention, an extension of the time for paying employment taxes, and the Paycheck Protection Program, which is a small business loan program with provisions for converting qualifying loans to grants which do not have to be repaid.

The following is a brief overview of the key tax provisions of the CARES Act for businesses:

## **Employee Retention Credit**

The CARES Act provides eligible employers with a credit against applicable employment taxes for each calendar quarter equal to 50 percent of the qualified wages with respect to each employee of the employer for the calendar quarter. The employee retention credit applies to wages paid after March 12, 2020, and before January 1, 2021. For purposes of determining the credit, the amount of qualified wages with respect to any employee which may be taken into account for all calendar quarters is limited to \$10,000.

An “eligible employer” is any employer that was carrying on a trade or business during calendar year 2020, and whose operation is fully or partially suspended during the calendar quarter due to orders by a government authority due to COVID-19, or for which the calendar quarter is within a period of “significant decline in gross receipts.”

A period of significant decline in gross receipts means a period beginning with the first calendar quarter beginning after December 31, 2019, for which gross receipts (as defined in Code Sec. 448(c)) for the calendar quarter are less than 50 percent of gross receipts for the same calendar quarter in the prior year, and ending with the first calendar quarter in which gross receipts are greater than 80 percent of the gross receipts for the same calendar quarter in the prior year.

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## **Extension of Time to Pay Employment Taxes**

Under the CARES Act, a business can delay payment of the Employer's share of applicable employment taxes for the period beginning on March 27, 2020, and ending before January 1, 2021 (i.e., the payroll tax deferral period). Generally, under this provision, an employer will be treated as having timely made all deposits of applicable employment taxes that would otherwise be required during the payroll tax deferral period if all such deposits are made not later than the "applicable date," which is defined as (i) December 31, 2021, with respect to 50 percent of the amounts due, and (ii) December 31, 2022, with respect to the remaining amounts.

In addition, for self-employed taxpayers, the payment for 50 percent of the self-employment taxes for the payroll tax deferral period is not due before the applicable date. For purposes of applying the penalty for underpayment of estimated income taxes to any tax year which includes any part of the payroll tax deferral period, 50 percent of the self-employment taxes for the payroll tax deferral period will not be treated as taxes to which that penalty applies.

## **Net Operating Losses (NOLs)**

For businesses that have incurred NOLs which they have not gotten the benefit of deducting, the CARES Act may help. It modifies the limitation on deducting NOLs, as well as the rules relating to NOL carrybacks. In general, for any NOL arising in a tax year beginning after December 31, 2017, and before January 1, 2021, the loss is an NOL carryback to each of the five tax years preceding the tax year of the loss, plus the provisions limiting the carrybacks of farming losses do not apply.

For tax years beginning after December 31, 2020, the provision allows the deduction of the sum of the aggregate amount of NOLs arising in tax years beginning before January 1, 2018, carried to that tax year, plus the lesser of (i) the aggregate amount of NOLs arising in tax years beginning after December 31, 2017, carried to such year, or (ii) 80 percent of the excess (if any) of taxable income computed without regard to certain deductions over the aggregate amount of NOLs arising in tax years beginning before January 1, 2018, carried to such year.

## **Deduction Limitation on Excess Business Losses**

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Under the CARES Act, in the case of a taxpayer other than a corporation, for any tax year beginning after December 31, 2017, and before January 1, 2026, the deduction limitation on excess farm losses of certain taxpayers, does not apply. Further, excess business losses, previously disallowed for tax years beginning after December 31, 2017, and before January 1, 2026, are now allowed for tax years beginning after 2017 and before January 1, 2021.

### **Business Interest**

For tax years beginning in 2019 or 2020, 50 percent of the taxpayer's adjusted taxable income, rather than 30 percent, is used to determine the business interest expense limitation. A special rule is provided for partnerships.

Under this special rule, the increase to 50 percent of adjusted taxable income in determining the business interest limitation does not apply to a partnership for 2019. However, unless a partner elects otherwise, if any excess business interest of a partnership for any tax year beginning in 2019 is allocated to a partner, 50 percent of the excess business interest is treated as business interest which is paid or accrued by the partner in the partner's first tax year beginning in 2020 and which is not subject to the limits in Code Sec. 163(j)(1), and 50 percent of the excess business interest is subject to the limitations in Code Sec. 163(j)(4)(B)(ii) in the same manner as any other excess business interest.

An election is also provided which allows a taxpayer to substitute its adjusted taxable income for its last tax year beginning in 2019 for its adjusted taxable income for 2020 in calculating the business interest limitation for 2020.

### **Prior Year Minimum Tax Liability**

The CARES Act modifies the rules for the minimum tax credit for alternative minimum tax (AMT) incurred by a corporation in a prior tax year. Under the provision, the limitation does not apply to a corporation's 2020 and 2021 tax years and the AMT refundable credit amount is 100 percent, rather than 50 percent, of the amount determined for tax years beginning in 2019.

### **Qualified Improvement Property**

The CARES Act fixes the "retail glitch" in the Tax Cuts and Jobs Act of 2017 (TCJA). Due to a drafting error in the TCJA, the 15-year recovery periods that

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were available for qualified leasehold improvements, qualified restaurant property, and qualified retail improvement property (i.e., qualified improvement property) placed in service before 2018, no longer existed for property placed in service after 2017. Instead, the depreciation period was 39 years.

The CARES Act fixes this mistake so that any such property now has a 15-year depreciation life and meets the criteria for taking a bonus depreciation deduction. Because the provision is effective as if it were included in TCJA, taxpayers should review prior returns to see if filing amended returns will result in their business being owed a refund.

Please feel free to contact us if you have more questions in regard to these issues.

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