TAXES, PANDEMICS, ELECTIONS . . . OH MY!

William E. Sigler, Esq.

Business Losses (NOLs)

- Under TCJA, an NOL arising in a tax year beginning after 2017 and carried over to a later tax year could not be used to offset more than 80% of taxable income for the carryover year.
- The CARES Act removes the limitation for tax years beginning before 2021.
- For tax years beginning after 2020, the CARES Act allows deductions equal to 100% of NOL carryovers from pre-2018 tax years, plus the lesser of 100% of NOL carryovers from post-2017 tax years or 80% of remaining taxable income after deducting NOL carryovers from pre-2018 tax years.
- CARES Act allows NOLs arising in tax beginning in 2018-2020 to be carried back for 5 years.

Limitation on Business Losses

- TCJA limits "excess business losses" by individuals and other noncorporate taxpayers in excess of $250,000 or $500,000 for married couples filing jointly in tax years beginning 2018-2025.
- The CARES Act suspends this rule for losses that arise in tax years beginning in 2018-2020.

Business Interest Limitation

- TCJA limited a taxpayer's deduction for business interest expense to 30% of ATI for tax years beginning in 2018 and beyond.
- The CARES Act increased the limit to 50% of ATI for tax years beginning in 2019 and 2020.
- Unfortunately, for partners and partnerships (including LLCs) the increased limit only applies for tax years beginning in 2020.
- But, the CARES Act allows taxpayers to calculate the limit for tax years beginning in 2020 using ATI from tax years beginning in 2019.

Minimum Tax Credits

- The CARES Act accelerates the ability of corporations to recover excess MTCs from when the corporate AMT was repealed in 2018.
- 50% are refundable in the corporations 2018 tax year, and all of the remaining in tax year 2019.
- An election is available to take the entire refund in the 2018 tax year.

Qualified Improvement Property

- Due to a drafting error, an intended first-year bonus depreciation break for QIP never made it into the TCJA
- The CARES Act retroactively classifies QIP placed in service after 2017 as 15-year property with an ADS recovery period of 20 years.
- Taxpayers may thus apply 100% bonus depreciation.

Credits for Providing Qualified Sick Leave Wages and Qualified Family Leave Wages

- The FFCRA established refundable payroll tax credits for providing qualified sick leave wages and qualified family leave wages.
- The credits may be applied against employer and employee portions of Social Security and Medicare taxes and the amount of federal income tax withheld.
- Available to employers with fewer than 500 employees.
- Available on qualified leave wages paid April 1 to Dec. 31, 2020.

Employee Retention Credit

- The CARES Act established a refundable payroll tax credit for retaining employees.
- Based on qualified wages paid March 13 to Dec. 31, 2020.
- The credit may be applied against employer and employee portions of Social Security and Medicare taxes and the amount of federal income tax withheld.
- The credit is half the qualified wages up to a maximum of $10,000 paid during a quarter resulting in a maximum credit per employee of $5,000.

Preclusion of Using Wages Upon Which Amount of a Refundable Payroll Tax Credit is Based for Calculating Amounts of Other Credits

- IRC 45S provides a tax credit for employers who provide paid family and medical leave to their employees
- Payments of qualified sick leave wages or qualified family leave wages, and wages for which the employer received the employee retention credit, cannot be counted toward the IRC 45S credit.

Filing Form 7200

- Form 7200 can be used to request advances of the portion of the combined amount of the two FFCRA credits and the employee retention credit that exceed the employment tax liability for the quarter.
- Alternatively, employers can forgo advances of the excess credit amounts and instead claim the refundable portions using Form 941.

Retaining Amounts of Employment Taxes in Anticipation of Credits

- Employers may retain amounts of employment taxes against which they can apply the two FFCRA credits and the employee retention credit instead of depositing those amounts.
- The taxes would be retained in anticipation of being able to use the credits.
- Notice 2020-22 broadened the employment taxes that may be retained this way.

Simplification of Credit and Retention Processes

- The instructions to Form 7200 likewise expand the set of employment taxes against which the three credits may be taken.
- The FFCRA and CARES Act only mentioned the employer share of Social Security tax.
- The Form 7200 instructions include withheld federal income tax and both the employee and employer share of Social Security and Medicare taxes.

Ability to Defer Deposits of the Employer Portion of Social Security Tax, with Deferred Amounts Due in 2021 and 2022

- Under the CARES Act, amounts of the employer portion of Social Security tax that would normally need to be paid to the government with respect to the period from March 27 to Dec. 31, 2020 do not need to be paid according to the normal deposit deadline and may be deferred instead.

- Half of the total amount owed for a quarter of 2020 is due Dec. 31, 2021, with the other half is due Dec. 31, 2022.

Ability to Defer Withholding and Deposits of the Employee Portion of Social Security Tax

- Under a Presidential Memorandum released Aug. 8, 2020, withholding, deposits and payments with respect to the employee portion of Social Security tax on compensation paid during Sept. 1 to Dec. 31, 2020 can be deferred.
- Under Notice 2020-65, it must be withheld, deposited and paid between Jan. 1 to April 30, 2021.
- Employers are responsible for payment.
- Applies only to compensation paid to employees whose biweekly pretax compensation is generally less than $4,000.

Tax-Favored Withdrawals from Retirement Plans

- "Coronavirus-related distributions" from eligible retirement plans are not subject to the 10% excise tax on early distributions.

- CRDs may not exceed $100,000 in the aggregate for any taxable year.

- Taxpayers may elect to ratably spread the income over a 3-year period beginning with 2020.

- Taxpayers may avoid income recognition by repaying distributions within 3 years of receipt.

Loans from Retirement Plans

- The CARES Act increased the limit on loans from qualified plans from $50,000 to $100,000.
- Applied to loans made on or after March 27, 2020 and before September 23, 2020 (i.e., for 180 days beginning on the date of enactment).
- The due date is suspended for 1 year on loans outstanding on March 27, 2020 with a due date falling between then and Dec. 31, 2020.

Temporary Waiver of Required Minimum Distribution Rules

- The RMD rules are waived for calendar year 2020 for IRAs and certain defined contribution plans.
- The waiver does not apply to required beginning dates in calendar years after 2020.
- A distribution that was initially intended to be an RMD in 2020 is no longer an RMD – it has now become an eligible rollover distribution.
- The one-rollover-per-year rule still applies to IRA to IRA distributions.
- RMDs from inherited IRAs are also waived, but those RMDs are not eligible for rollover if already taken.

Quick Refunds

- A corporation that overpays its estimated tax can obtain a quick refund of the excess before it files its return.
- Available only if refund is more than 10% the corporation's estimated tax liability and at least $500.
- Corporations may apply for a tentative quick refund using Form 4466.
- Special fax procedure available using Forms 1045 and 1139 to obtain quick refund on NOL carryback or acceleration of minimum tax credits.

Election Issues

- U.S. Individual Taxes
- U.S. Business Taxes
- Estate Taxes