

# Insights

## The CARES Act: Business and Individual Tax Provisions, Charities, and IRS Relief Measures

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By: Kendall A. Schnurpel

The Coronavirus Aid, Relief, and Economic Security Act (the "Act") modifies the Internal Revenue Code to provide significant tax relief to businesses and individuals in response to the COVID pandemic. This alert summarizes the key aspects of these tax changes.

### ***Business Tax Provisions***

The Act provides significant and comprehensive changes to the Internal Revenue Code designed to ease the economic burden on businesses adversely affected by COVID-19. As with many changes to the tax laws, these interplay with other provisions and will be impacted by regulations and interpretations that may be issued by the Internal Revenue Service. The intent, though, is to use the tax structure to benefit business and encourage behaviors that will help minimize the adverse effects of the pandemic on businesses of all sizes and in all industries.

- The Act provides a new refundable payroll tax credit (against the 6.2% "employer share" Social Security tax) for 50% of qualified wages paid by employers whose (1) operations were fully or partially suspended due to a COVID-19-related shutdown order, or (2) gross receipts declined by more than 50% when compared to the same quarter in the prior year. For eligible employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above. For eligible employers with 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 until the employer has a quarter where its receipts exceed 80% of what they were for the same quarter in the prior year. The credit is limited to the first \$10,000 of compensation (including health benefits) paid to an employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

- The Act allows employers and self-employed individuals to defer making deposits of the 6.2% “employer share” Social Security tax on wages and self-employment income otherwise due through the end of the year. The deferred employment tax is to be paid over the following two years, with half of the amount required to be paid by December 31, 2021, and the other half by December 31, 2022.
- The Act relaxes existing limits on NOL carryforwards and carrybacks by providing that a loss from 2018, 2019, or 2020 can be carried back five years. It also temporarily removes the 80% of taxable income limitation to allow a NOL carryforward to fully offset income (with limitation to be reinstated in 2021). The Act also relaxes the excess business loss limitations applicable to losses from pass-through businesses and sole proprietorships so that their owners can benefit from these relaxed NOL carryback rules. Note: the Act provides that NOLs of a taxpayer may not be carried back to any year in which the taxpayer was a real estate investment trust (REIT), and NOLs of a REIT may not be carried back to any tax year, regardless of whether the taxpayer was a REIT in that tax year.
- The Act accelerates the ability of companies to recover AMT credits, which were previously recoverable ratably over several years through 2021 (in connection with elimination of AMT under Tax Cut and Jobs Act of 2017).
- The Act enables businesses to immediately write off costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building (change retroactive to January 1, 2018).
- The Act waives the federal excise tax on distilled spirits for or contained in hand sanitizer effective for calendar year 2020.
- The Act increases the limitations on deductions for charitable contributions from 10% of taxable income to 25% and increases the limitation on deductions for contributions of food inventory from 15% to 25%.
- The Act increases the amount of business interest expense deductible under Section 163(j), increasing the “adjusted taxable income” (ATI) limit from 30% to 50%. This temporary change allows taxpayers to deduct more of their business interest, reducing their tax liability for tax years beginning in 2019 and 2020. This change does not apply to entities taxed as partnerships for federal income tax purposes, but partners receiving an allocation of a partnership's 2019 excess business interest expense may deduct 50% of such allocated expense in 2020 (with the remaining 50% subject to existing limits under Section 163(j)(4)(B)(ii)).
- The Act provides an “excise tax holiday” from the taxes imposed by Sections 4261 and 4271 of the Code for amounts paid for transportation by air of persons and property, including amounts paid for the right to award free or reduced rate air transportation. It also provides an excise tax holiday from the taxes imposed by Sections

4041 and 4081 of the Code for kerosene used in commercial aviation, except the Leaking Underground Storage Tank (LUST) tax.

### ***Individual Tax Provisions***

The Act also addresses provisions of the Code that impact individuals.

- The Act allows above-the-line charitable contribution deduction of up to \$300 for 2020 cash contributions for taxpayers who do not itemize their deductions.
- The Act allows employees to exclude up to \$5,250 in qualifying student loan repayments paid by an employer on behalf of the employee from the effective date of the Act through December 31, 2020.
- The Act provides for "recovery rebate" payments of up to \$1,200 to individuals or \$2,400 for couples who file joint tax returns, with additional \$500 payments per qualifying child. The payments begin phasing out when a single taxpayer's adjusted gross income exceeds \$75,000 (or \$150,000 for joint filers), and completely phases out for single taxpayers with adjusted gross income greater than \$99,000 or joint incomes greater than \$198,000 (the complete phase outs are increased by \$10,000 per qualifying child). These rebate payments are available even for individuals who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as SSI benefits. The Act requires the IRS to issue the rebates as rapidly as possible. However, no payments shall be made or allowed under this provision after December 31, 2020. The rebate is not available to any individual who is a nonresident individual, nor to any individual who can be claimed as a dependent on another's return, nor to estates and trusts.
- For 2020, the Act suspends the limit of 50% of adjusted gross income limitation on deductions for charitable contributions (for individuals who itemize).

### ***Benefit to Charities***

The Act adds a provision to the Internal Revenue Code that allows a deduction in 2020 for charitable contributions in cash up to \$300 to qualified charities by those individuals who do not itemize their deductions. Qualified charities include churches, educational organizations and healthcare organizations (including medical facilities and research organizations). For individuals who do itemize, the limitation of 50% of adjusted gross income is suspended for 2020. For corporations, the limitation on deductions as a percentage of taxable income is increased from 10% to 25%. The limitation for deductions for contributions consisting of food inventory rises from 15% to 25% for 2020. These beneficial changes will not apply to contributions to supporting organizations or donor advised funds.

***Additional IRS Relief Measures***

- In general, the Act provides for no new field, office and correspondence examinations during the period from April 1, 2020 through July 15, 2020. The IRS reserves the right to start new examinations to protect the government's interest if the statute of limitations is about to run out.
- Field collection activities, liens and levies will all be suspended from April 1, 2020 through July 15, 2020. However, IRS will continue to pursue high-income non-filers.

If you have any additional questions regarding this alert please contact Kendall A. Schnurpel or your regular Krieg DeVault attorney.