

## Coronavirus Aid, Relief, and Economic Security (CARES) Act

Coronavirus Aid, Relief, and Economic Security (CARES) Act, with a \$2.2 trillion price tag, was signed into law on March 27, 2020, by President Trump. CARES will have a major impact on the economy through loan forgiveness, support for business, enhanced unemployment insurance, federal loans to industries, tax relief and incentives, increased liquidity in the economy, tax deferral and recovery rebates for individuals. The following is a brief summary of selected provisions:

### INDIVIDUAL TAX

#### Recovery Rebate/Credit

A tax credit is provided for 2020 of \$1,200 to individual filers with adjusted gross incomes of \$75,000 or less (or \$112,500 or less for a head of household), and \$2,400 to married couples filing jointly with adjusted gross incomes of \$150,000 or less, which is to be paid in cash. There is an additional \$500 refundable credit for "qualifying children" as defined under §24(c) for purposes of the child tax credit (§6428(a)). The credit is refundable (§6428(b)).

#### Eligibility

An "eligible individual" is an individual other than a nonresident alien who could have qualified as a §151 dependent to another taxpayer. Estates and trusts are not eligible for the credit (§6428(d)). Thus, dependent children of their parents are not eligible individuals, even if they have income.

**Note:** Individuals without income or income that comes non-taxable means-tested benefit programs like SSI benefits are also eligible for the credit/rebate.

#### Identification Number

No credit is allowed to an eligible individual who does not include the individual's valid identification number on their tax return. When a qualifying child figures in the credit calculation, that child's identification number must also be included on the return.

#### Backward Calculation

Individuals who were eligible in 2019 are deemed to have made an income tax payment for 2019 equal to the rebate amount for 2019. The rebate amount is that amount that would have been an allowable credit for 2019 if the credit provision been in effect for 2019. In short, while the credit is for 2020, CARES treats it as the return of a 2019 overpayment. However, no interest is to be paid on this deemed overpayment.

**Note:** If a 2019 income tax return is yet to be filed, IRS will use the taxpayer's 2018 return. If no 2018 return has been filed, IRS will use the individual's 2019 Form SSA-1099.

Since the IRS is to pay the rebate amount as soon as possible (in some cases even before a 2019 file has been filed) the rebate is sometimes referred to as an "advance refund amount." In any event, no rebates will be made or allowed after Dec. 31, 2020 (§6428(f)).

#### Noticing Requirement

Within 15 days of distributing a rebate payment, IRS must mail a notice to the taxpayer's last known address stating how the payment was made, its amount, and a phone number to report any delivery problems.

#### Phaseout

The credit is reduced (but not below zero) by 5% of the taxpayer's adjusted gross income (AGI) in excess of:

- (1) \$150,000 for a joint return,
- (2) \$112,500 for a head of household, and
- (3) \$75,000 for all other taxpayers (§6428(c)).

As a result, the credit is phased-out for a single taxpayer with AGI over \$99,000 and for joint filers with no children with AGI over \$198,000. For a head of household with one child, the credit is phased out when AGI exceeds \$146,500.

### **Waiver of 10% Early Withdrawal Penalty**

Under §72(t), distributions from a qualified retirement plan are subject to a 10% additional tax unless the distribution meets certain exceptions. However, CARES now provides that individuals are allowed to withdraw up to an aggregate amount of \$100,000 from a qualified retirement account without the 10% penalty for early withdrawals for coronavirus-related distributions.

**Note:** Such distributions are subject to regular income tax but, it can be spread over three years.

### **Coronavirus-Related Distribution**

A coronavirus-related distribution is any distribution (within dollar limits), between January 1, 2020, and December 31, 2020, from §402(c)(8)(B) retirement plans (i.e. employer-sponsored retirement plans and individual retirement accounts) to a qualified individual.

### **Qualified Individual**

A qualified individual is any individual:

- (1) diagnosed with the virus SARS-CoV-2 or with coronavirus COVID-19 by a test approved by the CDC,
- (2) whose spouse or §151 defined dependent is similarly diagnosed, *or*
- (3) experiencing adverse financial consequences as a result of being:
  - (a) quarantined,
  - (b) furloughed or laid off or having work hours reduced due to such virus or disease, *or*
  - (c) unable to work due to lack of childcare due to such virus or disease, the closing or reduction of hours in a business owned or operated by the individual due to such virus or disease.

The eligible retirement plan administrator can rely on an employee's certification that the employee satisfies the conditions of item (3) above.

### **Repayments of Coronavirus-Related Distributions**

A coronavirus-related distribution may, at any time during the 3 year period beginning on the day after the date such coronavirus-related distribution was received, be repaid in one or more contributions to an eligible retirement plan in which the qualified individual is a beneficiary. Such repayments will be treated as eligible trustee to trustee rollovers made within 60 days of distribution.

### **Temporary Waiver of RMD Rules**

Under §401(a)(9), a retirement plan or IRA owner must take a required minimum distribution (RMD) annually once the owner reaches age 72. However, for calendar year 2020, CARES waives the required minimum distribution rules for certain defined contribution plans. The waiver applies to all required minimum distributions that would have been required in 2020.

### **Application**

Pursuant to CARES, RMD rules do not apply in 2020 to:

- (1) defined contribution plans (§403(a) or §403(b),
- (2) defined contribution plans that are eligible deferred compensation plans under §457(b) and maintained by an employer, *or*
- (3) individual retirement plans (§401(a)(9)(l)(i)).

In addition, the RMD rules do not apply to any distribution required to be made in 2020 because of:

- (1) a required beginning date occurring in 2020, and
- (2) Such distribution not having been made before 2020.

### **Loan Limits for Qualified Employer Plans**

The limitation on loans (§4975(d)) from a qualified employer plan to qualified individuals during the 180-day period beginning on the date of enactment (March 27) is increased from \$50,000 to \$100,000 (or, if less, the individual's nonforfeitable benefit). If the due date of a loan occurs between March 27 and December 31, 2020, it will be delayed for one year.

### **Charitable Deductions**

CARES allows an "above the line" charitable contribution deduction for up to \$300 of cash contributions to certain §501(c)(3) public charities in 2020, even if the standard deduction is taken. In addition, the income limitations for individuals and corporations are modified in 2020

#### **\$300 Above-the-Line Charitable Deduction**

Beginning in 2020, CARES adds a deduction to the calculation of gross income for the amount (not to exceed \$300) of qualified charitable contributions made by an eligible individual (§62(a)(22)). An "eligible individual" is an individual who does not itemize deductions (§62(f)(1)).

#### **Qualified Charitable Contribution**

A "qualified charitable contribution" is a §170(c) contribution:

- (a) made in cash,
- (b) allowable under §170 (without regard §170(b)),
- (c) to a §170(b)(1)(A) organization (not to a §509(a)(3) organization), *and*
- (d) not for the establishment or maintenance of a donor advised fund under §4966(d)(2)).

#### **Individual Cash Contribution Limit During 2020**

Section 170 allows individuals to deduct cash contributions to certain charitable organizations up to 60% of adjusted gross income (AGI) (§170(b)(1)(G)(i)). When the annual aggregate amount of such contributions exceeds 60% of AGI, the excess is carried forward and treated as a deductible charitable contribution in each of the next five tax years. (§170(b)(1)(G)(ii)).

Under CARES, for 2020, the 60% limit on qualifying cash contributions of individuals is disregarded permitting individual taxpayers to take a deduction in 2020 to the extent such contributions do not exceed the excess of the individual's AGI over the amount of all other allowed charitable contributions for the year. In short, individuals can deduct qualified cash contributions in 2020 up to 100% of AGI. Any excess is carried forward as a charitable contribution in each of the succeeding five years.

**Note:** Taxpayers must make an affirmative election on their 2020 income tax return to take advantage of this provision.

## Qualified Contributions

Qualified contributions are charitable contributions if:

- (a) paid in cash during 2020 to a §170(b) organization, and
- (b) the taxpayer has elected to apply this provision.

## Contribution Of Food Inventory During 2020

A donation of food inventory to a charitable organization that will use it for the care of the ill, the needy, or infants is deductible in an amount up to basis plus half the gain that would be realized on the sale of the food (not to exceed twice the basis). In the case of a C corporation, the deduction cannot exceed 15% of the corporation's income.

Under CARES, for charitable contributions of food during 2020, the taxable income limits are 25% rather than 15%.

## Repayment of Employee Student Loans

Under §127, an employee's gross income does not include up to \$5,250 per year of employer payments, in cash or kind, under a program for the employee's education.

CARES adds eligible student loan repayments made before January 1, 2021, to the types of educational payments that are excluded from employee gross income. This means an employer could contribute to loan payments and workers wouldn't have to include that money as income. Eligible student loan repayments are payments by the employer, whether paid to the employee or a lender, of principal or interest on any qualified higher education loan.

**Note:** To avoid a double benefit, such student loan repayments cannot also be deducted under §221 as student loan interest.

## Estimated Payments

CARES did *not* extend the April 15 filing date to July 15, 2020, nor extend the due date for estimated tax payments by individuals. However, on March 21, the Treasury and the IRS extended both the due date for the first quarter (but not, for now, second quarter) estimated tax payments and the April 15 filing date to July 15, 2020, in IR-2020-58.

## Unemployment Benefits

Unemployed individuals get an extra \$600 per week for up to four months, on top of state unemployment benefits to make up for 100 percent of lost wages. CARES also extends unemployment insurance benefits to last an additional 13 weeks.

# BUSINESS TAX

## Charitable Deductions

### Corporate Cash Contribution Limit During 2020

Corporate charitable deductions cannot exceed 10% of its taxable income (§170(b)(2)(A)). If this 10% limitation is exceeded, the excess is carried over and deducted for each of the next five years, to the extent the sum of carryovers and contributions does not exceed 10% of taxable income. (§170(d)(2)(A)).

Under CARES, for 2020, corporate charitable deductions cannot exceed 25% of its taxable income. Any excess is carried forward as a charitable contribution in each of the succeeding five years.

### Employee Retention Payroll Tax Credit

CARES allows eligible employers to receive a 50 percent payroll tax credit up to \$5,000 (\$10,000 x 50%) per employee for qualified wages paid after March 12, 2020, and before January 1, 2021. If the credit amount exceeds the employer's liability, the excess is refundable (§3111). The credit applies to wages paid after March 12, 2020, and before Jan. 1, 2021.

### Eligible Employers

Employers, including non-profits, whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel, or group meetings are eligible for the credit. In addition, eligible employers include those who have experienced more than a 50% reduction in quarterly receipts measured year-over-year.

### Wages

Wages include health benefits and are capped at the first \$10,000 in wages paid by the employer to an eligible employee. For employers with an average number of full-time employees in 2019 of 100 or fewer, all employee wages (including wages of those furloughed) are eligible. For employers with a larger average number of full-time employees in 2019, only the wages of furloughed or reduced hour employees.

### Employer Payroll Tax Delay

Employers must withhold social security taxes (§3111(a)) on employee wages (§3211(a) & §3221(a)). Self-employed individuals are subject to self-employment (SECA) tax (§1401(a)).

Under CARES, taxpayers are allowed to defer paying the 6.2% employer share of the Social Security tax (but not the 1.45% employer share of the Medicare tax) through the end of 2020. The tax would be payable over the following two years with half paid by December 31, 2021, and the other half by December 31, 2022.

### Applicable Date

The payment for applicable employment taxes between March 27, 2020, and January 31, 2021, won't be due before the applicable date. The applicable date is:

- (1) December 31, 2021, for 50% of employment and self-employment taxes, and
- (2) December 31, 2022, for the remaining 50% of those amounts.

An employer is treated as timely making all deposits of applicable employment taxes required if all such deposits are made by the applicable date.

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## Net Operating Losses

Under §172, an NOL for any tax year is carried forward to each tax year following the tax year of the loss but cannot be carried back.

Under CARES, NOLs arising in a tax year beginning after Dec. 31, 2018, and before Jan. 1, 2021 can be carried back to the five tax years preceding the tax year of such loss (§172(b)(1)). In short, NOLs arising in 2018, 2019 and 2020 can be carried back to the five preceding years and can fully offset taxable income (§172).

## Loss Limitation For Noncorporate Taxpayers

For tax years 2018 through 2025, §461(l)(1) disallows the deduction of excess business losses by noncorporate taxpayers. An "excess business loss" is the excess of:

- (1) taxpayer's aggregate business deductions for the tax year, *over*
- (2) the sum of the taxpayer's aggregate business gross income or gain plus \$250,000 (§461(l)(3)(A)).

CARES temporarily modifies the loss limitation for noncorporate taxpayers so they can deduct excess business losses arising in 2018, 2019, and 2020. (§461(l)(1)). Thus, CARES removes the excess business loss limitation for 2018 through 2020. As a result, taxpayers are able to use their business losses to fully offset their capital gains or non-business income.

## Business Interest Limitation

The TCJA limited the business interest deduction to 30% of adjusted taxable income (§163(j)(10)). CARES increases the limitation on the deductibility of interest expense from 30% to 50% for tax years beginning in 2019 and 2020.

**Note:** The limitation increase does not apply to partners in partnerships for 2019 but applies only in 2020.

Taxpayers may elect to calculate the interest limitation for 2020 using their 2019 adjusted taxable income.

## Qualified Improvement Property

The TCJA eliminated pre-existing definitions for qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property replacing those definitions with one single category called qualified improvement property. In addition, it was intended that qualified improvement property be eligible for 15-year cost recovery and first-year bonus depreciation. However, this was not reflected in the statutory text of the TCJA. As a result, qualified improvement property fell into 39-year cost recovery and became ineligible for bonus depreciation.

Effective for property placed in service in 2018 and later, CARES corrects this error by specifically designating qualified improvement property as 15-year cost recovery property for depreciation purposes making it eligible for bonus depreciation (§168(e)(3)(E)(vii)).

## Small Business Loan Forgiveness

A reduction or cancellation of indebtedness generally results in cancellation of debt (COD) income to the borrower (§61(a)(11)). CARES creates a loan forgiveness program for small businesses. However, any cancellation of debt income under the program would be tax-free without reduction of tax attributes.

### Eligible Debt Forgiveness

An eligible recipient is allowed tax-free forgiveness of indebtedness on a covered loan equal to the sum of the following payments made during the covered period:

- (a) payroll costs,
- (b) any interest payments on any covered mortgage obligation,
- (c) any payment for any covered rent obligation, *and*
- (d) covered utility payments.

An eligible recipient must verify that the loan amount was used to:

- (a) retain employees,
- (b) make interest payments on a covered mortgage obligation,
- (c) make payments on a covered lease obligation, *or*
- (d) make covered utility payments.

### Definitions

*Covered loan* is a loan guaranteed under § 7(a)(36) of the Small Business Act (15 USC 636(a)).

*Covered mortgage obligation* is any debt incurred in the ordinary course of business that:

- (a) is the liability of the borrower,
- (b) is a mortgage on real or personal property, *and*
- (c) was incurred before February 15, 2020.

*Covered period* is the 8 weeks beginning on the origination date of a covered loan.

*Covered rent obligation* is rent paid under a lease agreement entered into before February 15, 2020.

*Covered utility payments* are payments for the distribution of electricity, gas, water, transportation, telephone, or internet access beginning before February 15, 2020.

*Eligible recipient* is the borrower on a covered loan.