

Coronavirus Aid, Relief, and Economic Security (CARES) Act: Tax-Related Provisions



March 31, 2020

On Friday, March 27th, President Trump signed into legislation the Coronavirus Aid, Relief, and Economic Security (CARES) Act. This Act is designed to help the U.S. economy survive the current pandemic. In this communication, Pathstone will address three aspects of the Act. They are the individual tax provisions, business tax provisions, and the Paycheck Protection Program.

Individual tax-related provisions include the following:

Recovery Rebates for Individuals

A tax credit shall be allowed for 2020 of \$1,200 (\$2,400 for joint filers) plus \$500 per qualifying child (as defined by the Child Tax Credit rules ... 16 years old or younger and excluding non-resident aliens). It phases out by 5% of the following Adjusted Growth Income (AGI):

- \$150k for those married filing jointly
- \$112.5k for those filing as head of household
- \$75k for everyone else

The credit is ultimately against the taxpayer's 2020 taxes, but in order to expedite the refunds, an advance refund will be made based on 2019 income. If the taxpayer hasn't filed their 2019 tax return, the I.R.S. will determine the credit based on their 2018 taxes (if the individual hasn't filed a 2018 tax return, the I.R.S. can use 2019 Social Security Benefit Statements to determine eligibility). If the taxpayer does not qualify for the refund based on 2018/2019 income but does ultimately qualify based on 2020 income, they will receive the credit against their 2020 taxes when filed.

The I.R.S. is directed to refund or credit any overpayment attributable to this section "as rapidly as possible." Payment may be made electronically to any account to which a taxpayer authorized the delivery of a refund on or after 1/1/18.

Special Rules for the Use of Retirement Accounts

The 10% penalty for early distributions from qualified retirement plans is waived for distributions of up to \$100k, and distributions are taxed over three years. Alternatively, the taxpayer has three years from the date of distribution to repay the plan for some or all of the distribution and have the transaction treated as a rollover. To take advantage of this provision, you, your spouse, or dependent must have been diagnosed with COVID-19, or you must have experienced adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care, or closures related to the coronavirus pandemic.

The Act increases the limit for loans from qualified employer retirement plans for 180 days from the enactment of the Act (3/27/20) from the lesser of \$50k or 50% of the vested balance of the account to \$100k up to 100% of the vested balance of the account. In addition, any payment otherwise due in 2020 shall be delayed by one year.

Furthermore, required minimum distributions ("RMDs") from retirement accounts have been suspended for 2020, including any initial distribution as a result of a required beginning date ("RBD") occurring in 2019 or 2020.

Charitable Contributions

The Act allows up to \$300 of above the line qualified charitable deductions for cash contributions made in 2020 by people who do not itemize their deductions.

Additional changes **for 2020 only:**

- For individuals
 - o Replaces the 60% (through 12/31/25) limitation for the deduction of **cash** contributions to charity with a 100% of AGI limitation
 - o No change to five year carryover for excess donations
- For corporations
 - o Increases the allowable charitable deduction from 10% to 25% of taxable income
- The increased deduction limit applies to public charities otherwise eligible for the 60% cash contribution limitation. It does not apply to gifts made to private foundations, which continue to be eligible for a 30% of AGI limitation for cash contributions. The new limit also explicitly excludes supporting organizations and donor-advised funds (“DAFs”), which continue to be eligible for the 60% of AGI limitation through 12/31/25.

Exclusion for Certain Employer Payments of Student Loans

The Act modifies the Education Assistance Program rules, which currently permits employers to pay up to \$5,250 in educational assistance payments to an employee without inclusion in the employee’s income. The modification includes payments of principal or income on a qualified education loan in the definition of educational assistance for payments made in 2020.

The business tax-related provisions include the following:

Employee Retention credit

The Act establishes a refundable payroll tax credit to employers whose operations were either suspended due to a shutdown order or whose gross receipts declined by more than 50% during a calendar quarter vs. the same calendar quarter in the prior year and continuing in future quarters until gross receipts exceed 80% of gross receipts for the same calendar quarter in the prior year. The amount of the credit is 50% of eligible employee wages (including the employer’s cost for qualified health plan expenses) paid after 3/12/20 & before 1/1/21.

- Credits are available for wages paid to employees while they aren’t working
- For employers with 100 or fewer employees, credits are also available for wages paid to (working) employees while operations were suspended or during quarters in which the company had a significant decline in gross receipts.

Delay of Payment of Employer Payroll Taxes

The Act defers the employer portion of payroll tax payments (including the employer portion of self-employment taxes) otherwise owed in 2020. However, 50% of deferred payments are due by 12/31/2021 and the remaining 50% are due by 12/31/2022. While the Act notes that payments are deferred, it does not specify whether filings still have to be made. In the absence of such direction, we assume filings are still required.

Net Operating Losses (“NOLs”)

The Act allows Net Operating Losses (“NOLs”) for 2018-2020 to be carried back 5 years and removes the 80% taxable income limitations for years before 1/1/2021 so that losses can fully offset the taxpayer’s taxable income. Additional tax filings will be required to take advantage of the provisions.

It also defers the \$500k excess business loss limitations for pass-through entities and sole proprietors to years starting after 12/31/2020.

Corporate AMT Credits

The Act allows companies to take Minimum Tax Credits more quickly.

Business Interest

The Act increases the business expense deduction limit from 30% to 50% for interest expenses in 2019 and 2020.

Adjustments may be required for state tax purposes to the extent that states may not conform to the federal changes.

Other Business Related Provisions

Paycheck Protection Program

The Act creates the Paycheck Protection Program, a forgivable loan program offered through the Small Business Association (“SBA”). The interest rate cannot exceed 4%, and it is available without a personal guarantee or collateral. The program is available to businesses and nonprofit organizations with 500 or fewer employees (including self-employed individuals), or, if this amount is applicable and is larger than the standard size in the number of employees for the industry in which the business concern operates. This list can be found at https://www.naics.com/wp-content/uploads/2017/10/SBA_Size_Standards_Table.pdf. Businesses in the accommodation and food services industry with more than one physical location are also eligible if they employ 500 or fewer employees per physical location.

Loan proceeds can be used for payroll costs, group health benefits, interest on mortgages, rent, utilities, interest on any other debt that was incurred before the covered period. The borrower/recipient must certify that the loan is necessitated by the uncertainty of current economic conditions to support the ongoing operations of the eligible recipient.

The maximum loan size is the lesser of (a) 2.5 times the average monthly payroll costs for the previous year (excluding the cost of any individual employee with an annual salary exceeding \$100k), or (b) \$10m.

A loan recipient is eligible for forgiveness of the loan to the extent of payroll costs, payments of interest on any covered mortgage obligation, payment on covered rent obligations, and covered utility payments. The covered period is the eight week period beginning on the origination of the loan. The amount forgiven will be reduced ratably to the extent the employer reduces its number of employees during the covered period vs. either (at the borrower’s election) the 2/15/19-6/30/19 period or the 1/1/20-2/29/20 period. The amount of loan forgiveness will be further reduced to the extent salaries are reduced by more than 25% during the covered period. ***The amount forgiven will be excluded from income.***

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