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Policy Update: CARES Act Highlights

On Friday evening, President Donald Trump signed H.R. 748, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), into law. The bill is the third round of federal relief in response to the COVID-19 pandemic, following the emergency package of healthcare funding passed on March 4, 2020, and the Families First Coronavirus Response Act passed on March 18, 2020. The following is a summary of the main provisions for individuals and businesses in the CARES Act. The sections referenced below denote the corresponding sections in the CARES Act.

Individual Provisions

Sections 2102 – 2105. Unemployment Insurance

Unemployment Insurance is expanded to individuals not traditionally eligible for unemployment benefits and enhanced with an additional $600 paid per week to each recipient for up to four months. There will be an additional 13 weeks of unemployment benefits (up to 39 weeks) through December 31, 2020, to help those who remain unemployed after state unemployment benefits are no longer available.

Eligible individuals include any individual who provides self-certification that they are otherwise able to work but for:

- The individual or a member of their household being diagnosed with COVID-19;
- The individual providing care for a family member diagnosed with COVID-19;
- The individual has a child who is unable to attend school due to COVID19;
- The individual is unable to travel to work because of a quarantine order or self-quarantined based on advice from a healthcare professional;
- The individual quit their job as a direct result of COVID-19;
- The individual's place of employment is closed as a direct result of COVID-19, or
- The individual is self-employed, seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation.

Excluded from eligibility are individuals who have the ability to telework with pay (i.e., work from home) or who are receiving paid sick leave or other paid leave benefits.

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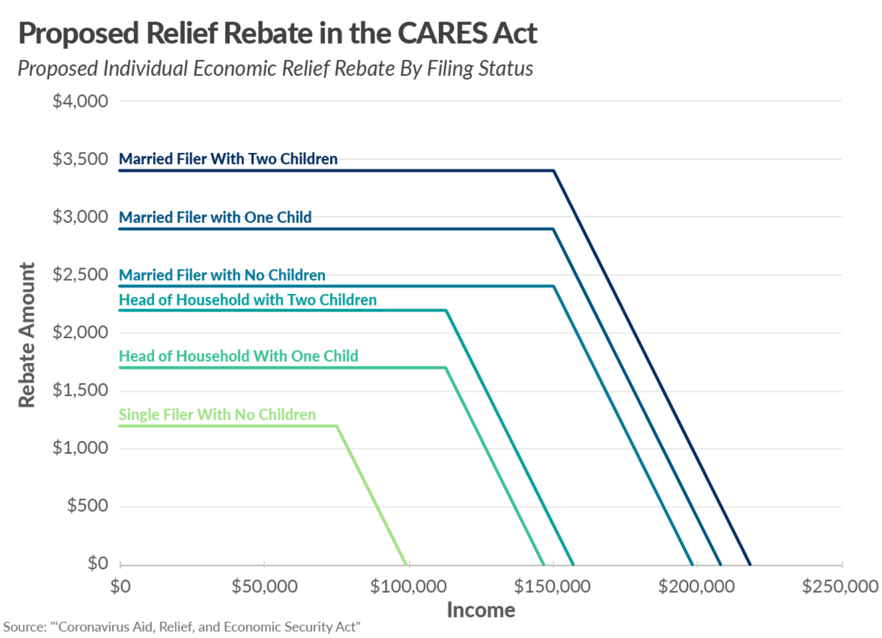
Section 2201. 2020 Recovery Rebates for Individuals

Recovery Rebates will be paid to eligible individuals up to $1,200 per adult and $500 per minor child. The rebates will come in the form of refundable tax credits and therefore are not includable in income.

Eligible Individuals include:

- U.S. residents with a work-eligible Social Security number
- Adjusted gross income (AGI) of:
    - $75,000 per year or less for Individuals
    - $112,500 per year or less for taxpayers filing as Head of Household
    - $150,000 per year or less for Married Filing Joint taxpayers
- For purposes of determining rebate eligibility the IRS will look to taxpayers' 2018 or 2019 tax returns (whichever is the latest they have on file). In instances where a taxpayer was over the income threshold for 2018 and/or 2019 but falls below the income threshold for tax year 2020 the taxpayer will receive the rebate when filing a 2020 tax return. In the event a taxpayer receives a rebate based on 2018 or 2019 AGI levels and later files a tax return for 2020 with income over the threshold there is no requirement to repay amounts to the IRS.
- The rebate amount is reduced by 5% for each dollar of qualified income exceeding the AGI category ceilings. It is entirely phased-out at $99,000 for individuals with no children, $146,500 for Head of Household taxpayers with one child, and $198,000 for Married Filing Joint taxpayers with no children (see chart below for rebate amounts and phase-out levels[1]). AGI limitations are based on the most recent tax filing (2018 or 2019).
- For taxpayers collecting Social Security who fall beneath the income filing threshold, the IRS will use the Social Security Benefit Statement to determine eligibility.



[1] Chart prepared by TaxFoundation.org

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Section 2202. Special Rules for Use of Retirement Funds

Retirement Plan Distributions up to $100,000 are now free of the 10% early withdrawal penalty if funds are used to address COVID-19-related issues. Limits are increased on retirement plan loans.

Distributions are eligible for the penalty waiver if:

- The individual or their spouse is diagnosed with COVID-19;
- The individual experiences adverse financial consequences as a result of being quarantined, furloughed, or laid off or having work hours reduced, being unable to work due to lack of childcare, closing or reducing hours of a business owned or operated or other factors determined by the Secretary

Distributions must take place in 2020. Income from the distribution may be recognized ratably over a three-year period, and the amount distributed can be repaid over that same three-year period. Distributions are exempt from trustee-to-trustee transfer and withholding rules.

Retirement Plan Loans taken within 180-days of the CARES Act enactment have their total value limit increased from $50,000 to $100,000. Additionally, individuals are permitted to borrow up to 100% of their retirement plan balance (increased from 50%). Repayment of any outstanding loan is delayed until December 31, 2020.

Section 2203. Temporary Waiver of Required Minimum Distribution Rules for Certain Retirement Plans and Accounts

In general, no Required Minimum Distributions (RMDs) are required for calendar year 2020 from individual retirement accounts or defined contribution plans. The provisions applies to all individuals receiving RMDs, including those who would receive their first RMD in 2020. Individuals who attained age 70 ½ in 2019 should note the Act waives the requirement they receive their first RMD by April 1, 2020. Taxpayers subject to the 5-year rule (such as inherited plans) can "skip" 2020.

The provision closely mirrors the language passed in the Worker, Retiree, and Employer Recovery Act of 2008. In both cases, the goal was to allow taxpayers whose retirement fund investment values had deteriorated substantially, and can afford to wait, to defer their withdrawals and have some additional time for their investments to recover.

Section 2204 and Section 2205. Allowance of Partial Above the Line Deduction and Modification of Limitations on Charitable Contributions During 2020

The Act creates an above-the-line deduction for cash contributions up to $300 per individual made to qualified charities for the 2020 tax year. This deduction is allowed whether or not the individual elects to itemize deductions.

For individuals that do itemize deductions, the 60% AGI limitation is suspended for cash contributions to qualified charities. This allows individuals to take a charitable contribution deduction for up to 100% of their AGI. Additionally, for corporations, the 10% charitable deduction limitation is increased to 25% of business taxable income. Furthermore, the Act increases the deductible limit for contributions of food inventory from 15% to 25%.

Gifts to supporting organization and donor-advised funds do not qualify for either the above-the-line deduction or the increased limits.

Section 2206. Exclusion for Certain Employer Payments of Student Loans

The Act offers employers the opportunity to provide employees with a tax-free student loan repayment benefit up to $5,250 for 2020. The benefit is governed under the "Educational Assistance Program" rules of IRC Section 127 but extends the program to payments made for student loans as well as the standard tuition, fees, books, supplies, and equipment. The $5,250 applies to any student loan repayment, as well as any other educational assistance payments made to the employee in 2020. This payment will be excluded from the employee's income.

Section 3513. Temporary Relief for Federal Student Loan Borrowers

The Act suspends all federal student loan payments (principal and interest) through September 30, 2020, without interest or penalties. This suspension is not automatic; borrowers must apply through their lenders. Additionally, federal student loan interest will be set to 0% through September 30, 2012. This provision is automatic and will apply whether or not individuals suspend payments.

Finally, all federal student loan debt collection has been suspended, including garnishment of wages, tax refunds, and other benefits.

The Act does not apply to private student loans.

Business Provisions

Sec. 1102. Paycheck Protection Program for Qualifying Small Businesses

The Act creates loans for eligible small business borrowers to assist with payroll costs, including commissions or similar compensation to domestic employees earning less than $100,000 per annum and operating costs (e.g., rent; mortgage interest payments; utilities).

Eligible Borrowers include:

- Any business employing 500 persons or less, or, if applicable, the SBA's size standard/employees
- Sole proprietors/independent contractors/self-employed persons
- Accommodation and Foodservice businesses under NAICS 72 with multiple locations (the 500 employee limit will apply on a per-location basis)
- During the covered period, affiliation rules are waived for:
    - SBIC financed small businesses
    - Small businesses in the accommodation and foodservice sector (NAICS 72)
    - Franchises assigned an individual franchiser identifier code by SBA

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Loan Terms are as follows:

- Good Faith certification required that borrower needs the funds to operate because of current economic disruption and will deploy funds for eligible uses
- Maximum loan amount is the lesser of:
    - $10 Million, or
    - The total average monthly payroll for the previous year, excluding compensation above $100,000 per employee x 2.5
    - This amount is reduced by the unrealized share of any 7(a) loan already approved
    - For seasonal businesses, the average monthly payroll may be calculated based on the average monthly payrolls for either February 15, 2019, or March 1, 2019, through June 30, 2019, at the borrower's election
    - For new businesses, that are otherwise eligible, the average monthly payroll may be calculated for amounts paid between January 1, 2020 and February 29, 2020
- Interest not greater than 4%
- No pre-payment penalty
- Loans will be non-recourse, and "collateral" and "personal guarantee" requirements are waived
- Loans are eligible for forgiveness, but any unforgiven portion will be repayable after 10 years with an option for deferral
    - Loan principal can be forgiven in an amount equal to cost for payroll, mortgage interest, rent and utilities incurred during the covered period of February 15 – June 30, 2020
    - Forgiven amounts will be reduced proportionally by any reduction in the average number of employees retained compared to the applicable period (depending on type of employer – existing, new, seasonal) and further reduced by any reduction in annualized pay of any employee beyond 25% of their prior-year compensation. Borrowers that re-hire workers previously laid off within 30 days of Enactment of the CARES Act (Enacted March 27, 2020 – 30 days is April 26, 2020) will not be penalized for reducing payroll
    - Forgiven amounts will not be included in the borrower's taxable income
- No double-dipping from SBA Economic Injury Disaster Loan (EIDL) program
- Loans will be made through SBA Section 7(a) lenders and other designated institutions. Treasury and the SBA may designate "additional lenders" under this emergency loan program that "have the necessary qualifications to process, close, disburse, and service loans made with the guarantee of the Administration." Lenders may approve loans with delegated SBA authority (no separate SBA approval required). SBICs and BDCs may qualify as "additional lenders" under this emergency program.

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Section 2301. Employee Retention Credit for Employers Subject to Closure Due to COVID-19

The Act creates a refundable payroll tax credit for 50% of qualified wages (including health benefits) up to $10,000 paid by employers to employees through December 31, 2020. The credit is available to businesses whose (1) operations were fully or partially suspended, due to a COVID-19-related lockdown, or (2) gross receipts declined by more than 50 percent compared to the same quarter in the prior year.

Qualified wages:

- For employers with more than 100 full-time employees, qualified wages are wages paid in the normal course of business, when not providing services due to the COVID-19-related circumstances.
- For employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether or not the employer is shutdown.

Importantly, businesses cannot claim this credit and take the forgivable SBA loan under the Paycheck Protection Program outlined in Section 1102.

Section 2302. Delay of Payment of Employer Payroll Taxes

The Act defers payment of the 6.2-percent Social Security tax on employee wages due from employers and self-employed individuals. The provision makes the deferred amount payable over the following two years, with half due by December 31, 2021, and the other half by December 31, 2022.

Section 2303. Modifications for Net Operating Losses

The Act removes limitations on net operating loss ("NOL") implemented under the Tax Cuts and Jobs act of 2017 (TCJA) for 2018, 2019, and 2020 tax years. Under TCJA, NOLs were limited to 80% of taxable income and could not be carried back to reduce income in prior years. The Cares Act allows NOLs to be carried back for five years. It also allows for NOLs arising before January 1, 2021, to fully offset income. Since losses may now be carried back to tax years before 2018, corporate taxpayers may benefit from a tax refund at favorable rates of up to 35%. (see chart below[2])

The removal of carry-back limitations applies to pass-through entities and sole proprietorships as well. Cross-reference the information below on IRC Section 461(l).

	Existing	CARES Act
2015	Generally not amendable in 2020	
2016 **2017**	• 3-year carry-back • 20-year carryforward	• 3-year carry-back • Indefinite carryforward • No 80% cap
2018 **2019**	• No carry-back of current losses • Indefinite carryforward of current losses	• 5-year carry-back for current losses • Indefinite carryforward • No 80% cap
2020	• 80% of taxable income cap for currently claimed losses	• 20-year carryforward NOLs before 1/1/18 • Plus the Lessor of (1) all NOLs after 12/31/17, or (2) 80% of taxable income

[2] Chart prepared by Robert Keebler, Michael Gerraerts, Jim Magner, Income Tax Planning Newsletter #194 (March 27, 2020)

Section 2304. Modification of limitation on losses for taxpayers other than corporations

The Act modifies loss limitation rules implemented under TCJA (IRC Section 461(l)) for non-corporate taxpayers (i.e., pass-through businesses and sole proprietors). Under IRC Section 461(l), a business loss in excess of $500,000 for joint filers and $250,000 for others was disallowed in the year incurred and was converted into an NOL that could be utilized in a future tax year.

The Act suspends IRC Sec. 461(l) for the 2020 tax year, allowing non-corporate taxpayers to deduct excess business losses arising in 2018, 2019, and 2020. Since the change is retroactive, individuals who were in an excess business loss position for tax year 2018 may need to consider amending their 2018 tax returns to fully utilize the losses.

Section 2305. Modification of credit for prior year minimum tax liability of corporations

As part of TCJA, the corporate alternative minimum tax ("AMT") was eliminated, effective for tax years beginning after December 31, 2017. Taxpayers that had AMT credit carryforwards were able to use them against their regular tax liability and also able to claim a refundable credit equal to 50% of the remaining AMT carryforward in years beginning in 2018 through 2020 and 100% for years beginning in 2021.

Under the Act, a fully refundable credit can be claimed in 2019, and a corporation can elect to claim the fully refundable credit amount in 2018.

Section 2306. Modification of limitation on business interest

The Act increases the amount of interest expense businesses can deduct on their tax returns from 30% to 50% for the 2019 and 2020 tax years. Additionally, businesses can elect to use their 2019 adjusted taxable income to compute their 2020 limitation, if that increases the interest deduction. In the case of a partnership, that election is made by the partnership.

The 50% limitation does not apply to partnerships for tax years beginning in 2019. Rather, if a partnership allocates excess business interest in 2019 to a partner (determined under the 30% adjusted taxable income limitation), then, generally (i) 50% of such excess is treated as business interest paid or accrued by the partner in the partner's first taxable year beginning in 2020 and is not subject to the limitation in that year for such business interest and (ii) the other 50% of the excess business interest is subject to the general excess business interest limitation rules (i.e., only allowed in a future year to the extent of excess taxable income from the same partnership).

Businesses can opt-out of the 50% rule and have the original 30% limitation apply.

Section 2307. Technical amendment regarding qualified improvement property

The provision corrects an error in TCJA and allows businesses to immediately deduct costs associated with improving facilities, rather than depreciating them over the 39-year depreciable life of the building. This provision allows for the amendment of prior year-returns when such improvements may have been made since TCJA.

Section 2308. Temporary exception from excise tax for alcohol used to produce hand sanitizer

The Act waives the federal excise tax on distilled spirits used for or in hand sanitizer that is produced and distributed in 2020 under FDA guidelines.

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