

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

On March 27, the House passed by voice vote, and the President signed, a third coronavirus relief package, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Some of the key provisions include:

Individual Provisions

Individual Recovery Rebate Payments / Credit

Under the CARES Act, an eligible individual is allowed an income tax credit for 2020 equal to the sum of: (1) \$1,200 (\$2,400 for eligible individuals filing a joint return), plus (2) \$500 for each qualifying child of the taxpayer.

Note: The term "qualifying child" means a qualifying child of the taxpayer, as defined for purposes of the dependency exemption by Code Sec. 152(c), who hasn't attained age 17.

Eligible taxpayers include anyone except:

- Individuals who qualify as a dependent of another taxpayer
- Nonresident aliens
- Any taxpayer who does not have a Social Security number (SSN) or Adoption Taxpayer Identification number (ATIN)
- Estates or trusts

Qualifying income includes:

- Earned income
- Social Security benefits
- VA benefits

Note: An individual who wasn't an eligible individual for 2019 may become one for 2020, e.g., where the individual was a dependent for 2019 but not for 2020. IRS won't send an advance rebate to such an individual, because advance rebates are generally based on information on the 2019 return (see below). However, the individual will be able to claim the credit when filing the 2020 return.

Credit Phase-out. The amount of 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.

Under these rules, the credit is completely phased-out for a single filer with AGI exceeding \$99,000 and for joint filers with no children with AGI exceeding \$198,000. For a head of household with one child, the credit is completely phased out when AGI exceeds \$146,500.

Advance Rebate Payments During 2020. Each individual who was an eligible individual for 2019 is treated as having made an income tax payment for 2019 equal to the advance refund

amount for 2019. The "advance refund amount" is the amount that would have been allowed as a credit for 2019 had the credit provision been in effect for 2019. In other words, even though the credit is technically for 2020, the law treats it as an overpayment for 2019 that IRS will rebate as soon as possible during 2020.

IRS will refund or credit any resulting overpayment as rapidly as possible. No interest will be paid on the overpayment.

If an individual hasn't yet filed a 2019 income tax return, IRS will determine the amount of the rebate using information from the taxpayer's 2018 return. If no 2018 return has been filed, IRS will use information from the individual's 2019 Form SSA-1099, Social Security Benefit Statement, or Form RRB-1099, Social Security Equivalent Benefit Statement.

Note: Most eligible individuals won't have to take any action to receive an advance rebate from IRS. This includes many low-income individuals who file a tax return to claim the refundable earned income credit and child tax credit.

IRS may make the rebate electronically to any account to which the payee authorized, on or after January 1, 2018, the delivery of a refund of federal taxes or of a federal payment.

No later than 15 days after distributing a rebate payment, IRS must mail a notice to the taxpayer's last known address indicating how the payment was made, the amount of the payment, and a phone number for reporting any failure to receive the payment to IRS.

Advance rebate reduces credit allowed for 2020. The amount of credit that is allowable for 2020 must be reduced (but not below zero) by the aggregate advance rebates made or allowed to the taxpayer during 2020.

If the taxpayer received an advance rebate during 2020 that was less than the credit to which the taxpayer is entitled for 2020, the taxpayer will be able to claim the balance of the credit when filing the 2020 return. If, on the other hand, the advance rebate received was greater than the credit to which the taxpayer is entitled, the taxpayer won't have to pay back the excess. That is because the 2020 credit can't be reduced below zero.

If an advance rebate was made or allowed for a joint return, half of the rebate is treated as having been made or allowed to each spouse who filed the joint return. Thus, if taxpayers filed a joint return for 2019 and received an advance rebate, but were divorced or filed separate returns for 2020, each individual will take into account half of the advance rebate when reducing the credit allowed for 2020.

New above-the-line Deduction for Charitable Cash Donations

The CARES Act adds a deduction to the calculation of gross income, in the case of tax years beginning in 2020, for the amount (not to exceed \$300) of qualified charitable contributions (cash donations) made by an eligible individual during the tax year.

Note: "Eligible individual" means any individual who does not elect to itemize deductions.

Effective Date. The amendments made by Act Sec. 2204 apply to tax years beginning after December 31, 2019.

Modification of Limitations on Individual Cash Contributions During 2020

The CARES Act provides that qualified contributions are disregarded in applying the 60% limit on cash contributions of individuals and the Code Sec. 170(d)(1) rules on carryovers of excess contributions.

Qualified contributions are allowed as a deduction only to the extent that the aggregate of those contributions does not exceed the excess of the individual's contribution base over the amount of all other charitable contributions allowed as deductions for the contribution year. In other words, the CARES Act allows such contributions to be deducted up to 100% of AGI for 2020, with any excess contributions available to be carried over to the next five years.

Qualified contributions are charitable contributions if:

1. They are paid in cash during calendar year 2020 to a 501(c)(3) charitable organization; and
2. The taxpayer has elected to apply this provision with respect to the contribution.

<p>Note: Contributions to a Code Sec. 509(a)(3) supporting organization or a donor advised fund are not qualified contributions.</p>

In the case of a partnership or S corporation, the election in item (2) above is made separately by each partner or shareholder.

Effective Date: The amendments made by Act Sec. 2205(a) apply to tax years beginning after December 31, 2019.

Tax-excluded Education Payments by an Employer

The CARES Act adds to the types of educational payments that are excluded from employee gross income "eligible student loan repayments" made before January 1, 2021. The payments are subject to the overall \$5,250 per employee limit for all educational payments.

Eligible student loan repayments are payments by the employer, whether paid to the employee or a lender, of principle or interest on any qualified higher education loan as defined in Code Sec 221(d)(1) for the education of the employee (but not of a spouse or dependent).

To prevent a double benefit, student loan repayments for which the exclusion is allowable can't be deducted under Code Sec 221 (which allows the deduction of student loan interest subject to a dollar limit and a phase-out above specified taxpayer income levels.)

Effective Date: The amendments made by Act Sec. 2206 apply to payments made after the date of enactment of the Act.

RMD requirement waived for 2020

The CARES Act provides that the required minimum distribution (RMD) requirements do not apply for calendar year 2020 to:

1. A defined contribution plan described in Code Sec. 403(a) or Code Sec. 403(b);
2. A defined contribution plan which is an eligible deferred compensation plan described in Code Sec. 457(b); or
3. An individual retirement plan (IRA).

The RMD requirements also do not apply to any distribution which is required to be made in calendar year 2020 by reason of:

1. A required beginning date occurring in calendar year 2020, and
2. Such distribution not having been made before January 1, 2020.

Eligible rollover distributions. If all or any portion of a distribution during 2020 is treated as an eligible rollover distribution but would not be so treated if the minimum distribution requirements under Code Sec. 401(a)(9) had applied during 2020, such distribution is not be treated as an eligible rollover distribution for purposes of Code Sec. 401(a)(31), Code Sec. 3405(c), or Code Sec. 402(f).

Effective date. The amendments made by Act Sec. 2203 apply for calendar years beginning after December 31, 2019.

No 10% Additional Tax for Coronavirus-related Retirement Plan Distributions

The CARES Act provides that the Code Sec. 72(t) 10% additional tax does not apply to any coronavirus-related distribution, up to \$100,000.

A coronavirus-related distribution is any distribution (not to exceed \$100,000), made on or after January 1, 2020, and before December 31, 2020, from an eligible retirement plan, made to a qualified individual.

A qualified individual is an individual:

1. Who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention (CDC),
2. Whose spouse or dependent is diagnosed with such virus or disease by such a test, or
3. Who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing

hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury.

Note: The administrator of an eligible retirement plan may rely on an employee's certification that the employee satisfies the conditions of determining whether any distribution is a coronavirus-related distribution.

Distribution can be contributed back to retirement plan. Any individual who receives a coronavirus-related distribution may, at any time during the 3-year period beginning on the day after the date on which such distribution was received, make one or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under Code Sec. 402(c), Code Sec. 403(a)(4), Code Sec. 403(b)(8), Code Sec. 408(d)(3), or Code Sec. 457(e)(16), as the case may be.

Distribution can be included in income over three years. In the case of any coronavirus-related distribution, unless the taxpayer elects not to, any amount required to be included in gross income for such tax year will be so included ratably over the 3-taxyear period beginning with such tax year.

Loans from qualified plans. The CARES Act provides flexibility for loans from certain retirement plans for coronavirus-related relief.

- Taxpayers who have a current outstanding plan loan with a payment requirement on the date of enactment and ending on December 31, 2020 will be granted an automatic 1-year delay for making that repayment.
- Loans from qualified plans made within 180 day beginning on the day of enactment, will not be treated as a distribution if the amount distributed does not exceed \$100,000.

Effective Date: Act Sec. 2202 applies to distributions made on or after January 1, 2020, and before December 31, 2020.

Business Provisions

Delay of Payment of Employer Payroll Taxes

The CARES Act allows taxpayers to defer paying the employer portion of certain payroll taxes through the end of 2020. Thus, notwithstanding any other provision of law, the payment for "applicable employment taxes "for the "payroll tax deferral period" won't be due before the "applicable date."

For purposes of the above rules, the term "applicable employment taxes" means:

1. The taxes imposed under Code Sec. 3111(a) (social security taxes),

2. Taxes imposed under Code Sec. 3211(a) as are attributable to the rate in effect under Code Sec. 3111(a), and
3. Taxes imposed under Code Sec. 3221(a) as are attributable to the rate in effect under Code Sec. 3111(a) (RRTA taxes).

The term "payroll tax deferral period" means the period beginning on the date of enactment of the Act and ending before January 1, 2021.

The term "applicable date" means:

1. December 31, 2021, with respect to 50% of the amounts to which Act Sec. 2302(a) (employment taxes) and Act Sec. 2302(b) (self-employment tax), as the case may be, apply, and
2. December 31, 2022, with respect to the remaining 50% of those amounts.

Notwithstanding Code Sec. 6302 (which authorizes IRS to set deadlines for tax deposits), an employer will be treated as having timely made all deposits of applicable employment taxes required to be made during the payroll tax deferral period if all such deposits are made not later than the applicable date.

The above rules won't apply to any taxpayer which has had indebtedness forgiven under Act Sec. 1106 with respect to a loan under Small Business Act Sec. 7(a)(36), as added by Act Sec. 1102, or indebtedness forgiven under Act Sec. 1109.

Effective Date: The provisions of Act Sec. 2302 apply to the period beginning on the date of enactment of the Act.

Employee Retention Credit for Employers

This provision provides a refundable payroll tax credit for 50% of wages paid by eligible employers to certain employees during the COVID-19 crisis.

Eligible employers. The credit is available to 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. The credit is also provided to employers who have experienced a greater than 50% reduction in quarterly receipts, measured on a year-over-year basis.

<p>Note: The credit is not available to employers receiving Small Business Interruption Loans under Sec. 1102 of the Act.</p>
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Wages paid to which employees? For employers who had an average number of full-time employees in 2019 of 100 or fewer, all employee wages are eligible, regardless of whether the employee is furloughed. For employers who had a larger average number of full-time employees in 2019, only the wages of employees who are furloughed or face reduced hours as a result of their employers' closure or reduced gross receipts are eligible for the credit.

No credit is available with respect to an employee for any period for which the employer is allowed a Work Opportunity Credit with respect to the employee.

Wages. The term "wages" includes health benefits and is capped at the first \$10,000 in wages paid by the employer to an eligible employee.

Wages do not include amounts taken into account for purposes of the payroll credits, for required paid sick leave or required paid family leave in the Families First Coronavirus Act, nor for wages taken into account for the Code Sec. 45S employer credit for paid family and medical leave.

IRS is granted authority to advance payments to eligible employers and to waive applicable penalties for employers who do not deposit applicable payroll taxes in anticipation of receiving the credit.

Effective Date: The credit applies to wages paid after March 12, 2020 and before January 1, 2021.

Temporary Changes for Net Operating Losses (NOLs)

The CARES Act temporarily removes the taxable income limitation to allow an NOL to fully offset income.

Effective Date: The amendments made by Act Sec. 2303(a) apply to tax years beginning after December 31, 2017, and to tax years beginning on or before December 31, 2017, to which NOLs arising in tax years beginning after December 31, 2017 are carried.

Modification of rules relating to net operating loss (NOL) carrybacks. The CARES Act provides that NOLs arising in a tax year beginning after December 31, 2018 and before January 1, 2021 can be carried back to each of the five tax years preceding the tax year of such loss.

Effective Date: The amendments made by Act Sec. 2303(b) apply to NOLs arising in tax years beginning after December 31, 2017 and to tax years beginning before, on or after such date to which such NOLs are carried.

Modification on Corporate Cash Charitable Contributions During 2020

A corporation's charitable deduction cannot exceed 10% of its taxable income, as computed with certain modifications. If a corporation's charitable contributions for a year exceed the 10% limitation, the excess is carried over and deducted for each of the five succeeding years in order of time, to the extent the sum of carryovers and contributions for each of those years does not exceed 10% of taxable income.

New Law: The CARES Act provides that qualified contributions are disregarded in applying the 10% limit on charitable contributions of corporations and the Code Sec. 170(d)(1) rules on carryovers of excess contributions.

Qualified contributions are allowed as a deduction only to the extent that the aggregate of those contributions does not exceed the excess of 25% of the corporation's taxable income (as computed

under Code Sec. 170(b)(2)) over the amount of all other charitable contributions allowed to the corporation as deductions for the contribution year.

If the aggregate amount of qualified contributions exceeds the limitation in the previous paragraph, the excess is taken into account under the Code Sec. 170(d)(2) carryover rule, subject to its limitations.

Effective Date: The amendments made by Act Sec. 2205(a) apply to tax years beginning after December 31, 2019.

Corporate Minimum Tax Credit (MTC)

The CARES Act allows corporations to claim 100% of AMT credits in 2019.

The CARES Act also provides for an election to take the entire refundable credit amount in 2018.

Under the CARES Act, a claim for credit or refund where a corporation elects to take the entire refundable credit amount in 2018 must be treated as made under Code Sec. 6411, i.e., as a tentative carryback refund claim.

Taxpayers may file an application for a tentative refund of any amount for which a refund is due by reason of an election under Code Sec. 53(e)(5). The application, which must be filed before December 31, 2020, must be in the manner and form IRS provides, must be verified in the same manner as an application for a tentative carryback adjustment, and must set forth: (a) the amount of the refundable credit claimed under Code Sec. 53(e) for the tax year, (b) the amount of the refundable credit claimed under Code Sec. 53(e) for any previously filed return for the tax year, and (c) the amount of the refund claimed.

Within 90 days from the date the application is filed, IRS must: (i) review the application, (ii) determine the amount of the overpayment, and (iii) apply, credit, or refund the overpayment, in a manner similar to that provided in Code Sec. 6411(b) (allowance of tentative carryback adjustments).

For an application made by a corporation filing a consolidated return, the rules of Code Sec. 6411(c) apply to an adjustment, to the extent IRS provides.

Effective Date: The amendments made by Act Sec. 2305 apply to tax years beginning after December 31, 2017.

Deductibility of Interest Expense Temporarily Increased

The CARES Act temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30-percent limitation to 50-percent of taxable income (with adjustments) for 2019 and 2020. As businesses look to weather the storm of the current crisis, this provision will allow them to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.

Election out of the increased limitation. Taxpayers may elect out of the increase, for any tax year, in the time and manner IRS prescribes. Once made, the election can be revoked only with IRS consent. For partnerships, the election must be made by the partnership and can be made only for tax years beginning in 2020.

Election to calculate 2020 interest limitation using 2019 adjusted taxable income. In addition, taxpayers can elect to calculate the interest limitation for their tax year beginning in 2020 using the adjusted taxable income for their last tax year beginning in 2019 as the relevant base. For partnerships, this election must be made by the partnership.

If an election is made to calculate the interest limitation using 2019 adjusted taxable income for a tax year that is a short tax year, the adjusted taxable income for the taxpayer's last tax year beginning in 2019 which is substituted under the election will be equal to the amount which bears the same ratio to such adjusted taxable income as the number of months in the short taxable year bears to 12.

Effective Date: The amendments made by Act Sec. 2306 apply to tax years beginning after December 31, 2018.

Bonus Depreciation for Qualified Improvement Property

The CARES Act provides a technical correction to the TCJA, and specifically designates qualified improvement (QI) property as 15-year property for depreciation purposes. This makes QI Property a category eligible for 100% Bonus Depreciation. QI property also is specifically assigned a 20-year class life for the Alternative Depreciation System.

Effective Date: The amendments made by Act Sec. 2307 are effective for property placed in service after December 31, 2017.

Miscellaneous Tax Provisions

Increase in Limits on Contributions of Food Inventory

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. In the case of a taxpayer other than a C corporation, the deduction cannot exceed 15% of aggregate net income of the taxpayer for that tax year from all trades or businesses from which those contributions were made, computed without regard to the taxpayer's charitable deductions for the year.

New Law: In the case of any charitable contribution of food during 2020 to which Code Sec. 170(e)(3)(C) applies, the taxable income limits are 25% rather than 15%.

Effective Date: The amendments made by Act Sec. 2205(b) apply to tax years beginning after December 31, 2019.

Forgiveness for Certain SBA-Guaranteed Loans

Under Code Sec. 61(a)(11), the reduction or cancellation of indebtedness generally results in cancellation of debt (COD) income to the debtor. An "identifiable event" determines when a debt has been reduced or canceled. An identifiable event includes a creditor accepting less than full payment as a complete discharge of a debt, the acquisition by a debtor of the debtor's own debt, and events or circumstances that remove the likelihood that a debt will be paid.

New Law: Under the CARES Act, an eligible recipient is eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs incurred and payments made during the covered period:

1. Payroll costs;
2. Any interest payments on any covered mortgage obligation;
3. Any payment for any covered rent obligation;
4. Covered utility payments.

Under the CARES Act, the amount which (but for this subsection) would be includible in gross income of the eligible recipient by reason of forgiveness described in subsection shall be excluded from gross income.

An eligible recipient seeking forgiveness of indebtedness on a covered loan must verify that the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered lease obligation or to make covered utility payments.

Under the CARES Act:

- An eligible recipient is the recipient of a covered loan (borrower).
- A covered loan is a loan guaranteed under Sec. 7(a)(36) of the Small Business Act.
- The covered period is the 8-week period beginning on the origination date of a covered loan.
- A covered rent obligation is rent paid under a lease agreement in force before February 15, 2020.
- A covered mortgage obligation is any indebtedness or debt instrument incurred in the ordinary course of business that
 - o Is the liability of the borrower;
 - o Is a mortgage on real or personal property; and
 - o Was incurred before February 15, 2020.
- Covered utility payments are payments for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.

Effective Date: Act Sec. 1106 applies to covered loans made during the period beginning on February 15, 2020 and ending on June 30, 2020.