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TAX RELIEF: Payroll Tax and Corporate Tax

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The CARES Act provides additional payroll tax credits, suspends certain excise taxes, and modifies certain provisions of the 2017 Tax Cuts and Jobs Act (“TCJA”). Each of the provisions provides relief designed to increase cash flow and liquidity to help businesses weather the pandemic.

Payroll Tax Relief

In addition to providing for an advance of the [FFCRA payroll tax credit for emergency paid leave](#), the CARES Act also creates an employee retention credit for employers who have been forced to close or suspend their operations.

Employee Retention Payroll Tax Credit

The employer payroll tax credit is available for 50% of qualified wages (up to \$10,000 in wages) per employee. An employer is eligible for the credit if the employer:

- Closes or partially suspends its operations because of COVID-19-related orders
- Experiences a 50% decline in gross receipts as compared to the same quarter last year

For employers with more than 100 full-time employees, eligible wages are those wages paid to employees who are not providing services for COVID-19 related reasons. For employers with 100 or fewer full-time employees, all wages paid will qualify for the credit whether the employer remains open for business or subject to a COVID-19 order.

Payment Deferral for Employer Payroll Taxes

The Act permits employers to delay payment of the employer payroll tax due for the periods between March 27 and December 31, 2020. Any amount due after taking into account credits available under FFCRA and the CARES Act, will now be due 50% on December 31, 2021 with the remaining amounts due on December 31, 2022. Employers who receive loan forgiveness under the CARES Act are not eligible for the payment deferral. employer must still remit the employee portion of the payroll tax under the current deadlines.

Corporate Income Tax Relief

The CARES Act lifts some of the restrictions that had been imposed by the TCJA. These measures are designed for businesses to seek refunds for losses and prior credits, thereby increasing cash flow. Eligible taxpayers

should review the impact of these provisions and consider filing amended returns and/or refund claims. The IRS has released guidance with procedures for filing refund claims arising from the CARES Act provisions, discussed below.

Temporary Lift of Corporate NOL Limitations & 5-year Carryback

The Act rolls back the limitations on net operating loss carryovers for losses earned prior to 2021 and permits a 5-year carryback period of NOLs earned in 2018, 2019, or 2020. Taxpayers that had losses in 2018 and 2019 should consider filing carryback claims quickly and be prepared to file carryback claims in Q1 2021 for any losses for the 2020 tax period.

How to File a Carryback Claim

To facilitate refunds resulting from the CARES Act carryback provisions, [Notice 2020-26](#), issued on April 9, 2020, provides grants a six-month extension to file a tentative claim for carryback refund for taxable years arising during calendar year 2018 and ending on or before June 30, 2019. Absent this guidance, the deadline for filing such claim had expired December 31, 2019. Taxpayers now have until June 30, 2020 to file a Form 1139 (corporations) or a Form 1045 (individuals, trusts, or estates). The IRS has issued [guidance](#) that a carryback claims should be submitted via fax: Form 1139 should be faxed to 844-249-6236 and Form 1045 should be faxed to 844-249-6237.

Note that the fax filing is only for claims for refund related to the CARES Act NOL carryback or AMT credit provisions. For example, quick refund claims for overpayments of estimated tax (Form 4466) should be filed under existing procedures.

Elections to Waive or Limit Carryback

[Rev. Proc. 2020-24](#), issued April 9, 2020, provides procedures for taxpayers who prefer to elect to waive or limit the new five-year carryback provisions for losses arising in the 2018-2020 tax years. An election to waive a carryback for NOLs arising in the tax years beginning in 2018 or 2019 must be made no later than the (extended) due date for filing the taxpayers first income tax return for the first tax year ending March 27, 2020. For NOLs arising in tax years beginning after December 31, 2019 but before January 1, 2021, the election must be made by the due date for the income tax return for the tax year in which the NOL arises.

A [similar procedure](#) applies to elections to exclude from the carryback period a year with a Section 965 inclusion. The election must be made by the due date for the income tax return for the tax year in which the NOL arises. However, the statement making the election must be included on the earlier filed of the tax return for the year in which the NOL arises, a Form 1139 or Form 1045 (as applicable), or an amended return applying the NOL to the earliest tax year in the carryback period.

Immediate Refund of AMT Credits

The TCJA eliminated the corporate alternative minimum tax (“AMT”) but permitted a credit to be taken on a taxpayer’s 2018-2021 returns. The AMT credits are now fully refundable in the 2018 tax year. Taxpayers may file a tentative claim for refund for these amounts. Treasury has been directed to process any such refund claims within 90 days. Like the NOL carryback claims, quick refund claims for AMT credits submitted on a Form 1139 should be faxed to 844-249-6236.

Other Income Tax Relief

Losses for Non-Corporate Businesses

The Act repeals excess loss limitation rules with respect to business losses arising in 2018, 2019, and 2020. Specifically, pass-through businesses and sole proprietors, including farms, will now be able to take losses for these tax years even if their losses exceed \$250,000.

Temporary Lift of Interest Limitations

The limitations on interest deductibility have been increased for the 2019 and 2020 tax years from 30% to 50% of EBITDA. In addition, a taxpayer may choose to use 2019 adjusted taxable income instead of 2020 when computing its limitation for the 2020 taxable year. (For partnerships, the increased limitation applies only to taxable years beginning in 2020, although special rules apply for taxable years beginning in 2019.)

The IRS has addressed situations where taxpayers would like to make a late “electing real property trade or business” (ERPTB) election or electing farming business (EFB) election or would like to withdraw a previously made election. Specifically, [Rev. Proc. 2020-22](#), issued April 10, 2020, allows a taxpayer to make a late election or withdraw a prior election by filing an amended tax return or, for a taxpayer classified as a partnership, an administrative adjustment request (AAR) or amended IRS Form 1065. [Rev. Proc. 2020-22](#) also explains how to make various elections regarding the application of the new business interest limitations.

Expensing for Qualified Improvement Property

The TCJA unintentionally classified certain “qualified improvement property” as nonresidential real property, which does not qualify for bonus depreciation. The CARES Act includes a long-awaited fix to the TCJA by classifying “qualified improvement property” as 15-year property. As a result, qualified improvement property placed in service any time between September 27, 2017 and December 31, 2022 now is eligible for 100% bonus depreciation. Qualified improvement property includes interior improvements to nonresidential real property (but does not include enlargements of the building, any elevator or escalator, or improvements to the internal structural framework of the building).

In [Rev. Proc. 2020-25](#), issued April 17, 2020, the IRS outlined the procedures for to take advantage of the new QIP rules by changing their method of depreciation under Section 168(e). Taxpayers may elect to take 100% bonus depreciation on QIP placed in service after December 31,

2017 by filing an amended return, an administrative adjustment request (AAR) under Sec. 6227, or a Form 3115, Application for Change in Accounting Method. In addition, the guidance tells taxpayers how to make various late elections, or revoke or withdraw existing elections, with respect to bonus depreciation and the alternative depreciation system.

Note that the procedures outlined in Rev. Proc. 2020-25 are not permitted for taxpayers that make a late ERTB or EFB election, or withdraw an election for the taxable year in which the QIP is placed in service. These taxpayers will follow the procedures outlined in Rev. Proc. 2020-22, described above.