

Understanding How the Tax Provisions of the Coronavirus Aid, Relief and Economic Security (CARES) Act Provide Broad Relief

March 30, 2020

On Friday, March 27, 2020, the CARES Act became law. The Act includes a wide range of financial and tax relief for businesses and individuals. It is the largest stimulus package ever passed.

The [Anchin COVID-19 Resource Team](#) can provide support and insight with your evaluation of benefits, coordinate assistance under different provisions of the Act, and assist you in your application for benefits. The Team has members with a broad range of expertise and deep experience working together, and can provide the coordination and timely delivery of support you need to overcome the current challenges.

Below are additional details on key tax-related provisions of the Act:

Business Tax Assistance and Relief

Net Operating Loss Rules Provide Tax Refund Opportunity:

Any Net Operating Losses (NOLs) incurred in tax years 2018, 2019 or 2020 can be carried back for five years. For NOLs that have occurred in 2018 and 2019, the time requirement to waive the carryback election is extended to 120 days after the enactment of the CARES Act (3/27/2020). The original time requirement to waive the carryback election is by the due date (including extensions) of the return. NOLs incurred in a tax year beginning after December 31, 2017 and before January 1, 2021 can be carried forward indefinitely while NOLs incurred prior are still subject to the 20 year carryforward period. Finally, all NOLs incurred in tax years beginning after December 31, 2017 and before January 1, 2021 are not subject to the 80% taxable income limitation and instead can be used to offset all taxable income. This

provision can not only allow for tax refunds but can also recapture tax that was paid at higher tax rates in prior years.

Payroll Tax Deferral:

Employers and self-employed individuals can defer the payment of 50% of the employer's portion of Federal social security payroll taxes and 50% of self-employment taxes due from the date of the enactment of the Act through December 31, 2020. One half of the taxes deferred will be due by December 31, 2021 and one half will be due by December 31, 2022. Employers who receive Small Business Act loans that were forgiven under the CARES Act are not eligible for this payroll tax deferral.

Employee Retention Tax Credits:

Any employer carrying on a trade or business in 2020 and whose business is fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority as a result of COVID-19 or such business that have seen a decline in gross receipts of at least 50% starting with the first quarter of 2020 as compared to the same quarter in the prior year can receive a credit for each quarter equal to 50% of the qualified wages (including health care costs) with respect to each employee. Up to \$10,000 of qualified wages per employee is taken into account. Any amounts in excess of federal payroll taxes will be refunded. The employee retention credit is effective for wages paid after March 12, 2020 and before January 1, 2021. Employers with greater than 100 full-time employees are entitled to the credit for any employee not providing services for the employer due to COVID-19 causes. However this credit will not be available to any taxpayer which avails themselves of a payroll protection-covered loan.

Business Interest Limitation Relief:

The 30% business interest limitation as part of the Tax Cuts and Jobs Act (TCJA), is increased to 50% for the years beginning with 2019 and 2020. For partnerships this will not apply to years beginning with 2019, but only for 2020 and the taxpayer can elect to use their 2019 Adjusted Taxable Income to compute the limitation for 2020. Assuming the taxpayer's adjusted taxable income for 2020 would be lower than that

of 2019, electing to use 2019 would result in a higher interest deduction. Under the TCJA, if a real estate company elected out of the interest limitation, the election was permanent. The CARES Act does not address any relief to a taxpayer that made such an election. Partners of a partnership can deduct 50% of the 2019 excess business interest expense in 2020.

Qualified Improvement Property (QIP) for Non-Residential Properties:

Both the House and Senate acknowledged that an error was made in drafting the TCJA as it related to QIP. The TCJA made QIP a 39-year asset and therefore not eligible for bonus depreciation. The CARES Act corrects this error retroactively to years beginning after December 31, 2017. Therefore Qualified Improvement Property is now depreciable over 15 years and is eligible for bonus depreciation. Taxpayers will likely have the option of amending prior tax returns or taking the benefit on their next filed return with applying for an accounting method change. This provision could provide an opportunity for tax refunds in certain cases.

Corporate Charitable Contribution Limitations Relaxed:

For corporate taxpayers, the act increases the limitation for 2020 on charitable contributions from 10 to 25 percent of taxable income. Similar to act changes for individuals, only cash contributions to public charities qualify. The taxpayer must make an election on their 2020 return. Additionally the limitation on donations of certain food inventory increased from 15 to 25 percent in 2020.

Individual and Family Relief

Individual Rebates:

Eligible taxpayers will receive direct deposits of rebates of up to \$1,200 per individual and \$500 per child. The actual amount received will be based on the taxpayer's 2019 tax return (or 2018, if a 2019 tax return has not yet been filed). The payments are limited by Adjusted Gross Income ("AGI") as follows:

- Single filer - AGI up to \$75,000, phases out at \$99,000,
- Head of Household - AGI up to \$112,500, phases out at \$146,500,
- Married filing joint - (up to \$2,400) AGI up to \$150,000, phases out at

\$198,000.

The phase outs are calculated at 5% over the base AGI of \$75,000, \$112,550 and \$150,000, respectfully.

Taxpayers that are not eligible include nonresident aliens, claimable dependents and estates and trusts. Post 12/31/17 direct deposit/debit information will be used or, if not available, checks will be issued. For first time eligible taxpayers filing in 2020, the amounts will be available as a tax credit.

Retirement Plan Related Relief:

For 2020, the minimum distribution requirement has been eliminated.

A taxpayer can borrow up to \$100,000 from their retirement plans within 180 days from enactment of the Act, which is double the previously-allowed amount.

A taxpayer can withdraw up to \$100,000 from their retirement plans, before December 31, 2020, and 1) not be subject to the 10% premature distribution penalty, 2) report the income over a 3 year period of time, and therefore pay the tax on the withdrawal over the same 3 year period 3) repay the amount withdrawn anytime within the 3 year period and not be subject to tax on the withdrawal. In order to qualify, the individual, their spouse or dependent needs to be diagnosed with the virus or experience financial hardship due to being quarantined, furloughed or laid off, or have their work hours reduced due to the virus, or be unable to work due to lack of child care or the closing of a business or reduced hours of a business operated by the individual due to the virus or any other factor as determined by the Secretary of the Treasury.

Excess Business Loss Limitations Suspended:

The excess business loss limitation rules under the Tax Cuts and Jobs Act of 2017 restricts an individual's ability to offset business losses against nonbusiness income to \$500,000 per year (taxpayers that are married filing joint). The CARES Act suspends these rules for years beginning after December 31, 2017 and before January 1, 2021. This could present an opportunity to file refund claims for taxpayers subject to these limitations in 2018 and allow taxpayers to take advantage

of the change for 2019.

Charitable Contributions Benefits Extended:

Individual taxpayers can deduct up to \$300 of cash contributions made to a public charity in 2020 as an above the line deduction even if they do not itemize deductions. A taxpayer that will itemize deductions for 2020 can deduct cash contributions made to a public charity during 2020 to the extent of 100% of their Adjusted Gross Income. Contributions to a Donor Advised Fund or a Supporting Organization don't qualify for these enhanced deduction limitations.

Mortgage Forbearance:

An individual with a residential mortgage on a property with 1-4 units can apply to their lender for a 180-day forbearance, at which time only the normal fees and interest under the mortgage will accrue. The forbearance can be extended for another 180 days, at the request of the borrower and such period can be shortened at the request of the borrower. Foreclosure cannot be initiated until at least 60 days beginning March 18, 2020.

A multifamily borrower (with 5 or more units), with a federally backed mortgage, experiencing financial hardship directly or indirectly as a result of COVID-19, may request forbearance. The forbearance can be for 30 days and can be extended for an additional two 30-day periods. The borrower must be current on their obligations as of February 1, 2020.

If a multifamily borrower receives forbearance, the borrower cannot evict or initiate eviction of a tenant solely for non-payment of rent or fees, during the period of forbearance.

In addition, there are other residential tenant protections on leased property irrespective of whether the borrower receives forbearance. For example, there is a 120 day moratorium on eviction from the enactment of the act and a landlord cannot require the tenant to vacate until 30 days after the notice to evict is issued.

We have summarized certain key provisions of the CARE Act. The Act offers many businesses and individuals opportunities for significant cash flow relief. However,

the various provisions are complex and include options to access cash by amending prior year's tax returns and other means.

Taxpayers must evaluate their options before acting, and carefully consider how to maximize their benefits, the timing of the benefits and the impact on other tax filing positions, and on their shareholders or partners.

The [Anchin COVID-19 Resource Team](#) can help provide guidance and clarity through its team of experienced specialists. Please contact your Anchin Relationship Partner, or a member of the Anchin COVID-19 Resource Team, at COVID19@anchin.com.

Disclaimer: Please note this is based on the information that is currently available and is subject to change.