

What A/E/C Firms Need to Remember About the CARES Act

August 31, 2020

When the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law in late March 2020, it got plenty of attention. For weeks afterward, guidance was issued and business owners focused on learning about what relief was available for them.

At this point, so much has happened this year that the CARES Act may seem like old news, yet its tax provisions remain in effect and, in some cases, beyond 2020 (unless subsequent legislation changes them). Careful planning may allow architecture, engineering and construction (A/E/C) firms to fully benefit from the wide and varying tax relief offered.

Operating losses

A net operating loss (NOL) generally occurs when the deductible expenses of a company or trade exceed its income. Because of work stoppages and slowdowns caused by the novel coronavirus (COVID-19) crisis, many A/E/C businesses may report NOL's for the 2020 tax year.

A few years ago, the Tax Cuts and Jobs Act (TCJA) limited the NOL deduction to 80% of taxable income for the year, eliminated the carryback of NOLs to create tax refund claims, and removed the time limit on carryforwards.

The CARES Act allows NOL's arising in 2018, 2019 or 2020 tax years to be carried back five years. Additionally, it removes the taxable income limitation on deductions for prior-year NOLs carried forward into tax years before 2021, so that NOLs can fully offset income. Keep in mind that this applies to both corporations and to owners of pass-through entities.

Finally, it temporarily eliminates the limitation on excess business losses that the TCJA had imposed for sole proprietors and owners of pass-through entities when their overall business losses were in excess of \$250,000 (\$500,000 in the case of a

joint return). Taxpayers can now deduct these excess business losses arising in 2018, 2019 and 2020 tax years.

If any of these rule changes affect you, filing an amended return for a previous tax year may allow you to claim a tax refund now that can boost much needed cash flow.

Additional Tax Deductions for Qualified Improvements

For a while now, A/E/C industry groups have been lobbying against the “retail glitch,” which Congress inadvertently created while drafting the TCJA. The drafting error caused any qualified improvement property (QIP) placed in service after December 31, 2017, to be ineligible for 100% bonus depreciation. This typically includes upgrades to retail, restaurant and leasehold property.

The drafting error was corrected under the CARES Act. Most businesses can now claim 100% bonus depreciation for QIP, assuming all applicable rules are followed. What’s more, the correction is retroactive to any QIP placed in service after December 31, 2017. (Improvements related to a building’s enlargement, elevator or escalator, or internal structural framework don’t qualify.)

Payroll Tax Credits

The CARES Act created a refundable credit against payroll tax to help employers, including A/E/C firms, retain their workforces. It’s generally available to employers whose operations have been fully or partially suspended because of a governmental shutdown order related to COVID-19. Employers whose gross receipts have dropped more than 50% compared to the same quarter in the previous year (until gross receipts exceed 80% of gross receipts in the earlier quarter) are also typically eligible.

A qualifying employer whose workforce exceeds 100 employees may claim the credit for employees who’ve been furloughed or had their hours reduced because of the reasons noted. If an employer has 100 or fewer employees, it can qualify for the credit regardless of whether it has furloughed employees or reduced employee hours.

The per-employee credit equals 50% of up to \$10,000 in compensation, including

health care benefits, paid to an eligible employee after March 12, 2020, through December 31, 2020. (Additional rules and limits apply, particularly regarding certain Small Business Administration loans received. If your company received a PPP loan, this particular credit cannot be claimed.)

The CARES Act also enables employers to delay payment of their share (6.2% of wages) of the Social Security payroll tax that would otherwise be due on or after March 27, 2020 and before January 1, 2021. They can pay the tax over the next two years, with the first half due by December 31, 2021, and the second half due by December 31, 2022.

The road ahead

A/E/C firms have had to deal with unprecedented challenges because of COVID-19. We are here for our clients and friends and will continue to be a resource. If you have any questions or need further clarification, please contact [Phillip Ross](#) or your Anchin Relationship Partner.