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Coronavirus: The Senate Passes the CARES Act; Summary of the Tax Provisions of the Bill

Tax Talks Blog on **March 26, 2020**

Last night, March 25, 2020, the Senate passed the Coronavirus Act, Relief, and Economic Security Act (the "CARES Act") (H.R. 748). The House is expected to consider the bill later this week.

This blog post summarizes the tax provisions of the CARES Act, as passed by the Senate.

1. **Recovery Checks.** The CARES Act would provide a refundable tax credit for 2020 of $1,200 to individual filers with adjusted gross incomes of $75,000 or less (or $112,500 or less for a head of household), and $2,400 to married couples filing jointly with adjusted gross incomes of $150,000 or less, which would be paid in cash. For individuals, heads of households, and married couples with adjusted gross income of $75,000/$112,500/$150,000 or less, there is an additional $500 refundable credit for each of their "qualifying children". Although the credit is for 2020, the bill treats the taxpayer as if he or she had overpaid an amount equal to the credit in 2019 (or if the taxpayer has not yet filed a 2019 tax return, 2018) so that the taxpayer is eligible to receive his or her refund immediately. No minimum income is necessary to receive the credit. For taxpayers with incomes over the $75,000/$112,500/$150,000 threshold, the credit is reduced by 5% of the taxpayer's adjusted gross income over $75,000/$112,500/$150,000. This results in a complete phase out for taxpayers who in 2019 made more than $99,000 (individuals), $146,500 (heads of households), and $198,000 (joint filers).
2. **50% Employee Retention Credit for Employers Closed Due to Covid-19.** The CARES Act provides eligible employers with a refundable payroll tax credit equal to 50% of certain "qualified wages" (including certain health plan expenses) paid to its employees in a calendar quarter if the employer is engaged in an active trade or business in 2020 and, during the applicable calendar quarter, either (i) the operation of that trade or business is fully or partially suspended due to a governmental order related to COVID-19 or (ii) the gross receipts for that trade or business are less than 50% of gross receipts for the same calendar quarter of the prior year. The employee retention credit is available for employers with more than 500 employees, but for employers with more than 100 employees, the credit is available only with respect to wages paid to an employee that is not providing

services due to the circumstances described in (i) and (ii) above. The credit is capped at $5,000 (50% of $10,000 qualified wages) per employee for all calendar quarters. Section 501(c) tax-exempt organizations are eligible for the credit, but governmental entities and companies receiving small business interruption loans under the CARES Act are not. The employee retention credit was not in either of the earlier Senate drafts of the CARES Act, but a similar provision was included in a coronavirus relief bill proposed by House Democrats earlier this week.

3. **Small Business Loan Forgiveness Does Not Give Rise To Cancellation of Indebtedness Income.** The CARES Act includes a loan forgiveness program for small businesses. Any cancellation of debt income under the program would be tax-free (i.e., excluded from income), and would not result in a loss of tax attributes.

4. **Tax Treatment of Economic Stabilization Investments.** The CARES Act authorizes the Treasury to make or guarantee up to $500 billion in debt and equity investments in businesses, states, and municipalities affected by COVID-19. The CARES Act directs the IRS to issue guidance providing that the acquisition of warrants, stock options, common or preferred stock or other equity under the program does not result in an ownership change for purposes of section 382. While the CARES Act does not by its terms prevent investments from contributing to a section 382ownership change, it appears consistent with the intent of the legislation for the IRS to entirely disregard investments for purposes of determining whether a taxpayer has experienceda section 382 ownership change. Any loans made or guaranteed by the Treasury under the program would be treated for tax purposes as debt issued at par, and stated interest on these loans would be treated as qualified stated interest. As a result, loans issued or guaranteed under the program would not be treated as issued with original issue discount for tax purposes, and cash basis taxpayers would not be permitted to deduct interest on the loans until that interest is paid.

5. **The CARES Act <u>Does Not</u> Repeal Downward Attribution.** The CARES Act **<u>does not</u>** contain the provision in the March 16 version that would have restored section 958(b)(4). (Before its removal as part of the 2017 Tax Cuts and Jobs Act (the "TCJA"), section 958(b)(4) prevented a United States person from being treated as owning the stock owned by its foreign owner.)

6. **NOLs; Excess Business Losses.** The CARES Act would allow a corporation's losses from 2018, 2019, and 2020 to be carried back for five years, and would allow corporate NOLs to fully reduce taxable income (rather than only 80% of taxable income under current law). A REIT would not be permitted to carry back losses. These provisions would temporarily reverse certain changes made by the TCJA. However, the CARES Act effectively prevents the use of NOL carrybacks to

offset income includible under section 965 (the deemed repatriation provision enacted in the TCJA). The CARES Act allows corporate taxpayers that may be able to carryback losses a 120-day period to make certain important elections, including the election to forego the carryback. The CARES Act would also retroactively suspend the excess business loss provision of section 461(*l*)(1) (which disallows business losses in excess of $200,000 for a single taxpayer and $500,000 for a married couple filing jointly) for 2018 through 2020.

7. **Increase the Section 163(j) Limitation on Business Interest Expense Deduction From 30% to 50%.** The CARES Act would retroactively increase the section 163(j) limitation on business interest expense deductions from 30% to 50% for 2019 and 2020. Taxpayers may elect out of the increase (for example, to defer the deduction and avoid generating or increasing a net operating loss which, under the CARES Act, would again be usable only to the extent of 80% of taxable income beginning in 2021). The CARES Act also provides that the increase in the limitation applies to partners in partnerships only in 2020 (and not in 2019) but, for partners that do not elect out of the provision, 50% of the business interest of a partner that is accrued in 2019 is deemed to accrue in 2020 and is not subject to any limitation in 2020.

8. **Filing and Payment Extensions.** The CARES Act would permit employers and self-employed individuals (other than taxpayers who have had indebtedness forgiven under the CARES Act) to delay payment of the 6.2% employer share of the Social Security tax (but not the 1.45% employer share of the Medicare tax) from the date of enactment through the end of 2020. The tax would be payable over the following two years with half paid by December 31, 2021 and the other half by December 31, 2022. These provisions would be available to everyone, regardless of income. The CARES Act **does not** extend the April 15 filing date to July 15, 2020 nor extend the due date for estimated tax payments by individuals and corporations to October 15, 2020, although the Treasury and the IRS extended both the due date for the first quarter (but not, for now, second quarter) estimated tax payments and the April 15 filing date to July 15, 2020 in guidance issued earlier this week.

9. **Waiver of 10% Early Withdrawal Penalty for Distributions of Up to $100,000 From Retirement Funds for Affected Individuals.** The CARES Act allows an individual to withdaw up to $100,000 from a qualified retirement account without incurring the 10% penalty for early withdrawals if (1) they are diagnosed with COVID-19, (2) their spouse or dependent is diagnosed with COVID-19, or (3) they experience adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a

business owned or operated by the individual due to COVID-19 or other factors as determined by the IRS. This provision applies to distributions from January 1, 2020 (rather than the date of enactment of the CARES Act) through December 31, 2020. Income attributable to the withdrawal will be taxable over three years (unless the taxpayer elects otherwise) and the taxpayer may recontribute the amount within three years without regard to the cap on contributions. The bill also increases the maximum amount that an individual may borrow from a qualified plan from $50,000 to $100,000, allows an individual to borrow up to the present value of the employee's nonforfeitable accrued benefit (rather than merely one-half of that amount, as under current law), and if the loan would mature between the date of enactment and December 31, 2020, allows up to an additional year to repay the loan.

10. **$300 Above the Line Charitable Contribution Deduction; Relaxation of the Charitable Contribution Limitation.** The CARES Act would allow a permanent "above the line" charitable contribution deduction for up to $300 of cash contributions to certain section 501(c)(3) public charities beginning in 2020, even if the individual takes the standard deduction. The bill would also suspend the 50% adjusted gross income limitation for charitable contributions by individuals in 2020 (so that individuals could receive a charitable contribution deduction for up to 100% of their 2020 adjusted gross income), and would increase the 10% taxable income limitation on charitable contribution deductions for corporations to 25%. Finally, the bill would temporarily increase the cap on deductions for charitable contributions of food inventory in 2020 from 15% to 25% of taxable income (in the case of a C corporation) or aggregate net income for all relevant trades or businesses (in the case of an individual).

11. **Immediate Expensing of Costs Associated With Improving Qualified Improvement Property.** The CARES Act would correct an error in the TCJA that prevented businesses from expensing certain costs for improvements to "qualified improvement property", and required the costs to be depreciated over the 39-year life of the building. Qualified improvement property is any improvement to the interior of a nonresidential building that is placed in service after the building is first placed in service. Qualified improvement property does not include improvements that are attributable to the enlargement of the building, elevators or escalators, or the internal structural framework of the building. The change is retroactive to the date of enactment of the TCJA.

12. **Acceleration of Alternative Minimum Tax (AMT) Credits.** The TCJA repealed the corporate AMT and allowed corporations to claim corporate AMT credits over several years until 2021. The CARES Act allows corporations with outstanding AMT credits to claim their credits immediately.

13. **Tax-Free Employer Repayment of Employee Student Loans.** Under the CARES Act, an employer's repayment of up to $5,250 of an employee's student loan debt would be tax-free to the employee if made after the enactment of the CARES Act and before January 1, 2021 (i.e., the repayment is excluded from the employee's income). The $5,250 cap would apply to the total employer educational assistance provided to an employee under current law (e.g., tuition, fees, and books) and the new provision in the CARES Act.

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