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Key Tax Provisions for Businesses and Individuals in the CARES Act

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On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") was signed into law. The CARES Act is the third piece of Federal legislation designed to respond to the COVID-19 outbreak caused by the novel coronavirus. This alert summarizes the major tax provisions in the CARES Act, which may benefit businesses and individuals.

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PRACTICE AREAS

Tax

Business Tax Provisions

Refundable Employee Retention Credit (CARES Act Section 2301)

The CARES Act grants eligible employers an employment tax credit equal to 50% of qualified wages (including health benefits) paid after March 12, 2020, and prior to January 1, 2021, to eligible employees during a calendar quarter, up to $10,000 per employee. To be eligible, businesses must either (i) be subject to a COVID-19 government order partially or fully suspending their operations, or (ii) suffer a 50% decline in gross receipts from the same quarter in 2019.

Qualified wages vary depending on the size of the employer. Employers with more than 100 full-time employees may receive credits for wages paid to employees while they are not providing services due to the COVID-19 outbreak. Employers with fewer than 100 full-time employees may receive credits for all wages paid during the applicable period, regardless of whether the employee provides services.

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If an employer receives a loan under the Small Business Administration ("SBA") Paycheck Protection Program added by Section 1102 of the CARES Act, the employer is not eligible to receive an employee retention credit under Section 2301 of the CARES Act. Please see Koley Jessen's Paycheck Protection Program - Frequently Asked Questions, which may be found **here**, for additional information about this program.

Employer Payroll Tax Deferral (CARES Act Section 2302)

Required payment of the 6.2% Social Security employer payroll tax is deferred for the period beginning on March 27, 2020, and ending on December 31, 2020. Half of the deferred payroll taxes are due on December 31, 2021, with the other half being due on December 31, 2022. Self-employed individuals receive similar relief, however, 50% of the self-employment tax remains due on existing deadlines. Employers (and self-employed individuals) who receive SBA Paycheck Protection Program loans that are forgiven are not eligible for the employer payroll tax deferral.

Expansion of Business Losses, Including NOLs (CARES Act Sections 2303 and 2304)

The Tax Cuts and Jobs Act of 2017 (the "TCJA") eliminated the carryback of net operating losses ("NOLs") to prior taxable years. The TCJA also allowed an indefinite carryforward of NOLs to future taxable years, but generally only allowed NOLs to offset 80% of current-year taxable income.

Under the CARES Act, taxpayers may generally carryback NOLs for tax years 2018, 2019, and 2020 to each of the five tax years preceding the loss year. Taxpayers will be able to amend or modify tax returns for tax years dating back to 2013 in order to take advantage of the carryback. In addition, the CARES Act temporarily repeals the TCJA's 80% limitation on the use of NOLs and taxpayers may use NOLs to offset 100% of their taxable income for tax years 2018, 2019, and 2020.

Section 2304 of the CARES Act provides similar loss rule relief to taxpayers that are not corporations.

Corporate AMT Credit Accelerated (CARES Act Section 2305)

The TCJA repealed the corporate alternative minimum tax ("AMT"). The TCJA also made corporate AMT credits refundable over several years, ending in 2021. The CARES Act permits corporations to accelerate recovery of any refundable AMT credits to tax years 2018 and 2019.

Increased Business Interest Expenses (CARES Act Section 2306)

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The TCJA limited the amount of allowable deductions for business interest (regardless of the type of entity) for tax years beginning after 2017. The limitation is generally 30% of the taxpayer's "adjusted taxable income", which is calculated similarly to EBITDA, for the year. The limitation does not apply to taxpayers with average annual gross receipts for the prior three years below an inflation-adjusted amount. For 2020, this amount is $26 million or less. The CARES Act increases this limitation to 50% of the taxpayer's adjusted taxable income for 2019 and 2020. The CARES Act also allows taxpayers to elect to use their 2019 adjusted taxable income instead of their 2020 adjusted taxable income when determining the deductibility of 2020 interest payments.

"Retail Glitch" Fixed (CARES Act Section 2307)

Due to a drafting error, the TCJA required "qualified improvement property" (generally, the interior of non-residential buildings) to be depreciated over a 39-year period. The CARES Act retroactively fixes this glitch for tax years beginning on or after January 1, 2018, and treats qualified improvement property as 15-year property for depreciation purposes. This technical correction allows retail establishments, including restaurants and other hospitality businesses, to claim bonus depreciation for, and therefore immediately expense, qualified investment property placed in service on or after January 1, 2018.

Tax-Free Forgiveness of Paycheck Protection Loans (CARES Act Section 1106)

Any loan amounts that are forgiven in accordance with the terms of the SBA Paycheck Protection Program under Section 1106 of the CARES Act are not considered canceled indebtedness and are excluded from gross income.

Tax-Free Employer Funded Student Debt Payments (CARES Act Section 2206)

The CARES Act allows employers to provide employees up to $5,250 in tax-free employer-paid student loan assistance through the end of 2020. The employee education assistance income exclusion for employer-paid student loan assistance is not available for programs that discriminate in favor of highly compensated employees or 5% or greater owners.

Individual Tax Provisions

Recovery Rebates (CARES Act Section 2201)

The CARES Act provides an up to $1,200 refundable tax credit for individual filers (up to $2,400 for married filing jointly), with an additional $500 credit for each child. These credits are reduced for individual filers with $75,000 or more in adjusted gross income ("AGI") and completely phased out for individual filers with $99,000 or more of AGI. For taxpayers who file their returns as married filing jointly, the credits are reduced beginning at $150,000 of AGI, and are completely phased out at $198,000 of AGI. In general, the recovery rebates are based on a taxpayer's 2020 taxable income; because 2020 taxable income is unknown, the qualifying income levels may be based on the taxpayer's most recently filed tax return – either 2019 or 2018. The IRS is required to refund these credits as rapidly as possible.

Retirement Plans (CARES Act Sections 2202 and 2203)

The CARES Act allows individuals to withdraw up to $100,000 from qualified retirement plans for coronavirus-related distributions without incurring the 10% early withdrawal penalty. A coronavirus-related distribution is one made during 2020 to an individual: (i) who is diagnosed with COVID-19, (ii) whose spouse or dependent is diagnosed with COVID-19, or (iii) who experiences 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 Treasury Secretary.

Any income tax attributable to a qualified early withdrawal may be paid over a three-year period, and taxpayers may re-contribute the withdrawn amounts to a qualified retirement plan without regard to annual caps on contributions if such contributions are made within three years.

The CARES Act also temporarily waives the minimum distribution requirements for qualified retirement plans. This applies for all required minimum distributions that would have been required to be made in 2020.

In addition, the CARES Act increases the loan amount permitted from a qualified plan to the lesser of $100,000 or 100% of the participant's vested account balance, an increase from $50,000 or 50% of the participant's vested account balance, for the next 180 days. The CARES Act also permits qualifying individuals who have outstanding loans to delay loan payments otherwise due between March 27, 2020 and December 31, 2020 for one year.

Expanded Charitable Contribution Deductions (CARES Act Section 2204 and 2205)

The CARES Act provides tax incentives for charitable giving in a number of ways.

First, it allows an above-the-line deduction of up to $300 for charitable contributions made by individuals, even if the taxpayer does not itemize.

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Second, for taxpayers who itemize, for 2020, individuals may claim an unlimited itemized deduction for a charitable contribution; the limit was previously 50% of AGI. In the case of corporations, the usual 10% of AGI limitation is increased to 25% for the 2020 tax year.

Koley Jessen continues to monitor the situation and stay current on the federal and state tax issues facing businesses and individuals. If you have additional questions or concerns as the situation develops, please contact a member of the Koley Jessen Tax Practice Group.

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