

Publications

Federal Tax Bulletin: CARES Act Provides a Number of Tax Benefits to Businesses

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Joseph B. Mann

Jeffrey Allen Miller

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CLIENT ALERT | 3.31.2020

Phase III of the federal stimulus measures, the CARES Act, was signed into law on Friday, March 27. The CARES Act includes a number of tax provisions designed to provide tax relief to businesses and business owners. One such benefit is a refundable tax credit available to certain employers for wages paid during periods of partial or complete shutdown, or significant decline in gross receipts, resulting from COVID-19. This Retention Credit (Section 2301 of the CARES Act) is described in further detail in Vorys' *March 28 Client Alert: The CARES Act Impact on Employee Benefit Plans*. Another benefit provided by the CARES Act is that employers, as well as self-employed individuals, are able to defer payment of a portion of their 2020 payroll or self-employment tax until after 2020. Further details about this deferral are provided in Vorys' *March 27 Federal Tax Bulletin: CARES Act Extends Deadline for Payment of 2020 Employer and Self-Employment Social Security Tax*.

In addition to the benefits described above, the CARES Act expands the ability of businesses to reduce taxable income through increased or accelerated tax deductions. The following describes a number of these other CARES Act benefits.

Net Operating Losses. The 2017 Tax Cuts and Jobs Act (TCJA) imposed new limits on the ability of businesses to utilize net operating losses (NOLs) to reduce taxable income. As a result of the TCJA, NOLs generated after 2017 could not be carried back to reduce prior years' taxable income. NOLs were able to be carried forward to future years, but could not offset more than 80% of a business's taxable income in those years. The CARES Act modifies these limitations. For tax years beginning in 2018, 2019 and 2020, an NOL generated in that year may be carried back 5 years. In addition, if the business generates taxable income in 2018, 2019 or 2020, NOLs carried either forward or back to that year will not be subject to the 80% limitation. (However, where an NOL is generated in 2018, 2019 or 2020, and that NOL is carried forward to a year after 2020, the NOL will be subject to the 80% limitation.)

Application of Business Loss Against Non-Business Income by Non-Corporate Taxpayers. The TCJA imposed limits on the ability of non-corporate taxpayers (including such partners of a partnership, or shareholders of an S corporation) to apply excess losses generated by a trade or business against non-business income of the taxpayer. Under the TCJA, for tax years beginning after December 31, 2017, non-corporate taxpayers could apply a maximum amount (which for 2018, was \$250,000 (\$500,000 married filing jointly)) of such excess business losses per year against non-business income. The CARES Act delays application of this limit until tax years beginning after 2020. Therefore, net business losses generated in 2018, 2019 and 2020 are now fully available for non-corporate taxpayers to apply against non-business income.

Limitation on Deductibility of Business Interest. The TCJA limited the amount of business interest that can be deducted during a tax year to 30% of adjusted taxable income generated from the taxpayer's business. The CARES Act generally increases this limit to 50% for tax years beginning in 2019 and 2020. For partnerships, this increase applies only to 2020. Generally, partnerships continue to be subject to the 30% limit for 2019. However, in the event that a partnership has 2019 interest expense in excess of the limit, a partner may carry forward their share of such excess to 2020. 50% of such excess is then deductible by the partner in 2020, without limitation. The remaining 50% is treated as interest incurred in 2020, and is subject to the limitations that otherwise apply. Taxpayers may elect out of these provisions.

The CARES Act also allows taxpayers to elect to use their 2019 adjusted taxable income for purposes of calculating their business interest limitation for 2020.

Correction of "Retail Glitch." The TCJA created a category of property called qualified improvement property (QIP), which includes certain non-structural improvements to the interior of commercial property. It seems clear that Congress intended QIP to be generally depreciable over 15 years and therefore eligible for bonus depreciation. Due to drafting errors, however, QIP instead was classified as 39-year property and was not eligible for bonus depreciation. (Arguably the most publicized of the TCJA drafting errors, this mistake has become known colloquially as the "retail glitch.") The CARES Act corrects the retail glitch by designating QIP as 15-year property, eligible for bonus depreciation (and assigning it a class life of 20 years for purposes of the Alternative Depreciation System). The CARES Act also revises the definition of QIP so that it is limited to improvements made by the taxpayer, thereby excluding used improvements.

The CARES Act amendments have retroactive effect, causing QIP placed in service after December 31, 2017 to be eligible for 100% bonus depreciation. For taxpayers who elect not to claim bonus depreciation, QIP is now depreciable over 15 years (rather than 39 years). Taxpayers should consider filing amended returns for years in which QIP depreciation was claimed. Note that partnerships subject to the centralized partnership audit regime are not permitted to file amended income tax returns, but rather must file an "administrative adjustment request," which could impede timely receipt of benefits related to this amendment.

Increase in Charitable Contribution Limits. For cash contributions made during calendar year 2020 to certain non-profits, donors may elect to increase their cap on charitable deductions to the following amounts, reduced by other permitted charitable deductions:

- *Individuals:* 100% (rather than 60%) of aggregate gross income.
- *Corporations:* 25% (rather than 10%) of taxable income.

Employer Payment of Employee Student Loan Payments. Employer payments of principal or interest on a qualified education loan of an employee in 2020 is not includible in the employee's taxable income (subject to limit).

Acceleration of Corporate AMT Tax Credit. Although the TCJA eliminated the corporate alternative minimum tax (**AMT**), corporate taxpayers who paid AMT prior to TCJA enactment are entitled to claim tax credits for AMT paid in prior tax years to be used against a corporation's normal tax liability in tax years 2018, 2019, 2020, and 2021. These credits are partially refundable in tax years 2018-2020, with any unused credits becoming fully refundable in tax year 2021. The CARES Act accelerates corporations' ability to claim these credits and refunds by making all remaining unclaimed credits available for use in tax year 2019. Additionally, corporations have the option to elect to utilize the remaining unclaimed credits for tax year 2018 instead of 2019. Taxpayers making this election for tax year 2018 may apply for a "tentative refund" before Dec. 31, 2020, which application must be processed by the IRS within 90 days of filing.

There are naturally many questions outstanding regarding the application of these and other tax provisions of the CARES Act. Presumably further guidance from Treasury and the IRS will be forthcoming. Please contact your Vorys attorney with questions.