CLIENT ALERTS & INSIGHTS

Benesch COVID-19 Resource Center: Key Business Tax Provisions Included in the CARES Act

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On March 27, 2020, President Trump signed into law a broad economic stimulus bill known as the Coronavirus Aid, Relief and Economic Security Act (referred to herein as the "CARES Act" or the "Act").

The CARES Act attempts to provide businesses short-term liquidity by, among other things, providing relief in the form of (i) deferral for payment of certain payroll taxes, (ii) a credit against certain employment taxes for businesses subject to closure or economic hardship as a result of the Coronavirus, (iii) enhanced ability for taxpayers to utilize net operating losses ("NOLs") to offset taxable income, (iv) temporary loosening of the business interest deduction rules, (v) temporary repeal of excess business loss limitations for noncorporate taxpayers, (vi) a fix to the cost-recovery period for qualified improvement property, and (vii) modified temporary AMT credit rules for corporations.

At the outset, we note that the Act contains certain other tax provisions (including non-business tax provisions for individuals), but this Client Alert focuses on the seven specific business provisions listed above.

i. Deferral of Payment of Employer Payroll Taxes

The Act allows employers and self-employed individuals to defer payment of the employer portion of the social security tax (6.2%) that they otherwise would be responsible for paying to the federal government in 2020 with respect to their employees (and themselves, in the case of self-employed individuals). Half of the deferred payroll taxes are due December 31, 2021, and the other half are due on December 31, 2022. The deferral provides taxpayers with the ability to retain cash in the short-term and instead utilize such retained amount to meet their other, short-term operational needs.

ii. Refundable Credit Against Payroll Taxes for Certain Businesses

The Act allows eligible employers to receive a refundable tax credit against employment taxes for 50% of the "qualified wages" paid to employees during each calendar quarter if they continue to pay their employees while they have been forced to suspend, partially or fully, or close their operations during any calendar quarter due to orders from an appropriate government authority because of COVID-19. An employer is also eligible for the tax credit if it remains open, and for any calendar quarter of 2020, the employer's gross receipts are less than 50% of what its gross receipts were for that same calendar quarter in 2019. In the case of an employer which qualifies for the credit by virtue of this gross receipts test, the employer's eligibility for the credit ends once it has a calendar quarter

in which its gross receipts for that calendar quarter exceeds 80% of its gross receipts for the same calendar quarter in 2019.

For purposes of calculating the credit, "qualified wages" are capped at the first $10,000 of compensation, including health benefits, paid to each employee. Whether amounts are includible in the calculation of "qualified wages" further depends on the size of the employer and whether the employees are not providing services due to COVID-19 circumstances. A more fulsome discussion of what constitutes "qualified wages" is discussed in our separate client alert, titled *Key Provisions for Employers in the CARES Act*.

Further, the refundable payroll tax credit is not available if an employer takes out a payroll protection loan under Section 7(a) of the Small Business Act as detailed in our separate client alert, titled *Forgivable Small Business Loans Related to the CARES Act*.

iii. Modifications to Net Operating Loss Rules

The Act modifies certain limitations on a taxpayer's ability to utilize NOLs that were put in place as a part of the Tax Cuts and Jobs Act of 2017 (the "TCJA"). The TCJA eliminated the ability for taxpayers to carry back NOLs generated in taxable years beginning after December 31, 2017. In addition, the TCJA placed a cap on the amount of NOLs arising in taxable years beginning after December 31, 2017 that could be used to offset taxable income in future years at 80% of taxable income. The Act temporarily suspends those two limitations for most taxpayers. Under the Act, NOLs that are generated in taxable years beginning after December 31, 2017 and before January 1, 2021 may be carried back up to five taxable years. For taxable years beginning before January 1, 2021, taxpayers will be allowed to use their NOL carryforwards to offset 100% of their taxable income, without regard to the 80% limitation that previously applied to NOLs arising in taxable years beginning after December 31, 2017. The ability to carry back NOLs for up to five taxable years is particularly valuable for taxpayers that can carry such losses back to pre-TCJA tax years (i.e., calendar year 2017 and earlier), when the tax rate was 35% (as opposed to the current, lower rate of 21%). Moreover, by temporarily repealing the 80% limitation on NOL carryforwards, losses that are generated during this calendar year become more valuable in reducing any future tax liabilities. Note that the 80% limitation on NOL carryforwards kicks back in for taxable years beginning after December 31, 2020.

iv. Modification to Business Interest Deduction Limitation

For taxable years beginning in 2019 and 2020, the limitation on interest expense deductions of 30% of adjusted taxable income under Section 163(j) of the Internal Revenue Code of 1986, as amended, (the "Code") is temporarily increased to 50% of adjusted taxable income. Increasing the interest deductions for taxpayers who otherwise would have been limited by the 30% limitation will effectively reduce the cost of borrowing for those taxpayers.

v. Repeal of Excess Loss Limitations

The Act temporarily repeals the excess business loss limitation under Section 461(l) of the Code that was added by the TCJA, which disallowed excess business losses for noncorporate taxpayers if the amount of the loss exceeded $250,000 ($500,000 for married taxpayers filing jointly). This provision of the Act was made retroactive back to December 31, 2017. Accordingly, taxpayers that were impacted by the excess business loss limitation may amend their 2018 and 2019 tax returns (if already filed) to obtain the benefit of this provision of the Act.

vi. Accelerated Cost Recovery of Qualified Improvement Property

The CARES Act fixes a mistake widely referred to as the "retail glitch" in the TCJA to allow for a quicker write-off period for qualified improvement property. Qualified improvement property means any improvement to an interior portion of a building which is nonresidential real property if such improvement is placed in service after the date such building was first placed in service (other than improvements attributable to elevators, escalators, building enlargements or the building's internal structural framework). Under the Act, qualified improvement property will now be eligible for an immediate write-off utilizing the 100% first-year bonus depreciation benefit that was added by the TCJA. Importantly, this provision was made retroactive to the effective date of the TCJA. As such, taxpayers may amend their 2018 and 2019 tax returns (if already filed) to take advantage of the immediate expensing allowance for qualified improvement property.

vii. Acceleration of Refundable AMT Credits for Corporations

In connection with the repeal of the corporate alternative minimum tax under the TCJA, refundable AMT credits were made available to be paid over several years, ending in 2021. The Act accelerates the ability of companies to recover those AMT credits, permitting companies to claim a refund now as a way to obtain additional, immediate cash flow.

For further information regarding these tax provisions or any other portion of the CARES Act, please contact a member of your Benesch team, including Richard Tracanna at (216) 363-4408, Jessica Angney at (216) 363-4620, or Leah Beitner at (312) 624-6326.

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In addition, Benesch's dedicated COVID-19 task force will continue to provide updates and analysis to help guide its business partners in an effort to navigate the fast-paced and changing legal landscape related to COVID-19. Additional information is available on the Benesch COVID-19 Resource Center.