# Coronavirus Tax Relief

March 20, 2020

## Highlights

- ✔ New Law Mandates Paid Leave
- ✔ Tax Credits Provided for Paid Leave
- ✔ Tax Return Due Date Moved to July 15
- ✔ IRS issues additional guidance

## Inside



SPECIAL REPORT

# President Signs Bill Providing Testing, Employment Relief; Tax Day Moved to July 15

As coronavirus (COVID-19) continues to spread, rattling financial markets, forcing the closures of businesses and schools, and canceling major public events across the country, the Trump Administration and Congress began taking steps to mitigate the impact on Americans. On March 13, 2020, President Trump declared a national emergency, which frees up $50 billion in funding for state and local governments to use in fighting the pandemic.

Meanwhile, the House, after working closely with Administration officials, passed the Families First Coronavirus Response Act (H.R. 6201) early in the morning on March 14, 2020. Over the following days, it became clear that changes, described as technical corrections, needed to be made to the bill as passed by the House. An amended version of the bill was passed by the House on March 16, 2020 by unanimous consent, as the majority of House members were on recess for the week, and the bill was sent to the Senate. On March 18, 2020, the Senate passed the bill and sent it to the President's desk. The President signed the bill into law later that day. Meanwhile Congress is far along in considering a third, and significantly larger, stimulus and relief bill.

The bill as passed increases funding for testing and extends paid sick leave to employees all over the country affected by the pandemic.

## PAID LEAVE

The new law requires employers with fewer than 500 employees to provide paid sick leave to employees who are forced to stay home due to quarantining or to care for a family member ("qualified paid sick leave") or to care for a child if the school or place of care is closed ("qualified family leave"). The bill compensates employers and the self-employed for this paid leave in the form of a tax credit.

> **COMMENT.** *Only a very small portion of the Act provides tax changes. The Act is largely focused on funding for increased coronavirus testing, ensuring free testing for everyone, and continuing student lunch programs when schools are closed.*

In the case of sick leave wages paid by an employer to an employee, the employer receives a refundable credit against its share of either the OASDI and the RRTA portion (as applicable) of the payroll tax. The credit can be claimed on a quarterly basis, equal to 100 percent of the amount of sick leave wages paid under the new law. The amount of the credit is limited to $200 per day. However, the credit is increased to $511 per day if the employee is on leave because he or she:

- is subject to a federal, state or local quarantine or isolation order related to COVID-19;
- has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- is experiencing symptoms of COVID-19 and seeking a medical diagnosis

The amount of total hours of paid sick leave is limited by the new law and the payroll tax credit is limited to 10 days of wages.

For family leave wages paid by an employer, a separate refundable payroll tax credit applies, with different limitations. The 100 percent credit against the employer's share of the payroll tax is limited to $200 per day, up to an aggregate of $10,000.

For self-employed persons, the credit is allowed against regular income taxes. The limit on sick leave wages is determined by multiplying the number of days (subject to limitation) the self-employed person is unable to perform services in the trade or business by the lesser of 67% of the taxpayer's average daily self-employment income, or $200. The limits are increased to 100% and $511, respectively, in the case of the three scenarios that also apply to the employer payroll tax credit. The same calculation is made for family leave wages, with days unable to perform services (no more than 50) multiplied by the lesser of 67% of the taxpayer's average daily self-employment income, or $200.

The new law provides numerous requirements, limitations and definitions relating to the application of the mandate, as well as the credit.

**COMMENT.** *As mentioned above, these provisions are all temporary. The credits are applicable from the date selected by the Secretary of the Treasury (which must be within 15 days of the date of enactment) until December 31, 2020. The tax provisions do not make changes to the Internal Revenue Code.*

## TAX RETURN DEADLINE POSTPONED

On March 20, 2020, the IRS issued guidance (Notice 2020-18) that postponed the tax return filing and tax payment deadline from April 15, 2020 to July 15, 2020. The extension is applicable to all taxpayers without regard to the amount of tax owed and is automatic, so Forms 4868 or 7004 (as applicable) do not need to be filed. The extension applies to federal income tax payments and income tax returns due April 15, 2020 with respect to the 2019 tax year and to quarterly estimated taxes for the 2020 tax year due April 15, 2020. The extension does not apply to the payment of any other federal taxes or to the filing of information returns due on April 15, 2020. The period from April 15, 2020 to July 15, 2020 will be disregarded in the calculation of penalties, interest, and additions to tax on any unpaid amounts subject to the extension. Interest, penalties, and additions to tax will begin to accrue on amounts unpaid for the new July 15 deadline on July 16, 2020.

**COMMENT.** *The Senate's draft of the Coronavirus Aid, Relief, and Economic Security Act, released on March 19, 2020, also included a delay of the filing deadline to July 15, 2020. The provisions of that bill are not covered in this Tax Briefing.*

The IRS had previously issued guidance that delayed only the tax payment deadline to July 15, 2020, and only for taxpayers owing up to a limited amount. This new guidance expands upon and supersedes that previous guidance.

## ADDITIONAL GUIDANCE

The IRS announced in Notice 2020-15 that a health plan that satisfies the requirements of a high deductible health plan (HDHP) under the Internal Revenue Code, and thus allows individuals to deduct contributions to a health savings account, will not cease to be qualified as an HDHP if it allows for COVID-19 testing. This includes testing to be done with deductibles below the minimum deductible for an HDHP, including a $0 deductible.

Wolters Kluwer

Tax Briefing

# CARES Act

March 27, 2020

## Highlights

- ✔ $2.2 Trillion Stimulus Package Includes Vast Amounts of Relief
- ✔ $1,200 "Recovery Rebate" Provided for Most American Adults
- ✔ Individual Relief Includes Enhanced Charitable Deductions
- ✔ Business Tax Relief Provides Increased Liquidity

## Inside



SPECIAL REPORT

# President Signs $2.2 Trillion Bill to Support Economy During Virus Pandemic

As COVID-19 continues to upend nearly every aspect of life in the United States, Congress has been working to relieve suffering Americans. Having passed the Families First Coronavirus Response Act on March 18 in an effort to limit the spread of the pandemic and support relief efforts, Congress turned to stabilizing the economy. After days of furious negotiations between Republicans and Democrats on the Hill and Trump Administration officials, the Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act. With a $2.2 trillion price tag, the Act is the most expensive piece of legislation ever passed.

The Act passed in the Senate by a unanimous vote late on March 25, 2020 and was passed in the House of Representatives on March 27, 2020. The President signed the bill into law later on March 27, 2020.

The Act looks to make a significant impact on the economy by providing loan forgiveness, supporting small businesses, enhancing unemployment insurance, and providing federal loans to industries severely impacted by the pandemic. In addition, it provides tax relief and tax incentives for individuals and businesses alike. The majority of the tax relief is designed to increase liquidity in the economy, largely through the relaxation of limitations on business deductions and the deferral of taxes, but also with the introduction of recovery rebates for individuals.

## INDIVIDUAL TAX RELIEF

### Recovery Rebates

The most well-publicized provision is the $1,200 recovery rebates for individual taxpayers. The rebate amounts are advance refunds of credits against 2020 taxes, and equal to $1,200 for individuals, or $2,400 for joint filers, with a $500 credit for each child. The amount of each rebate is phased out by $5 for every $100 in excess of a threshold amount. This threshold amount is based upon 2018 adjusted gross income (unless a 2019 return has already been filed), and the phaseout begins at $75,000 for single filers, $112,500 for heads of households, and $150,000 for joint filers. Thus, the rebates are completely phased out for single filers with 2018 (or 2019, if applicable) adjusted gross income over $99,000, heads of household with $136,500 (or higher, depending upon whether status is established because of children), and joint filers with $198,000.

In order to be eligible for a recovery rebate, the individual must not be: (1) a nonresident alien, (2) able to be claimed as a dependent on another taxpayer's return, (3) an estate or trust, and (4) must have included a Social Security number for both the taxpayer, the taxpayer's spouse, and eligible children (or an adoption taxpayer identification number, where appropriate). The Act includes additional rules for the application of the credit.

The Secretary of the Treasury is directed to provide the rebate as rapidly as possible.

> *"The Act is the most expensive piece of legislation ever passed."*

## Retirement Plans

The Act also waives the 10-percent penalty on early withdrawals up to $100,000 from qualified retirement plans for coronavirus-related distributions. For purposes of the penalty waiver, a coronavirus-related distribution is one made during the 2020 calendar year, to an individual (or the spouse of an individual) diagnosed with COVID-19 with a CDC-approved test, or to an individual who experiences adverse financial consequences as a result of quarantine, business closure, layoff, or reduced hours due to the virus. Any income attributable to an early withdrawal is subject to tax over a three-year period, and taxpayers may recontribute the withdrawn amounts to a qualified retirement plan without regard to annual caps on contributions if made within three years.

**COMMENT.** *This relief is commonly granted by Congress in the wake of major disaster declarations, such as those made after a major hurricane.*

The Act also waives all required minimum distributions for 2020, regardless of whether the taxpayer has been impacted by the pandemic.

## Charitable Contributions

The Act enhances tax incentives for making charitable contributions for the 2020 tax year. First, it allows an above-the-line deduction of up to $300 for charitable contributions made by individuals.

**IMPACT.** *This allows an individual to claim a deduction for a charitable contribution, even if the individual does not itemize deductions.*

Additionally, the percent-of-adjusted gross income (AGI) limitations are increased for all taxpayers as well as for specific types of contributions. For the 2020 tax year, individuals can claim an unlimited itemized deduction for a charitable contribution, which is normally limited to 50 percent of AGI. In the case of corporations, the usual 10-percent-of-AGI limitation is increased to 25 percent for the 2020 tax year. Finally, the contribution of food inventory, the deduction for which is normally limited to 15 percent of AGI, is increased to 25 percent for the 2020 tax year.

## Student Loans Paid by Employers

The Act provides for an exclusion of up to $5,250 from income for payments of an employee's education loans. In order for the exclusion to apply, the loan must have been incurred by the employee for the education of the employee (so, for example, the loan must not have been incurred to pay for the education of the employee's child). The payment can be made to the employee or directly to the lender. The exclusion only applies for payments made by an employer after the date of enactment and before January 1, 2021.

**COMMENT.** *The $5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employee.*

# BUSINESS TAX RELIEF

## Employee Retention Credit

The CARES Act grants eligible employers a credit against employment taxes equal to 50 percent of qualified wages paid to employees who are not working due to the employer's full or partial cessation of business or a significant decline in gross receipts. The credit is available to be claimed on a quarterly basis, but the amount of wages, including health benefits, for which the credit can be claimed is limited to $10,000 in aggregate per employee for all quarters. The provision contains several requirements defining qualified wages, qualified employees, and qualified employers. The credit applies to wages paid after March 12, 2020, and before January 1, 2021.

**COMMENT.** *This is very similar to the paid leave credits granted to employers under the Families First Coronavirus Response Act signed into law on March 18, 2020, with some changes to the requirements.*

*Most significantly, neither the employee nor the employer have to be directly impacted by infection.*

**COMMENT.** *This is also similar to the employee retention credits Congress provides after major disasters, but with different requirements and limitations.*

## Payroll Tax Deferral

In order to free up employers' cash flow and retain employees during times of quarantine or shutdown, the CARES Act defers the payment of payroll taxes. Payroll taxes due from the period beginning on the date the CARES Act is signed into law and ending on December 31, 2020, are deferred. The 6.2 percent OASID portion of payroll taxes incurred by employers, and 50 percent of the equivalent payroll taxes incurred by self-employed persons qualify for the deferral. Half of the deferred payroll taxes are due on December 31, 2021, with the remainder due on December 31, 2022.

## Net Operating Losses

The Act allows for a five-year carryback of net operating losses (NOLs) arising in 2018, 2019, or 2020 by a business. Businesses will be able to amend or modify tax returns for tax years dating back to 2013 in order to take advantage of the carryback. Under current law, only farming NOLs are allowed to be carried back, and the carryback is limited to two years.

**COMMENT.** *The Tax Cuts and Jobs Act (TCJA) eliminated the carryback of NOLs for tax years ending after 2017 and allowed for the indefinite carry forward for NOLs. Prior to the TCJA, an NOL could be carried back two years, with longer carryback periods for NOLs arising from a casualty or declared disaster or farming losses.*

The Act also eliminates loss limitation rules applicable to sole proprietors and passthrough entities to allow them to take advantage of the NOL carryback.

Additionally, the Act allows for NOLs arising before January 1, 2021, to fully offset income. Under current law, NOLs are limited to 80 percent of taxable income.

## Minimum Tax Credits

The TCJA eliminated the alternative minimum tax for corporations for tax years after 2017, but allowed corporations to claim a refundable portion of any unused minimum tax credits through 2021. The amount of the refundable credit is limited to 50 percent of any excess minimum tax in 2018 through 2020, before being fully refundable in 2021. The Act accelerates the year for which a fully refundable credit can be claimed to 2019, and allows corporations to elect to claim the fully refundable minimum tax credits in 2018.

## Business Interest Expense Limitation

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 the amount of business interest income for the year plus 30 percent of the taxpayer's adjusted taxable income for the year. The limitation does not apply to taxpayers with average annual gross receipts for the prior three year below an inflation-adjusted amount. For 2020, this amount is $26 million or less.

The Act increases the limitation amount to 50 percent of the taxpayer's adjusted taxable income for 2019 and 2020 (with a special allocation election required for partnerships for 2019). In calculating the limitation for 2020, the taxpayer may elect to use adjusted taxable income for 2019.

**COMMENT.** *The option to use 2019 adjusted taxable income in calculating the limitation is meant to counteract the likelihood that incomes will not be higher in 2020 because of the economic environment, whereas 2019 was generally a very high revenue year for businesses.*

## Qualified Improvement Property

When Congress drafted the TCJA, it allowed for 100-percent bonus depreciation rules to apply to all MACRS property with a recovery period of 20 years or less. Before TCJA, qualified improvement property was depreciated as 39-year residential real property, unless it separately qualified as 15-year qualified leasehold improvement property, 15-year retail improvement property, or 15-year restaurant property. Congress eliminated the three separate categories of 15-year improvement properties with the intention of making *all* qualified improvement property 15-year property. However, it failed to do so, and as a result, qualified improvement property is depreciated as 39-year property and not qualified for bonus depreciation.

**COMMENT.** *This is known in tax circles as the "retail glitch." A technical amendment has long been promised and had been included in early drafts of several pieces of legislation since the TCJA became law in December 2017. However, it never made it into the final version of any piece of significant legislation voted on by either chamber of Congress.*

The CARES Act corrects this Congressional oversight by defining qualified improvement property as 15-year property, thus allowing 100 percent of improvements to be deducted in the year incurred. The change is made as if included in the TCJA and, thus, is effective for property acquired and placed in service after September 27, 2017.

**IMPACT.** *The closures and quarantines related to the coronavirus/COVID-19 pandemic have been especially hard on small businesses, which includes restaurants and local retail stores. This technical correction allows any expenses incurred by owners to make improvements to the physical premises related to these businesses to be accelerated into the 2017 or 2018 tax year on an amended return or the 2019 tax year on a return due July 15, 2020.*

### Excise Tax Relief

The Act also provides a temporary exception from alcohol excise taxes for alcohol for use in or contained in hand sanitizer produced or directed by the Food and Drug Administration related to the pandemic. The Act also suspends excise taxes on aviation and kerosene used in aviation fuel. The exception and suspensions are applicable to 2020 only.

## ADDITIONAL PROVISIONS

The CARES Act is a massive Act, the majority of which does not have a tax impact. However, some smaller, but no less significant, provisions impacting federal tax are sprinkled outside of the tax-related division of the Act. These provisions include:

- The exclusion from tax of any forgiven small business loans, mortgage obligations, or other loan obligations forgiven by the lender during the applicable period;
- A safe harbor from the definition of a high deductible health plan permitting telehealth services to be included, even though such services do not carry a deductible;
- The inclusion of over-the-counter menstrual products as qualified medical expenses for purposes of distributions from health savings accounts and health flexible spending arrangements;
- Pension funding relief for failures to meet contribution requirements to defined benefit plans during 2020;
- Allowing certain charitable employers whose primary exempt purpose is providing services to mothers and children to use small employer charity pension plan rules.