The Jaffe Update
Legal News Delivered

A publication of Jaffe Raitt Heuer & Weiss March 2020

COVID-19: TAX UPDATE
Tax Provisions in the CARES Act

This is a summary of the material business and individual income tax provisions contained in the recently enacted Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Business Tax Provisions

Employment Tax Credits

The Act provides a credit against payments of Social Security taxes (but not Medicare taxes) equal to 50% of the "qualified wages" paid by an "eligible employer."

- An "eligible employer" is an employer (i) whose business operations were fully or partially suspended by a government-ordered COVID-19 shutdown or (ii) whose gross receipts for any calendar quarter are less than 50% of the gross receipts for the same quarter in the prior year.
- For an employer with more than 100 full-time equivalent employees, "qualified wages" are only wages paid for services that are not being performed during the applicable period as a result of the shutdown.
- For an employer with 100 or fewer full-time equivalent employees, "qualified wages" include all wages.
- Qualified wages are limited to the first $10,000 of compensation paid to each employee after March 12, 2020 and before January 1, 2021 (i.e., the maximum credit per employee is $5,000).
- A taxpayer that receives an SBA loan under the Act (reference SBA Economic Injury Disaster Loans summary) cannot also receive the credit.
- This credit is applied after the tax credit allowed under the Families First Coronavirus Response Act for certain wages paid to employees who are sick or caring for the sick, and is refundable.
- Note that an employer may not also deduct wages for which it has taken a credit.

Employment Tax Deferral

Under the Act, the due date for payments of Social Security taxes (but not Medicare taxes) for the period from the date of enactment of the Act through December 31, 2020 is extended as follows: 50% on December 31, 2021 and 50% on December 31, 2022.

- A corresponding provision applies to 50% (the "employer side") of self-employment taxes.

Net Operating Losses (NOLs)

Under the Act, NOLs arising in 2018 - 2020 can be carried back for up to 5 years, and the use of NOL carrybacks and carryforwards in tax years beginning before January 1, 2021 is no longer limited to 80% of taxable income.

- Taxpayers can file amended returns for previous years and offset NOLs against taxable income in such years.
- This temporarily repeals the limitations added by the Tax Cuts and Jobs Act of 2017 (TCJA).

Expensing of Qualified Improvement Property

The Act makes "qualified improvement property" (improvements to the interiors of nonresidential buildings) eligible for bonus depreciation.

- This is a technical correction to the TCJA and is effective as if it were part of the TCJA, thereby allowing companies to amend prior returns to take bonus depreciation.

Other Taxpayer-Friendly Revisions of the TJCA

The Act revises or repeals other revenue-raising provisions added by the TCJA in 2017:

- The Act removes the excess business loss limitation added by the TCJA.
- Under the TCJA, a taxpayer's deduction for business interest was limited to 30% of its taxable income. The Act increases this limitation to 50% (with adjustments) for tax years beginning in 2019 and 2020, and a taxpayer can elect to use its 2019 taxable income (which may be higher) for computing its 2020 limitation.
- Under the TCJA, the corporate alternative minimum tax (AMT) was repealed, but corporate AMT credits were made available as refundable credits over several years, ending in 2021. The Act allows corporations to accelerate the recovery of these AMT credits.

Individual Tax Provisions

Charitable Donations

The Act contains two provisions that aim to stimulate charitable giving:

- Taxpayers who do not itemize their deductions may deduct up to $300 of cash charitable contributions.
- The limitations on deductible cash contributions during 2020 (only) for individuals and corporations have been relaxed:
    - For individuals, the 50% of adjusted gross income limitation is suspended (with exclusions for contributions to donor advised funds and support organizations).
    - For corporations, the existing 10% taxable income limitation is increased to 25%.

Retirement Plans

The Act contains three provisions that aim to give taxpayers greater access to cash from retirement plans:

- The 10% penalty on early withdrawals (prior to age 59 ½) from qualified retirement accounts (including IRAs) is waived for distributions up to $100,000 on or after January 1, 2020 and before December 31, 2020, provided there is a coronavirus-related purpose for the withdrawal.
    - This requirement is satisfied by any participant (or his/her spouse or dependent) who is diagnosed with COVID-19 or any participant who experiences adverse financial consequences as a result of being quarantined, furloughed or laid off, or having to work reduced hours due to the pandemic.
    - The income tax associated with such withdrawals would, unless elected otherwise, be subject to tax over three years or alternatively, the taxpayer may recontribute such amounts to the qualified retirement account during such three-year period, without regard to any limits on contributions.
- The required minimum distribution rules for certain defined contribution plans and IRAs are waived for the 2020 calendar year.
- Loans from a qualified retirement plan, if permitted under the terms of the plan, during the 180-day period beginning on the date of enactment of the Act, may be made up to $100,000 (up from $50,000), and any current outstanding plan loan repayments due in 2020 may be delayed for 1 year (requires plan amendment on or before the first plan year beginning on or after January 1, 2022).

Please contact the following with any questions:

Bill Sider at 248.727.1451 or bsider@jaffelaw.com

Marko Belej at 248.727.1384 or mbelej@jaffelaw.com

Danny Soleimani at 248.727.1606 or dsoleimani@jaffelaw.com

JAFFE RAITT HEUER & WEISS