ANALYSIS OF THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (CARES ACT) SIGNED INTO LAW BY PRESIDENT TRUMP ON MARCH 27, 2020

On March 27, President Trump signed the CARES Act into law as the third measure of federal government aid in response to the COVID-19 pandemic. The Act includes a number of provisions for both individuals and businesses. Below is a summary of those provisions.

Individual Tax Provisions

Recovery Rebates to Individuals and Families

- Advance refunds of a 2020 tax credit.
- Individuals with income up to $75,000 - $1,200 (phasing out at a rate of $5 for every $100 in income above $75,000, phased out entirely at $99,000).
- Married couples with combined incomes up to $150,000 - $2,400 (phasing out at same rate as individuals, completely phased out at $198,000)
- Additional $500 per child under age 17, also subject to phase-out.
- Phase-out begins at $112,500 for heads of household filers.
- Taxpayer, spouse and all qualifying children must have a valid social security number.
- Those claimed as a dependent on another return are ineligible.
- Based on 2019 income tax filings where possible with 2018 tax data and Social Security data used in lieu of 2019 data, if unavailable.
- Advanced payment of a credit - taxpayers will reduce the amount of credit available on their 2020 tax return by the amount of the advance refund they receive.
- Individuals will not be required to repay any overpayment when filing 2020 returns.

Retirement Plans

- Waives the 10% early withdrawal penalty for up to $100,000 coronavirus-related distributions from retirement accounts for qualifying individuals during 2020.
  - Eligible distributions taken up to December 31, 2020
  - Income inclusion can be taken over three years beginning in 2020.
  - May avoid income recognition by repaying the distribution to retirement plan within three years of receiving it.
- Qualifying individuals –
  - One who has been diagnosed with SARS-CoV-2 virus or COVID-19 disease or whose spouse or dependent has been diagnosed with SARS-CoV-2 virus or COVID-19 disease. Test must be approved by CDC.
  - Experiences adverse financial consequences from being quarantined, furloughed, or laid off or has had his/her work hours reduced, or who is unable to work due to lack of child care.
• Increases amount an individual may borrow from retirement plan from $50,000 to $100,000 for the 180-day period beginning after the enactment of the Act.
  o Payment dates for loans due the remainder of 2020 extended for a year.
• Waives RMD rules for certain retirement accounts for 2020.
• Delays 2020 minimum required contributions for single-employer plans until 2021.

Charitable Deductions

• New $300 above-the-line deduction on charitable donations for 2020.
  o For taxpayers who do not itemize.
• Changes limitation on charitable contributions to 100% of AGI, excess contributions carried over to next five years.

Payroll Tax Delay

• Delays payment of 50% of 2020 self-employment taxes until December 31, 2021. The other 50% due December 31, 2022.

Student Loans

• Allows employers to provide up to $5,250 annual toward employee student loan payments on a tax-free basis for one year.
  o Combined limit with payment of employee’s qualified educational expenses.
  o Employee cannot deduct the interest on the student loan under Section 221.

Unemployment Benefits

• Expands eligibility
• See Alabama Department of Labor’s provisions here: https://www.labor.alabama.gov/covid19resources.aspx


Payroll Tax Credit Refunds

• Advance refunding of payroll tax credits provided in the Families First Coronavirus Response Act.
  o IRS will provide forms and instructions.
  o IRS will waive penalties for failure to deposit payroll taxes if failure due to an anticipated payroll tax credit.

Employee Retention Credit

• For eligible employers that close due to coronavirus pandemic.
  o Eligible employers:
    ▪ Carrying on trade and business during 2020.
    ▪ Operation of business fully or partially suspended during any calendar quarter of 2020 due to orders from appropriate governmental authority
limiting commerce, travel, or group meetings due to the COVID-19 outbreak.

- During any quarter in 2020, employers with gross receipts less than 50% of their gross receipts for the same quarter in the prior year (eligible until their gross receipts exceed 80% of their gross receipts for the same calendar quarter in the prior year).

- Credit amount – 50% of qualified wages (up to $10,000 in wages) for each employee. Taken against employment taxes.

- Eligible wages:
  - More than 100 employees - wages that employer pays employees not providing services due to the suspension of business or drop in gross receipts.
  - 100 or fewer employees – all wages paid qualify.

- Qualified wages include any “qualified health plan expenses” allocable to the wages.

- Applies to wages paid after March 12, 2020 and before January 1, 2021.

- Wages taken in to account for the payroll tax credits under the Families First Coronavirus Relief Act will not qualify.

- Refundable credit.

- Not available if employer takes out a payroll protection loan under Section 7(a) of Small Business Act.

**Payroll Tax Delay**

- Delays payment of 50% of 2020 employer 6.2% Social Security payroll taxes until December 31, 2021. The other 50% due December 31, 2022.

- Not available to any employer that takes out a payroll protection loan forgiven.

**Charitable Deductions**

- Changes limitation on charitable contributions from 10% to 25% of taxable income.

- Increases food contribution limits to 25%.

**Net Operating Losses (NOL)**

- Temporarily repeals the 80% income limitation for NOL deductions for years beginning before 2021. Losses carried to 2019 and 2020 permitted to offset 100% of taxable income.

- 5-year carryback allowed for losses arising in 2018, 2019 and 2020 (may elect to forgo the carryback)

**Excess Loss Limitations**

- Repeals Sec. 461(l) excess loss limitation for 2020 and retroactive to January 1, 2018.

- Able to file amended returns to claim refunds for 2018 or 2019.

- Section 461(l) limitation will kick back in, in 2021.

- In 2021 and beyond, wages will not be considered business income.
Corporate Alternative Minimum Tax (AMT)

- Modifies the AMT credit for corporations to make it a refundable credit for 2018 tax year.

Interest Limitations

- The adjusted taxable income percentage is increased from 30% to 50% in an amendment of Sec. 163(j) for tax years beginning in 2019 and 2020.
- Taxpayers can elect to use 2019 income in place of 2020 for the computation.
- Not applicable to partnerships for 2019.

Qualified Improvement Property

- Qualified improvement property under Sec. 168 is now 15-year property.
- Taxpayers should be eligible to file amended returns for 2018 and 2019 to take benefit of accelerated depreciation.

Excise Tax on Alcohol

- Exempt manufacturers from the federal excise tax on alcohol for remainder of 2020 if alcohol is being used to make hand sanitizer.

Aviation Taxes

- Various excise taxes suspended until 2021.

Health Plans

- High-deductible Health Plan (HDHP) rules amended to cover telehealth and other remote care services without charging a deductible.
- Over-the-counter medical products and feminine care products added to list of items reimbursable from a health savings account, Archer medical savings account, or health reimbursement arrangement.

Small Business Loans

Paycheck Protection Loans

- Businesses with fewer than 500 employees (including sole proprietors and nonprofits)
- Fully guaranteed by the federal government through December 31, 2020.
- Generally limited to the LESSER of:
  - the sum of 1) average monthly payroll costs for the 1 year period ending on the date the loan was made (an alternative calculation available for seasonal employers) multiplied by 2.5, and 2) any disaster loan taken out after January 31, 2020 that has been refinanced into a paycheck protection loan, and
  - $10 million
- Payroll costs are the sum of the following:
  - wages, commissions, salary, or similar compensation to an employee or independent contractor,
- payment of a cash tip or equivalent,
- payment for vacation parental, family, medical or sick leave,
- allowance for dismissal or separation,
- payment for group health care benefits, including premiums,
- payment of any retirement benefits, and
- payment of state or local tax assessed on the compensation of employees.

- Payroll costs do not include:
  - the compensation of any individual employee in excess of an annual salary of $100,000,
  - payroll taxes,
  - any qualified sick leave or family medical leave for which a credit is allowed under the Families First Coronavirus Relief Act

- Maximum maturity of 10 years and interest rate not exceeding 4%. On March 31, the US Department of the Treasury released guidance that the maximum loan maturity is 2 years with a fixed interest rate no higher than 0.5%. The SBA is expected to release final guidance.

- Use of proceeds – payroll support (including paid sick or medical leave), employee salaries, mortgage interest payments, rent, utilities, and interest on any other debt obligations incurred before the covered period.

- Standard fees under Section 7 of Small Business Act waived.

- No personal guarantee required of business owner.

- Possible deferment of repayment of the loans for a period of at least six months, but not to exceed a year. Recent guidance from the U.S. Department of the Treasury calls for a 6-month deferment period. SBA will issue final guidance.

**Loan Forgiveness of Paycheck Protection Loans**

- Amount to be forgiven is the sum of the amount spent by the borrower during the 8-week period beginning on the date of the loan:
  - payroll costs
  - mortgage interest on any mortgage incurred before February 15, 2020
  - rent on any lease in force before February 15, 2020
  - certain utility payments for which service began before February 15, 2020

- Borrower must submit application seeking forgiveness to lender that includes documentation verifying number of employees and pay rates, and cancelled checks showing mortgage, rent, or utility payments.

- Forgiveness reduced if the employer either:
  - Reduced employees retained compared to the prior year
  - Reduced pay of any employee (earning less than $100,000) beyond 25% of prior year compensation
Special Terms for SBA Loans

- No personal or collateral guarantee required
- Recipient does not have to certify that it is unable to obtain credit elsewhere
- Borrowers must make a good faith certification that loan is necessary due to uncertain economic conditions caused by COVID-19; funds will be used for a permitted purpose; and that they are not receiving funds from another SBA program for the same users.
- Maximum term of loan is 10 years
- Interest rate cannot exceed 4% but interest payments are completely deferred for 1 year
- No prepayment penalty

Emergency Government Disaster Loan and Grant

- Expands access to Economic Injury Disaster Loans under 7(b)(2) of the Small Business Act to include:
  - Businesses with fewer than 500 employees
  - Sole proprietors
  - ESOPs
- No personal guarantee on loans below $200,000 made under program before December 31, 2020
- Allows a disaster loan to be taken out between January 31, 2020 and the date on which a paycheck protection loan is available for reasons other than paying payroll costs.
- New Emergency Grant created to allow a business that has applied for a disaster loan to get an immediate advance of up to $10,000.
  - Can be used to maintain payroll
  - Not required to be repaid even if request for 7(b) loan is denied.

Subsidy for Certain Loan Payments

- For those with loans under Section 7(a) of the Small Business Act other than paycheck protection loans
- Government subsidy
- SBA pay six months of principal, interest and fees on qualifying loans

State and City Government Assistance

- Act establishes a $150 billion Coronavirus Relief Fund for state and city expenditures incurred due to dealing with the Coronavirus public health emergency.
- Allocated in proportion to population.
- Minimum of $1.25 billion for each state.

Health Care System Investments

- Act provides $100 billion to reimburse health care providers for expenses or lost revenue as a result of COVID-19.
- Provides funding for medical research, equipment, and training, as well as increased Medicare payments to hospitals and providers.
Economic Development Agency Funding

- Allocates $1.5 billion to private sector companies and local and state governments for “economic assistance programs”.

Emergency Appropriations

- Over $300 billion in emergency funding for federal agencies.