



Business Tax Modifications and Payroll Tax Benefits Under the “Coronavirus Aid, Relief, and Economic Security Act”

On Friday, March 27, 2020, President Donald J. Trump signed into law the bi-partisan Coronavirus Aid, Relief, and Economic Security Act (the, “CARES Act”). Sections 2301 through 2307 of the Act help generate cash flow and liquidity to keep business going and maintain payroll. Below is a high-level summary of these tax provisions and how they affect credits, payment delays, loss carrybacks, and interest deductions for companies and corporations.

- Employers may qualify for a payroll tax credit for 50 percent of qualified wages.
- Employers may be able to defer payment of the 6.2 percent Social Security tax on employee wages.
- Companies may be able to use net operating losses to offset losses and amend prior years' tax returns.
- Employers may not enjoy the tax advantages under Sections 2301-2302 and the Small Business Association loan benefits under Section 7(a).

Employee Retention Credit for Employers Subject to Closure Due to COVID-19

Section 2301 provides a refundable payroll tax credit for 50 percent of qualified wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers who qualify as follows: either (a) operations were fully or partially suspended due to a COVID-19-related shutdown order; or (b) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year. The statute specifies that the calendar quarter begins after December 31, 2019.

Note that the credit is based on qualified wages. For employers with more than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to COVID-19-related circumstances. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13 through December 31, 2020.

However, according to Section 2301(j), an employer may not be eligible for the credit under Section 2301 if the employer is taking a loan under paragraph (36) of Section 7(a) of the Small Business Act (15 U.S.C. 636(a)). Consult an attorney to clarify whether you qualify.

Delay of Payment of Employer Payroll Taxes

Section 2302 permits employers and self-employed persons to defer payment of the employer share of tax they otherwise are responsible for paying. Employers are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires that the deferred

employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

However, according to Section 2302(a)(3), this benefit may not apply to the taxpayer who has had indebtedness forgiven under Section 1106 of this Act with respect to a loan under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 6365(a)). Consult an attorney to clarify whether you qualify.

Modifications for Net Operating Losses

Section 2303 relaxes the limitations on a company's use of losses. Net operating losses (NOL) are currently subject to a taxable-income limitation; losses can be carried into the future to set off profits, but they cannot be carried back to reduce income in a prior tax year. The provision provides that an NOL arising in a tax year beginning in 2018, 2019 or 2020 can be carried back five years, with some exceptions, and temporarily removes the taxable income limitation to allow an NOL to fully offset income. Companies can take advantage of this benefit to utilize losses and amend prior year returns, thereby increasing present cash flow.

Modification of Limitation on Losses for Taxpayers Other Than Corporations

Section 2304 allows pass-through entities and sole proprietorships to also benefit from Section 2303's relaxed NOL carryback.

Modification of Credit for Prior Year Minimum Tax Liability of Corporations

Section 2305 allows companies to apply for and receive within 90 days a credit or refund in the amount of overpayment based on the corporate alternative minimum tax (AMT). The AMT was repealed as part of the Tax Cuts and Jobs Act, but corporate AMT credits were made available as refundable credits over several years, ending in 2021. This provision accelerates the ability of companies to recover those AMT credits.

Modification of Limitation on Business Interest

Section 2306 temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30-percent limitation to 50 percent of taxable income (with adjustments) for 2019 and 2020. This provision will allow businesses to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.

Correction of Bonus Depreciation for Qualified Improvement Property

Section 2307 clarifies the bonus depreciation rules under Section 168(k) of the Code.

Tax Cut and Jobs Act of 2017 ("TCJA") contained a provision allowing taxpayers to claim bonus depreciation deductions (up to 100%) for certain types of qualified property, which included property with a depreciable life of 20 years or less. The TCJA defined the concept of "qualified improvement property" ("QIP") as "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." The intent of this provision was to make the

bonus depreciation deduction available to restaurants and other retail establishments that invested in improvements or renovations to their commercial properties.

However, because of a drafting error, the QIP were not actually eligible for the bonus depreciation deduction, as their recovery period was set at the 39-year ordinary life of a building instead of the intended 15 years. Only property with a recovery period of 20 years or less is eligible for bonus depreciation.

The CARES Act corrects the drafting error by assigning a 15-year depreciable life to QIP, thereby allowing it to be characterized as qualified property eligible for bonus depreciation. Furthermore, the Act revised the definition of “qualified improvement property” to mean only “improvements made by the taxpayer,” which eliminates the option of a taxpayer getting bonus depreciation for “used” QIP that was purchased by the taxpayer. These corrections are effective retroactively to property placed in service in 2018 and beyond.

The provision should not only increase a company’s access to cash flow by allowing it to amend a prior year tax return, but also incentivize taxpayers and American businesses to continue to invest in building improvements during these uncertain times.

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