March 31, 2020

Coronavirus Aid, Relief, and Economic Securities Act (CARES Act – H.R. 748) – *3/25/2020*

Business Highlights

Q: What is the Employee retention credit for employers?

A: This provision provides a refundable payroll tax credit for 50% of wages (up to $10,000 per employee) paid by eligible employers to certain employees during the COVID-19 crisis. This means the maximum available credit is $5,000 per employee (50% of $10,000)

Eligible employers. The credit is available to employers, including non-profits, whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel, or group meetings. The credit is also provided to employers who have experienced a greater than 50% reduction in quarterly receipts, measured on a year-over-year basis. The credit is not available to employers receiving Small Business Interruption Loans under Sec. 1102 of the Act.

Since these provisions may overlap, careful consideration should be done before applying for these loans to ensure the maximum benefit is achieved. There is no <u>double dipping</u> allowed.

Wages paid to which employees? For employers who had an average number of full-time employees in 2019 of 100 or fewer, all employee wages are eligible, regardless of whether the employee is furloughed. For employers who had a larger average number of full-time employees in 2019, only the wages of employees who are furloughed or face reduced hours as a result of their employers' closure or reduced gross receipts are eligible for the credit.

No credit is available with respect to an employee for any period for which the employer is allowed a Work Opportunity Credit with respect to the employee. No credit is available with respect to an employee for any period for which the employer is allowed a Work Opportunity Credit with respect to the employee.

Wages. The term "wages" includes health benefits and is capped at the first $10,000 in wages paid by the employer to an eligible employee. Wages do not include amounts taken into account for purposes of the payroll credits, for required paid sick leave or required paid family leave in the Families First Coronavirus Act nor for wages taken into account for the employer credit for paid family and medical leave.

Other. IRS is granted authority to advance payments to eligible employers and to waive applicable penalties for employers who do not deposit applicable payroll taxes in anticipation of receiving the credit.

Effective date. The credit applies to wages paid after <u>March 12, 2020 and before Jan. 1, 2021.</u>

How to apply. We are currently awaiting guidance for the mechanics to take for these credits.

March 31, 2020

Coronavirus Aid, Relief, and Economic Securities Act (CARES Act – H.R. 748) – *3/25/2020*

Business Highlights

Q: What is the delay or payment of employer payroll taxes?

A: The CARES Act allows all employers to defer the deposit of the employer's 6.2% Social Security tax for the remainder of the year with respect to any amounts not yet deposited as of March 27, 2020. Fifty percent of such deferred taxes are due on Dec. 31, 2021, with the remainder due on Dec. 31, 2022. Similar deferral is permitted for the equivalent share of self-employment tax for self-employed individuals. In that case, estimated taxes for the 2020 tax year are computed without regard to that portion of the self-employment tax.

The payroll deferral is not available to employers that avail themselves of the Small Business Administration loans designated for payroll. Therefore, if you do not pay the payroll taxes now but later apply for one of these loans and then get approved there is a possibility that this would need to be repaid. Further clarification is yet to be provided on this.

Employers should work closely with their payroll tax providers to determine eligible deferral amounts. Employers should also keep in mind that this is, in effect, a 33-month interest-free loan that will have to be repaid and that individual employees of a business can be directly liable for any payroll taxes that aren't eventually deposited by the applicable due dates.

Q: What are the changes for business net operating losses (NOL's) and net operating loss carryback rules?

A: The CARES act would allow business losses from tax years beginning after December 31, 2017, and before January 1, 2021, to be carried back 5 years. The act would also allow the full amount of net operating loss carryovers and carrybacks to be used for tax years beginning before January 1, 2021. Both provisions are favorable compared to the tax overhaul that occurred in 2017.

If your business has a net operating loss from 2018, we will need to assess whether a 5-year carryback claim makes sense or if the loss should be applied to the 2019 tax return year.

Generally, these provisions apply also to individuals as well as to corporations.

Q: Are there any changes to the business loss rules for noncorporate taxpayers?

A: Yes, the CARES act temporarily modifies the loss limitation for noncorporate taxpayers so they can deduct excess business losses arising in 2018, 2019, and 2020. Previously, these losses were capped to a total loss of $250,000 on the taxpayer's personal tax returns.

If your personal tax return contains large business losses that were previously limited, we will need to assess the impact on your 2018 tax return. It is possible that either a carryback claim should be filed or an amended return to allow these additional losses.

March 31, 2020

Coronavirus Aid, Relief, and Economic Securities Act (CARES Act – H.R. 748) – *3/25/2020*

Business Highlights

Q: What about business tax charitable contributions?

A: Yes! For corporations, the CARES Act temporarily increases the limitation on the deductibility of cash charitable contributions <u>during 2020</u> from 10% to 25% of the taxpayer's taxable income. The CARES Act also increases the limitation on deductions for contributions of food inventory from 15% to 25%.

Q: Were there any changes to the Corporate AMT credits?

A: Yes. The Cares Act allows corporations to claim 100% of AMT credits in 2019. If your corporation has an AMT credit still available for the 2019 tax year, we should be able to obtain a refund when filing your 2019 tax return.

Q: Are there any changes to interest expense deductibility?

A: YES! The CARES Act temporarily and retroactively increases the limitation on the deductibility of interest expense from 30% to 50% for tax years beginning in 2019 and 2020. There are many fine details to work through with this particularly with pass-through entities and their individuals, but this is a favorable change.

With respect to partnerships, the increased Section 163(j) limit from 30% to 50% of ATI only applies to taxable years beginning in 2020. However, in the case of any excess business interest expense allocated from a partnership for any taxable year beginning in 2019, 50% of such excess business interest expense is treated as not subject to the Section 163(j) limitation and is fully deductible by the partner in 2020. The remaining 50% of such excess business interest expense shall be subject to the limitations in the same manner as any other excess business interest expense so allocated. Each partner has the ability, under regulations to be prescribed by Treasury, to elect to have this special rule not applied. No rules are provided for application of this rule in the context of tiered partnership structures.

Real estate with qualified improvement property may want to re-think electing out of this provision now that bonus depreciation is allowed on this 15-year qualified improvement property.

Will have to assess on a state by state basis for their special rules.

Q: Are there any changes to bonus depreciation rules?

A: Yes. The CARES Act provides a technical correction to the Tax Cuts and Jobs Act of 2017 (tax reform) and specifically designates qualified improvement property as 15-year property for depreciation purposes. This makes all qualified improvement property eligible for 100% bonus depreciation. This is effective for property placed in service after December 31, 2017.

If you have any clients that put in service qualified improvement property in 2018 and you did not previously take bonus depreciation you should consider whether a change should be made to allow

100% deduction instead. This could be through an amended return or a method change form. Careful consideration should be done before making this decision as there could be a ripple effect on other tax provisions.