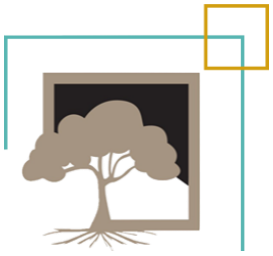
Coronavirus Aid, Relief & Economic Security (CARES) Act



Benefits for Businesses

On March 27, 2020, President Trump signed the ***Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020*** is an estimated $2 trillion package, including nearly half a trillion dollars in individual rebate checks, another $500B for support of several severely-damaged industries, nearly $400B support including tax credits for wages and payroll tax relief, over $300B of support for state and local governments, and almost $150B for various initiatives to support hospitals and the health care system.

Several key provisions of the bill are intended to help and target small business owners who may have had to close their doors to patrons and lay off employees. A portion of the appropriated $425 billion in funds for the Federal Reserve's credit facilities will target small businesses. Some of the provisions include:

Paycheck Protection Program

A (partially) forgivable loan program offered through the Small Business Administration (SBA). These loans must be applied for by June 30, 2020, and can have a maximum maturity of 10 years. They may be provided via existing approved SBA lenders, as well as lenders who are otherwise certified by the SBA to offer such loans. Furthermore, such loans will be 100% guaranteed by the SBA.

Businesses, including sole proprietorships, that have fewer than 500 employees (including affiliated businesses), or the employee size standard under NAICS Code, if larger, are eligible for this relief. Eligible borrowers are also required to make a good-faith certification that the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19.

Under the Paycheck Protection Program, lenders will generally be able to issue SBA 7(a) small business loans up to a maximum of the lesser of $10 million, or 2.5 times the average monthly payroll costs over the previous year (excluding annual compensation of amounts over $100,000 per person). And the proceeds of such loans may be used to pay a variety of costs, including:

- Payroll costs
- Group health insurance premiums and other healthcare costs
- Salaries and/or commissions
- Rent
- Mortgage *interest* (excluding amounts pre-paid)
- Utilities
- Other business interest incurred prior to February 15, 2020

With this program there is the possibility of having all or a portion of the loan forgiven. The amount eligible to be forgiven is the amount spent, during the first 8 weeks after the loan is made, on:

- Payroll costs, excluding prorated amounts for individuals with compensation greater than $100,000
- Rent pursuant to a lease in force before February 15, 2020.
- Electricity, gas, water, transportation, telephone, or internet expenses for services which began before 2/15/20.
- Group health insurance premiums and other healthcare costs.

The maximum interest rate that can be charged for a loan made under this program is 4%.

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In order for the amounts to be forgiven, the business must maintain the same number of employees from February 15, 2020 through June 30, 2020 as it did during either the same period in 2019 or from January 1, 2020 until February 15, 2020.

Employee Retention Credit

Businesses who have been hit hard by the economic effects of the COVID-19 crisis are being incentivize from making further layoffs, Section 2301 of the CARES Act introduces a new payroll tax credit.
There will be 50% refundable payroll tax credit on worker wages will further incentivize businesses, including ones with fewer than 500 employees, to retain workers. This qualifying event for a company to eligible is that operations would need to have been fully or partially suspended during a quarter as the result of the government action or in which revenue in 2020 has less than 50% of the revenue from the same quarter in 2019.

Payment of Payroll Taxes Deferred

Section 2302 of the CARES Act provides employers with another payroll-related tax break. With the exception of employers who have debt forgiven by the CARES Act for certain loans provided by the Small Business Administration, employers are eligible to defer payroll taxes from the date of enactment, through the end of the year, until the end of 2021 and 2022.

More specifically, 50% of the payroll taxes that would otherwise be due during this period may be deferred until December 31, 2021. The remaining 50% is due on December 31, 2022.

If you are self-employed, this tax break will also apply to you, at least with respect to the 'employer equivalent' portion of your self-employment taxes. Accordingly, 50% of an individual's self-employment taxes, from the date of program enactment through the end of 2020, may be deferred, with 50% of that amount (so 25% of 2020 self-employment taxes) due December 31, 2021, and the remaining deferred amount due on December 31, 2022.

Loosening of Net Operating Loss Rules

Section 2303 of the CARES Act amends the rules for corporations (other than REITs) with Net Operating Losses (NOLs). Back in December 2017, the Tax Cuts and Jobs Act was passed and beginning in 2018, it allowed such losses only to be carried forward indefinitely. Before 2017, the losses could be carried back up to two years and forward up to 20 years.

The new CARES Act adjusts those rules once more, allowing any NOL from 2018, 2019, or 2020 to be carried back up to five years. Conceptually, this should allow companies to reduce prior years' tax bills, allowing them to claim refunds of amounts previously paid to provide further liquidity to get them through the COVID-19 crisis.

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