Covid-19: Tax-Related Provisions of the CARES Act
By Alison Levy

On March 27, 2020, President Trump signed The Corononavirus Aid, Relief and Economic Security (CARES) Act, which contains both tax and non-tax provisions. The CARES Act authorizes more than $2 trillion to battle Covid-19 and its economic effects, including loan programs for small businesses and various types of economic relief for impacted businesses and industries. Below is a summary of certain key tax-related provisions for individuals and businesses.

- **Due Dates**: Apart from the CARES Act, the IRS postponed to July 15, 2020 the due date for both filing an income tax return and for making income tax payments due April 15, 2020. The IRS also postponed to July 15, 2020 the due date for both filing a gift tax return and for making gift tax or generation-skipping tax payments due April 15, 2020. Both of these postponements are automatic.
- **Individual tax rebates**: Eligible individuals with incomes of up to $75,000 ($150,000 for a joint return) will receives checks from the U.S. Treasury for $1,200 ($2,400 for a joint return), plus $500 for each child. The amount phases down with higher incomes and phases out completely at income levels of $99,000 (or $198,000 for a joint return). Eligible individuals generally include any individual who has a social security number and who is not (i) a non-resident alien, (ii) an individual who can be claimed as a dependent on another taxpayer's return, or (iii) an estate or trust.
- **Tax-favored retirement plan distributions**: Coronavirus-related distributions from eligible retirement plans are not subject to the 10% excise tax on early distributions. Distributions must be made on or after Jan. 1, 2020 and before Dec. 31, 2020 to an individual (i) who is diagnosed with Covid-19 (by a CDC approved test), (ii) whose spouse or dependent is so diagnosed or (iii) who experiences financial hardship because of quarantine, furlough, lack of child care or loss of working or business hours. Taxpayers can elect to ratably spread the otherwise taxable income over a three year period, or can also avoid income recognition by repaying the distribution within three years of receipt. The CARES Act also provides flexibility for loans from certain retirement plans.
- **Waiver of required minimum distribution rules:** Minimum distribution rules are temporarily waived for IRAs and certain defined contribution plans for participants who were required to received such distributions in 2020.
- **Charitable deductions:** Individual taxpayers who do not itemize deductions can take an above-the-line deduction of up to $300 in 2020 for charitable contributions made in cash to qualified tax-exempt organizations. In addition, the deduction percentage limitation for charitable contributions of cash (to qualified tax-exempt organizations) has been removed for individual taxpayers (i.e., any qualified contribution is allowed as a deduction to the extent the aggregate amount does not exceed the taxpayer's adjusted gross income). The limitation on corporate charitable contribution deductions is increased from 10% of taxable income to 25% of taxable income.
- **Deferral of payment of payroll taxes**: Employers can delay payment of the employer portion of payroll taxes through the end of 2020. Fifty percent of any deferred taxes must be paid by Dec. 31, 2021 and the remaining amount must be paid by Dec. 31, 2022.
- **Forgivable Small Business Loans**: For loans provided to businesses under section 1106 of the CARES Act ("Paycheck Protection Program" loans via the Small Business Act), any forgiveness or cancellation of such loans will not be treated as cancellation of indebtedness income for U.S. federal income tax purposes. An eligible recipient is eligible for forgiveness of indebtedness on a

Paycheck Protection Program loan in an amount equal to the sum of: (i) payroll costs and (ii) most mortgage, rent and utility payments, all made or incurred during the 8-week period beginning on the origination date of a covered loan.

- **Payroll tax credit**: The CARES Act provides for a refundable payroll tax credit of 50% of qualified wages paid by eligible employers during the Covid-19 crisis. Up to $10,000 of qualified wages per employee is taken into account. Eligible employers include employers (i) whose trade or business is fully or partially suspended as a result of a government order limiting commerce, travel or group meetings or (ii) who have a 50% decrease in gross receipts for the same calendar quarter in the prior year. This credit is not available to employers receiving a Paycheck Protection Program loan (discussed above).
- **NOLs**: The Tax Cuts and Jobs Act of 2017 (TCJA) eliminated the ability to carry back NOLs generated in taxable years beginning after Dec. 31, 2017. The CARES Act provides that NOLs generated in taxable years beginning in 2018, 2019 or 2020 may now be carried back five years from the year of the loss. The CARES Act also allows all NOLs carried forward or back to taxable years beginning before Jan. 1, 2021 to offset 100% of taxable income in such years (rather than 80% with respect to post-2017 NOLs as provided by the TCJA). There are specific rules with respect to REITs, life insurance companies and shareholders of certain foreign corporations (e.g., a taxpayer is not permitted to use an NOL carryback to reduce its Section 965 income).[1]
- **Business interest expense**: The TJCA generally provided that net interest expense could only be deducted to the extent of 30% of adjusted taxable income. The CARES Act increases this limitation to 50% for taxable years beginning in 2019 and 2020. Also, given that many taxpayers may have significantly reduced income in 2020, taxpayers can choose to use its adjusted taxable income for a taxable year beginning in 2019 when applying this limitation for a taxable year beginning in 2020. Special rules apply with respect to partnerships, including that the increase in limitation applies only to tax years beginning in 2020.
- **Limitations on losses:** The TCJA generally provided that a non-corporate taxpayer's ability to deduct "excess business losses" was limited for tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026. The CARES Act amends this limitation so that it now applies only to taxable years beginning after Dec. 31, 2020. Generally, an excess business loss is the excess of (i) the taxpayer's aggregate trade or business deductions for the tax year over (ii) the sum of the taxpayer's aggregate trade or business gross income, plus $250,000 (or $500,000 in the case of a joint return).
- **Expedited corporate AMT credit refunds**: The TJCA repealed the corporate alternative minimum tax. A corporation with AMT credits from prior years can elect to take its entire refundable credit amount at once beginning with its first taxable year beginning in 2018. Without an election, any AMT credit will become completely refundable in a taxable year beginning in 2019.
- **Bonus depreciation:** A technical correction was made to the TJCA to specifically designate "qualified improvement property" as 15-year property for depreciation purposes (i.e., generally any improvement made by the taxpayer to a building's interior (excluding improvements attributable to the enlargement of a building or the internal structural framework)). Qualified improvement property is now eligible for 100% bonus depreciation. This change is retroactive to Dec. 22, 2017.

[1] Section 965 generally required certain U.S. shareholders in foreign corporations to include in gross income, as of the end of 2017, their share of the foreign corporation's earnings that were not previously subject to U.S. tax.

The White House and Congress have begun to discuss enacting another around of economic stimulus in connection with Covid-19. Any such legislation would most likely include additional tax-related provisions, such as possibly suspending the $10,000 cap on federal deductions for state and local taxes and/or restoring tax deductions for entertaining business clients.