**PRESIDENT TRUMP SIGNS INTO LAW CARES ACT**

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief and Economic Security (CARES) Act, which provides relief to taxpayers affected by the novel coronavirus (COVID-19). The CARES Act is the third round of federal government aid related to COVID-19. We have summarized the top provisions in the new legislation below. Click [here](https://www.congress.gov/bill/116th-congress/house-bill/748/text) for a link to the full text of the bill.

***Paycheck Protection/Small Business Administration (SBA) 7(a) Loan Program***

The recently passed CARES Act creates a SBA loan program, called the “Paycheck Protection Program (PPP). The PPP provides small businesses with zero-fee loans of up to $10 million to cover payroll and other operating expenses. Principal portion of loan amounts can be forgiven if used to cover payroll, mortgage interest, rent, and utility costs during the 8 week covered period. Payments on principal and interest are deferred for six months and up to one year. Small businesses will be able to apply if they were harmed by COVID-19 between February 15, 2020, and June 30, 2020. This program is retroactive to February 15, 2020, in order to help bring workers who may have already been laid off back onto payrolls. Loans are available through June 30, 2020.

**Eligibility:**

Generally small businesses are defined as less than 500 employees (special rule for hospitality and dining businesses of 500 per location). More specifically, the CARES Act states:

You are eligible if:

* Your business or entity was in operation on February 15, 2020;
* You are a small business, a 501(c)(3) non profit organization, a 501(c)(19) veterans organization, or tribal business concern that has fewer than 500 employees or the applicable size standard in number of employees for the North America Industry Classification Systems (NAICS) industry as provided by SBA, if higher.
* You are a sole proprietorship, an independent contractor, or self-employed.
* You are a franchise business that employs not more than 500 employees per physical location and your business has an NAICS code beginning with 72, Accommodation and Food Services (see enclosure), for which affiliation rules are waived. Affiliation rules are also waived for any businesses operating as a franchise that is assigned a franchisor identifier code by the SBA, and any company that receives funding through a Small Business Investment Company.

**Loan Size:**

* The maximum loan size is 250% of average monthly payroll costs for the one-year period before the loan is made.
* If you were not in business this time last year, the maximum loan is equal to 250% of your average monthly payroll costs between January 1, 2020, and February 29, 2020.
* The loan maximum in all cases is $10 million.

**Payroll costs for the purpose of determining your loan size include:**

* Compensation (salary, wage, commission, or similar compensation, payment of cash tip)
* Payment for vacation, parental, family, medical, or sick leave
* Allowance for dismissal or separation
* Payment required for group health care benefits, including insurance premiums
* Payment of any retirement benefit
* Payment of State or local tax assessed on the compensation of employees

The following costs ***do not*** count towards your loan size: compensation over $100,000, certain withheld taxes, compensation for employees outside of the United States, and required leave under the Families First Coronavirus Response Act, for which a payroll tax credit is allowed.

**Use of Loan Funds:**

Funds may be used for:

* Payroll costs (all costs included above)
* Costs related to group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums
* Employee salaries, commissions, or similar compensations (except as excluded above)
* Payments of interest on any mortgage (but not payment or prepayment of principal)
* Rent
* Utilities
* Interest on any other debt obligations that were incurred before February 15, 2020

**Loan Terms:**

For any amounts not forgiven, the maximum is 10 years, the maximum interest rate is 4 percent, zero loan fees, zero prepayment fee (SBA will establish application fee caps for lenders that charge).

**Loan Deferment:**

The Act requires lenders to provide complete payment deferment relief for borrowers with loans for a period of not less than 6 months, including payment of principal, interest, and fees, and not more than 1 year.

**Loan Forgiveness:**

You can apply to your lender to forgive your loan for the amount of payroll costs plus payments of mortgage interest, rent, and utilities incurred during the 8 week covered period. The amount that can be forgiven is proportionate to maintaining employees and wages. You must apply through your lender for forgiveness and provide:

* Documentation verifying the number of employees on payroll, their pay rate, IRS payroll and state income or payroll tax filings, and unemployment insurance filings;
* Documentation verifying payments of rent, mortgage interest, utilities, and other debt; and
* Certification from your business that the documentation provided is true and that amount of the loan that is being forgiven was used in line with the program’s requirements.

The principal portion of the loan can be forgiven based on a formula that compares the average number of full-time equivalent employees per month employed by the eligible recipient during the period from February 15, 2020 to June 30, 2020 divided by average number of full-time equivalent employees per month employed during the period of February 15, 2019 to June 30, 2019 or the period January 1, 2020 to February 29, 2020. You can select which period to use.

The amount of loan forgiveness would not be subject to income tax.

Any loan amounts not forgiven are carried forward as an ongoing loan with max terms of 10 years, at a maximum interest rate of 4 percent. Principal and interest will continue to be deferred for a total of 6 months to a year after disbursement of the loan.

***SBA Economic Injury Disaster Loan & Emergency Grant***

The CARES Act temporarily expands eligibility for SBA economic injury disaster loans (EIDL) and provides an emergency advance of up to $10,000 to small businesses and private non-profits harmed by COVID-19 within 3 days of applying for an SBA EIDL. To access the advance, you must first apply for an EIDL and then request the advance. The advance does not need to be repaid, even if the EIDL loan request is denied, and may be used to keep employees on payroll, to pay for sick leave, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent, and mortgage payments.

**Eligibility:**

In addition to the entities that are already eligible for disaster loans (small businesses, private non-profits, and small agriculture cooperatives), eligibility is temporarily expanded to include:

* Business entities with 500 or fewer employees:
* Sole proprietorships, with or without employees
* Independent contractors
* Cooperatives and employee owned businesses
* Tribal small businesses
* Private non-profits of any size.

Additionally, you must have been in business as of January 31, 2020. Expanded eligibility criteria and the emergency grants are only available from January 31, 2020 through December 31, 2020.

**How to Apply:**

* You can apply for an EIDL online with the SBA.
* When you apply, you can request an emergency grant of $10,000.
* The SBA will provide the grant within 3 days of receiving your application.
* You will not have to repay the grant, even if your application for a loan is denied.
* You can visit an SBA resource partner who can help guide you through the loan application process.

**Loan Terms:**

The maximum loan limit for an EIDL is $2,000,000. The term of the loan is 30 years with an interest rate of 3.75 percent for commercial businesses and 2.75 percent for non-profits. There are no deferrals in payments of these loans and no loan forgiveness. The $10,000 emergency grant will not have to be repaid; however, based on current tax law, the forgiveness of the $10,000 advance is taxable unless the government changes the law.

**Can I use a Payroll Protection Loan with other SBA Loans?**

Yes, you may apply for a paycheck protection loan and other SBA loans, including the SBA economic injury disaster loans, 7(a) loans, 503 loans, and microloans. Any existing 7(b) loans would need to be refinanced under the paycheck protection loan. However, you may not use funds from each of these programs for the same purposes. If you apply for an EIDL and the grant as well as the paycheck protection loan, the amount forgiven under the paycheck protection loan will be decreased by the $10,000 grant.

***2020 Recovery Refund Checks for Individuals***

The CARES Act provides eligible individuals with a refund check equal to $1,200 ($2,400 for joint filers) plus $500 per qualifying child. The refund begins to phase out if the individual’s adjusted gross income (AGI) exceeds $75,000 ($150,000 for joint filers, $112,500 for head of household filers, $75,000 for married filing separate filers). The credit is completely phased out for individuals with no qualifying children if their AGI exceeds $99,000 ($198,000 for joint filers and $136,500 for head of household filers).

Eligible individuals do not include nonresident aliens, individuals who may be claimed as a dependent on another person’s return, estates, or trusts. Eligible individuals and qualifying children must all have a valid social security number. For married taxpayers who filed jointly with their most recent tax filings (2018 or 2019) but will file separately in 2020, each spouse will be deemed to have received one half of the joint filers credit or $1,200 each.

A qualifying child (i) is a child, stepchild, eligible foster child, brother, sister, stepbrother, or stepsister, or a descendent of any of them, (ii) under age 17, (iii) who has not provided more than half of their own support, (iv) who has lived with the taxpayer for more than half of the year, and (v) who has not filed a joint return (other than only for a claim for refund) with the individual’s spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

The refund is determined based on the taxpayer’s 2020 income tax return but is advanced to taxpayers based on their 2018 or 2019 tax return, as appropriate. If an eligible individual’s 2020 income is higher than the 2018 or 2019 income used to determine the rebate payment, the eligible individual will not be required to pay back any excess rebate. However, if the eligible individual’s 2020 income is lower than the 2018 or 2019 income used to determine the rebate payment such that the individual should have received a larger rebate, the eligible individual will be able to claim an additional credit generally equal to the difference of what was refunded and any additional eligible amount when they file their 2020 income tax return.

Individuals who have not filed a tax return in 2018 or 2019 may still receive an automatic advance based on their social security benefit statements (Form SSA-1099) or social security equivalent benefit statement (Form RRB-1099). Other individuals may be required to file a return to receive any benefits.

The CARES Act provides that the IRS will make automatic payments to individuals who have previously filed their income tax returns electronically, using direct deposit banking information provided on a return any time after January 1, 2018.

***Charitable Contributions***

Above-the-line deductions: Under the CARES Act, an eligible individual may take a qualified charitable contribution deduction of up to $300 against their AGI in 2020. An eligible individual is any individual taxpayer who does not elect to itemize his or her deductions. A qualified charitable contribution is a charitable contribution (i) made in cash, (ii) for which a charitable contribution deduction is otherwise allowed, and (iii) that is made to certain publicly supported charities.

This above-the-line charitable deduction may not be used to make contributions to a non-operating private foundation or to a donor advised fund.

Modification of limitations on cash contributions: Currently, individuals who make cash contributions to publicly supported charities are permitted a charitable contribution deduction of up to 60% of their AGI. Any such contributions in excess of the 60% AGI limitation may be carried forward as a charitable contribution in each of the five succeeding years.

The CARES Act temporarily suspends the AGI limitation for qualifying cash contributions, instead permitting individual taxpayers to take a charitable contribution deduction for qualifying cash contributions made in 2020 to the extent such contributions do not exceed the excess of the individual’s contribution base over the amount of all other charitable contributions allowed as a deduction for the contribution year. Any excess is carried forward as a charitable contribution in each of the succeeding five years. Taxpayers wishing to take advantage of this provision must make an affirmative election on their 2020 income tax return.

This provision is useful to taxpayers who elect to itemize their deductions in 2020 and make cash contributions to certain public charities. As with the aforementioned above-the-line deduction, contributions to non-operating private foundations or donor advised funds are not eligible.

For corporations, the CARES Act temporarily increases the limitation on the deductibility of cash charitable contributions during 2020 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%.

***Compensation, Benefits, and Payroll Relief***

The law temporarily increases the amount of and expands eligibility for unemployment benefits, and it provides relief for workers who are self-employed. Additionally, certain employers affected by the pandemic who retain their employees will receive a credit against payroll taxes for 50% of eligible employee wages paid or incurred from March 13 to December 31, 2020. This employee retention credit would be provided for as much as $10,000 of qualifying wages, including health benefits. Eligible employers may defer remitting employer payroll tax payments that remain due for 2020 (after the credits are deducted), with half being due by December 31, 2021, and the balance due by December 31, 2022. Employers with fewer than 500 employees are also allowed to give terminated employees access to the mandated paid federal sick and child care leave benefits for which the employer is 100% reimbursed by the government through payroll tax credits if the employer rehires the qualifying employees. Participants can take a coronavirus-related distribution from their eligible retirement plan or IRA up to $100,000 during 2020 without a 10% early withdrawal penalty. Amounts are required to be treated as income but can be spread over three years as opposed to having all of the amount included immediately in income. Also, the coronavirus-related distribution allows for repayments to be made within three years and can gain tax-free rollover treatment. Qualifying plan participants include (1) participants (or their spouses or dependents) who have been diagnosed with the virus SARS-CoV-2 or with COVID-19 or (2) participants experiencing adverse financial consequences as a result of being quarantined, furloughed, or laid off, having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, and closing or reducing hours of a business owned or operated by the individual due to such virus or disease.

Additionally, the bill makes it easier to borrow money from 401(k) accounts or qualified employer plans, raising the loan limit to $100,000 from $50,000 for the first 180 days after enactment of the CARES act, and the payment dates for any loans due the rest of 2020 would be extended for a year.

Individuals do not have to take their 2020 required minimum distributions from their retirement funds. This avoids lost earnings power on the taxes due on distributions and maximizes the potential gain as the market recovers.

Two long-awaited provisions allow employers to assist employees with college loan debt through tax free payments up to $5,250 and restores over-the-counter medical supplies as permissible expenses that can be reimbursed through health care flexible spending accounts and health care savings accounts.

***Deferral of Net Business Losses for Three Years***

Section 461(l) limits non-corporate taxpayers in their use of net business losses to offset other sources of income. As enacted in 2017, this limitation was effective for taxable years beginning after 2017 and before 2026, and applied after the basis, at-risk, and passive activity loss limitations. The amount of deductible net business losses is limited to $500,000 for married taxpayers filing a joint return and $250,000 for all other taxpayers. These amounts are indexed for inflation after 2018 (to $518,000 and $259,000, respectively, in 2020). Excess business losses are carried forward to the next succeeding taxable year and treated as a net operating loss in that year.

The CARES Act defers the effective date of Section 461(l) for three years, but also makes important technical corrections that will become effective when the limitation on excess business losses once again becomes applicable. Accordingly, net business losses from 2018, 2019, or 2020 may offset other sources of income, provided they are not otherwise limited by other provisions that remain in the Code. Beginning in 2021, the application of this limitation is clarified with respect to the treatment of wages and related deductions from employment, coordination with deductions under Section 172 (for net operating losses) or Section 199A (relating to qualified business income), and the treatment of business capital gains and losses.

***Section 163(j) Amended for Taxable Years Beginning in 2019 and 2020***

The CARES Act amends Section 163(j) solely for taxable years beginning in 2019 and 2020. Taxpayers with average gross receipts of $26 million or less for the prior 3 tax years are not subject to the Section 163(j) limitation. With the exception of partnerships, and solely for taxable years beginning in 2019 and 2020, taxpayers may deduct business interest expense up to 50% of their adjusted taxable income (ATI), an increase from 30% of ATI under the TCJA, unless an election is made to use the lower limitation for any taxable year. Additionally, for any taxable year beginning in 2020, the taxpayer may elect to use its 2019 ATI for purposes of computing its 2020 Section 163(j) limitation. This will benefit taxpayers who may be facing reduced 2020 earnings as a result of the business implications of COVID-19. As such, taxpayers should be mindful of elections on their 2019 return that could impact their 2019 and 2020 business interest expense deduction. 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.

***Net Operating Losses Carryback Allowed for Taxable Years Beginning in 2018 and Before 2021***

The CARES Act provides for an elective five-year carryback of net operating losses (NOLs) generated in taxable years beginning after December 31, 2017, and before January 1, 2021. Taxpayers may elect to relinquish the entire five-year carryback period with respect to a particular year’s NOL, with the election being irrevocable once made. In addition, the 80% limitation on NOL deductions arising in taxable years beginning after December 31, 2017, has temporarily been pushed to taxable years beginning after December 31, 2020. Several ambiguities in the application of Section 172 arising as a result of drafting errors in the Tax Cuts and Jobs Act have also been corrected. As certain benefits (i.e., charitable contributions, Section 250 “GILTI” deductions, etc.) may be impacted by an adjustment to taxable income, and therefore reduce the effective value of any NOL deduction, taxpayers will have to determine whether to elect to forego the carryback. Moreover, the bill provides for two special rules for NOL carrybacks to years in which the taxpayer included income from its foreign subsidiaries under Section 965. Please consider the impact of this interaction with your international tax advisors. However, given the potential offset to income taxed under a 35% federal rate, and the uncertainty regarding the long-term impact of the COVID-19 crisis on future earnings, it seems likely that most companies will take advantage of the revisions. This is a technical point, but while the highest average federal rate was 35% before 2018, the highest marginal tax rate was 38.333% for taxable amounts between $15 million and $18.33 million. This was put in place as part of our progressive tax system to eliminate earlier benefits of the 34% tax rate. Companies may wish to revisit their tax accounting methodologies to defer income and accelerate deductions in order to maximize their current year losses to increase their NOL carrybacks to earlier years.

***Alternative Minimum Tax Credit Refunds***

The CARES Act allows the refundable alternative minimum tax credit to be completely refunded for taxable years beginning after December 31, 2018, or by election, taxable years beginning after December 31, 2017. Under the Tax Cuts and Jobs Act, the credit was refundable over a series of years with the remainder recoverable in 2021.

***Technical Correction to Qualified Improvement Property***

The CARES Act contains a technical correction to a drafting error in the Tax Cuts and Jobs Act that required qualified improvement property (QIP) to be depreciated over 39 years, rendering such property ineligible for bonus depreciation. With the technical correction applying retroactively to 2018, QIP is now 15-year property and eligible for 100% bonus depreciation. This will provide immediate current cash flow benefits and relief to taxpayers, especially those in the retail, restaurant, and hospitality industries. Taxpayers that placed QIP into service in 2019 can claim 100% bonus depreciation prospectively on their 2019 return and should consider whether they can file Form 4464 to quickly recover overpayments of 2019 estimated taxes. Taxpayers that placed QIP in service in 2018 and that filed their 2018 federal income tax return treating the assets as bonus-ineligible 39-year property should consider amending that return to treat such assets as bonus-eligible. For C corporations, in particular, claiming the bonus depreciation on an amended return can potentially generate NOLs that can be carried back five years under the new NOL provisions of the CARES Act to taxable years before 2018 when the tax rates were 35%, even though the carryback losses were generated in years when the tax rate was 21%. With the taxable income limit under Section 172(a) being removed, an NOL can fully offset income to generate the maximum cash refund for taxpayers that need immediate cash. Alternatively, in lieu of amending the 2018 return, taxpayers may file an automatic Form 3115, Application for Change in Accounting Method, with the 2019 return to take advantage of the new favorable treatment and claim the missed depreciation as a favorable Section 481(a) adjustment.

***Effects of the CARES Act at the State and Local Levels***

As with the Tax Cuts and Jobs Act, the tax implications of the CARES Act at the state level first depends on whether a state is a “rolling” Internal Revenue Code (IRC) conformity state or follows “fixed-date” conformity. For example, with respect to the modifications to Section 163(j), rolling states will automatically conform, unless they specifically decouple (but separate state ATI calculations will still be necessary). However, fixed-date conformity states will have to update their conformity dates to conform to the Section 163(j) modifications. A number of states have already updated during their current legislative sessions (e.g., Idaho, Indiana, Maine, Virginia, and West Virginia). Nonetheless, even if a state has updated, the effective date of the update may not apply to changes to the IRC enacted after January 1, 2020 (e.g., Arizona). A number of other states have either expressly decoupled from Section 163(j) or conform to an earlier version and will not follow the CARES Act changes (e.g., California, Connecticut, Georgia, Missouri, South Carolina, Tennessee (starting in 2020), Wisconsin). Similar considerations will apply to the NOL modifications for states that adopted the 80% limitation, and most states do not allow carrybacks. Likewise, in fixed-dated conformity states that do not update, the Section 461(l) limitation will still apply

resulting in a separate state NOL for those states. These conformity questions add another layer of complexity to applying the tax provisions of the CARES Act at the state level. Further, once the COVID-19 crisis is past, rolling IRC conformity states must be monitored, as these states could decouple from these CARES Act provisions for purposes of state revenue.

State of Hawaii’s current legislative session is in recess due to the COVID-19 situation, thus Hawaii has not yet adopted these tax provisions.

***It is possible that provisions of this CARES Act may be revised as it is being implemented.***