

# CORONAVIRUS INFORMATION & UPDATES

March 26, 2020

## Bipartisan Proposal for Coronavirus Aid, Relief, and Economic Security Act (CARES Act) – Analysis of Certain Key Tax-Related Provisions

A bipartisan agreement for the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), commonly referred to as Phase 3 of the federal government's response to the coronavirus outbreak, was signed by President Trump on March 27, after having been passed by the Senate on March 25, 2020 and the House on March 27, 2020. This version updated a prior Senate bill introduced on March 18, 2020. The Senate vote was unanimous (96-0) of those present. The key tax provisions are summarized in this Alert.

Key amongst its relief provisions, the bipartisan CARES Act, if passed by the House of Representatives, would:

- Expand Small Business Loans to businesses with up to 500 employees (including loosening existing affiliation rules for hotel, food service and franchise businesses), with increased forgiveness of loans used to meet payroll (the Paycheck Protection Program).
- Establish the Exchange Stabilization Fund to provide direct loans (including funds earmarked for the airline industry and businesses important to national security), loan guarantees and investments broadly in support of the Federal Reserve's efforts to mitigate adverse economic consequences.
- Extend Unemployment Insurance Benefits to self-employed individuals and those with limited work histories, provide supplemental benefits for all individuals and extend coverage for up to four months.
- Provide extensive aid to the healthcare industry and states in addressing the COVID-19 crisis.

The CARES Act also implements several key individual and business tax provisions intended to provide relief to impacted businesses, affected individuals and encourage retention of employees.

Previously, on Thursday night, March 18, 2020, Mitch McConnell introduced into the Senate a prior version of the CARES Act (the "Senate Proposal") that did not pass the Senate. Ropes & Gray published two Alerts on the Senate Proposal, on the [tax-related sections](#) and on [all sections](#). The CARES Act as passed by the Senate on March 25 reflected bipartisan negotiations, and is expected to be put to a vote by the House of Representatives on Friday morning.

Certain key highlighted tax-related provisions of the CARES Act are summarized below, with differences from the March 18 Senate Proposal noted.

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<b>Part A: Summary of Certain Key Tax-Related Provisions, Changes from Senate Proposal</b>		
	<b>March 18 Senate Proposal</b>	<b>March 25 CARES Act</b>
<b>Loan Forgiveness Not Income</b>	A loan that is guaranteed under section 7(a) of the Small Business Act (as amended by the CARES Act), that is used for certain permitted purposes (including payroll obligations) and that is made to an eligible recipient from March 1, 2020 through June 30, 2020 is eligible for forgiveness. Any resulting cancellation of such loan is excluded from gross income (so no “cancellation of debt income” or “CODI” under section 61(a)(12) of the Internal Revenue Code of 1986 (the Code)). (See § 1105 of the Senate Proposal.) <sup>1</sup>	Permitted purposes giving rise to, and the maximum amount of, loan forgiveness are adjusted, but amounts forgiven will still be excluded from gross income, consistent with Senate Proposal. (See § 1106 of the CARES Act.)
<b>Individual Rebates</b>	<p>Authorizes a refund of tax for an eligible individual (generally an individual not a nonresident alien individual) to the lesser of tax reflected on an individual’s tax return or \$1,200 per individual (\$2,400 for joint return), but not less than \$600 per individual (\$1,200 for joint return). Taxpayers will receive an additional \$500 per child. Limitations include being subject to reduced rebate where AGI exceeds \$75,000 per individual (\$150,000 for joint return).</p> <p>The Secretary shall refund such amount as rapidly as possible. (See § 2101.)</p>	<p>The revised CARES Act provides for a flat rebate in the form of a credit against eligible individuals’ 2020 tax liability of \$1,200 per individual (\$2,400 for joint filers). The revised CARES Act provides for an “advance rebate” in the form of a credit treated as a tax payment, up to the full amount, against 2019 tax liability (or 2018, if a taxpayer has not yet filed a 2019 return). Any unused excess is creditable against 2020 liability. If an individual has not filed returns for either 2018 or 2019, the IRS will use certain other available information to determine eligibility for refund relief.</p> <p>The IRS will automatically process refunds to the extent possible, and any remaining credits will be claimed on 2020 tax returns.</p> <p>The income-based phase-outs remain the same. (See § 2201.)</p>

<sup>1</sup> § references in each column refer to the sections of each respective Act, whether the Senate Proposal on the left or the revised CARES Act on the right.

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<b>Part A: Summary of Certain Key Tax-Related Provisions, Changes from Senate Proposal</b>		
	<b>March 18 Senate Proposal</b>	<b>March 25 CARES Act</b>
<b>2019 Filings and Payments</b>	Extends the April 15, 2020 filing deadline for 2019 to July 15, 2020. Accordingly, 2019 tax payments due on April 15, 2020 would be deferred (with no cap on the amount deferred) until July 15, 2020. (See § 2102.)	Deleted. The revised CARES Act does not provide for further extensions of the deadline to pay tax and/or file tax returns for 2019.  Note, however, that Notice 2020-18 issued by the Treasury on Friday, March 20, confirms that the IRS will extend tax filing and payment deadlines from April 15, 2020 to July 15, 2020 for both filing of 2019 income tax returns and payment of tax and that there is no cap on payment amounts deferred to July 15, 2020. Notice 2020-18 remains in effect.
<b>2020 Estimated Payments</b>	Postpones estimated tax payments due from the date of enactment until October 15, 2020 (with no cap). In effect, the first three (3) quarterly payments will all be due on October 15. (See § 2102.)	Deleted. The revised CARES Act does not provide for extensions of the deadline to pay estimated tax and/or file tax returns for 2020.  Note, however, that Notice 2020-18 extends the payment deadline for 2020 Quarter 1 estimated tax installments from April 15, 2020 to July 15, 2020. Notice 2020-18 remains in effect.
<b>Corporations' Estimated Payments</b>	Defers corporations' 2020 estimated tax payments until October 15, 2020. (See § 2201.)	Deleted. The revised CARES Act does not provide for extensions of the deadline to pay estimated tax and/or file tax returns for 2020.  Note, however, that Notice 2020-18 extends the payment deadline for 2020 Quarter 1 estimated tax installments from April 15, 2020 to July 15, 2020. Notice 2020-18 remains in effect.

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<b>Part A: Summary of Certain Key Tax-Related Provisions, Changes from Senate Proposal</b>		
	<b>March 18 Senate Proposal</b>	<b>March 25 CARES Act</b>
<b>Employer Social Security Payroll Tax Payments</b>	Delays payment of employer social security payroll taxes (and 50% of self-employment taxes, which is the equivalent of the employer portion) from date of enactment to January 1, 2021. 50% of this deferred amount is paid on December 31, 2021. The remaining 50% is paid on December 31, 2022. (See § 2202.)	Same. (See § 2302.)
<b>NOL Changes</b>	A net operating loss (NOL) arising in a taxable year beginning after December 31, 2017, and before January 1, 2020, generally can be <u>carried back</u> five years preceding the taxable year of such loss. In addition, the effective date of the “80% NOL limitation” rule enacted in December 2017 is changed to be effective for tax years beginning after December 31, 2020, thereby making <u>100% of NOLs</u> generally available for offset in 2018, 2019 and 2020. (See §§ 2203 and 2204.)	The revised CARES Act is identical, but corrected “January 1, 2020” to read “January 1, 2021.” (See §§ 2303 and 2304.)
<b>Business Interest Expense Deductions</b>	Business interest expense deductions can be taken for up to 50% of business income (up from 30%) for 2019 and 2020. For 2020, the business can elect to use 2019 income to determine the limitation amount. (See § 2206.)	Same. (See § 2306.)
<b>Bonus Depreciation</b>	One hundred percent bonus depreciation now applies to qualified improvement property. (See § 2207.)	Same. (See § 2307.)

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**Part B: Summary of Certain New Key Tax-Related Provisions**

March 25 CARES Act

<p><b>Employee Retention Credit for Employers Subject to Closure Due to COVID-19</b></p>	<p>Provides eligible employers a refundable credit against applicable employment taxes for each calendar quarter for 50% of qualified wages paid to employees. Section 2301 only applies to wages paid after March 12, 2020 and before January 1, 2021.</p> <p>Employers are eligible for this credit if the employer’s operations were fully or partially suspended by a governmental authority due to COVID-19 or if gross receipts are less than 50% of gross receipts for the same calendar quarter in the prior year.</p> <p>If an eligible employer has 100 or fewer full-time employees, all employee wages are qualified wages. For eligible employers with more than 100 employees, qualified wages are wages paid to an employee unable to provide services due to either (i) the when an employer’s operations were being fully or partially suspended by governmental authority due to COVID-19, or the employer’s decline in gross receipts (as described above).</p> <p>The amount of qualified wages for any employee for all calendar quarters shall not exceed \$10,000, which includes qualified health plan expenses allocable to such wages.</p> <p>Employers receiving a covered loan under section 7(a)(36) of the Small Business Act (as added by section 1102 of the CARES Act) shall not be eligible for the credit under this provision. (See § 2301.)</p>
<p><b>Student Loans</b></p>	<p>Payments made by an employer after date of enactment but before January 1, 2021 for an employee’s principal or interest on qualified educational loans may be excluded from income up to the maximum exclusion amount of \$5,250. (See § 2206.)</p> <p>Payments due on federally held student loans are suspended, and interest will not accrue through September 30, 2020. All involuntary collections relating to student loans are also suspended, including garnishment of wages and reductions of tax refunds and other Federal benefits. (See § 3513.)</p>

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<b>Part C: Summary of Other Tax-Related Provisions, Changes from Senate Proposal</b>		
	<b>March 18 Senate Proposal</b>	<b>March 25 CARES Act</b>
<b>Retirement Funds and Single Employer Plans</b>	<p>Provides individuals with up to \$100,000 in distributions from their eligible employer retirement plan for certain eligible COVID-19-related purposes without incurring any fines. Any distributed amount may be repaid over three years. Any increase to income due to this distribution is prorated over three years. (See § 2102.)</p> <p>Increases the limit for loans from certain retirement accounts from \$50,000 to \$100,000. (See § 2103.)</p>	<p>Same. (See §§ 2202 and 2203.)</p> <p>In addition, single-employer plan funding deadlines are delayed. (See § 3608.)</p>
<b>Charitable Contributions</b>	<p>For taxable years beginning in 2020, deduction of up to \$300 for qualifying charitable contributions made by non-itemizing taxpayers. Other limitations on charitable deductions are eased. (See §§ 2104 and 2105.)</p>	<p>Same. (See §§ 2204 and 2205.)</p>
<b>AMT</b>	<p>Increased credit available for prior year minimum tax liability of corporations. (See § 2205.)</p>	<p>Same. (See § 2305.)</p>
<b>Section 965 Installment Election</b>	<p>Prior installment election under section 965 of the Code shall not prevent the credit or refund of overpayments or increase estimated taxes, as no future installment shall be taken into account as a liability for purposes of such calculations. (See § 2208.)</p>	<p>Deleted, as corresponding changes to the deadlines for payment of 2019 tax and 2020 estimated tax were not included in revised CARES Act.</p>
<b>CFC Downward Attribution Revision</b>	<p>Restoration of limitation on downward attribution of stock ownership in applying constructive ownership rules for purposes of determining whether a corporation is a “controlled foreign corporation” (or “CFC”) and implementation of a targeted rule to curb specific abuse involving use of CFCs. (See § 2209.)</p>	<p>Deleted.</p>
<b>Aviation Industry</b>	<p>During the excise tax holiday period (from date of enactment through December 31, 2020), certain taxes will be suspended on any payments regarding transportation by air and aviation fuel. (See § 3201.)</p>	<p>Same. (See § 4007.)</p>

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<b>Part C: Summary of Other Tax-Related Provisions, Changes from Senate Proposal</b>		
	<b>March 18 Senate Proposal</b>	<b>March 25 CARES Act</b>
<b>Telehealth</b>	Increase provides a safe harbor for high deductible health plans to provide telehealth and other remote care services. (See § 4401.)	Same. (See § 3701.)
<b>HSAs &amp; MSAs</b>	Expands definition of qualified medical expenses for qualified health savings accounts, medical savings accounts and health flexible spending accounts. (See §§ 4402 and 4403.)	Same, except direct primary care services (Senate Proposal § 4403) was deleted. (See § 3702.)
<b>Phase 2 Act Corrections</b>	Pursuant to sections 7001 and 7003 of the Families First Coronavirus Response Act (“Phase 2 Act”), subsection (h) is added to provide that the Treasury will waive any penalties imposed under section 6656 of the Code for failing to make a tax deposit under sections 3111(a) or 3221(a) of the Code if the failure to pay was due to anticipation of receiving a credit under the applicable section. Pursuant to sections 7002 and 7004 of the Phase 2 Act, subsections (h) and (f), respectively, are added to provide the allowance of an advance payment of the credit under sections 7002(a) and 7004(a), respectively, subject to certain limitations, and allowing for the reconciliation of the amount of the advanced payment with the amount advanced at the time of filing. (See § 4607.)	In addition to the penalty relief provided by the Senate Proposal, the revised CARES Act further amends sections 7001 and 7003 of the Phase 2 Act by providing that in anticipation of such credits, including the refundable portions, the credits may be advanced up to the amounts calculated under subsections 7001(a) and 7003(a), subject to certain limitations. (See § 3606.)  Various technical corrections to the Phase 2 Act. (See § 3611.)

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**Part D: Summary of Other New Tax-Related Provisions**

March 25 CARES Act

<p><b>Relief for Hand Sanitizer Producers</b></p>	<p>This provision amends section 5214(a) of the Code and provides that no excise tax will apply to distilled spirits used or contained in hand sanitizer produced and distributed in a manner consistent with Food and Drug Administration guidance related to COVID-19. This temporary waiver of excise tax is effective for the calendar year 2020. (See § 2308.)</p>
<p><b>Guaranteed Loans Not to Affect Application of Section 382</b></p>	<p>Loans issued or guaranteed by the Treasury as part of § 4003 will be treated as debt under the Code issued for their stated principal amount and the interest will be treated as qualified stated interest. In addition, the Treasury Department may issue regulations providing that the acquisition of equity will not result in an ownership change under section 382 of the Code. (See § 4003.)</p>
<p><b>Expansion of Small Employer Charity Pension Plan Rules</b></p>	<p>Application of cooperative and small employer charity pension plan rules to certain charitable employers whose primary exempt purpose is providing services with respect to mothers and children. (See § 3609.)</p>