

CORONAVIRUS INFORMATION & UPDATES

March 20, 2020

Senate Proposal for Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

*****This legal development is still in progress. We will update this Alert as the Act makes its way through the legislative process.*****

On Thursday night, March 18, 2020, Mitch McConnell introduced into the Senate proposed language 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.

Complete language for the CARES Act's proposal can be found [here](#).

Certain key highlighted provisions of the CARES Act are summarized immediately below. Further below, these sections are included in a high-level summary of all of the CARES Act's tax-related sections.

CARES Act—Highlight of Certain Key Tax-Related Provisions

- **Loan Forgiven Not Income:** 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 during 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 CARES Act.)
- **Individual Rebates:** 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.)

The Secretary shall refund such amount as rapidly as possible. (See § 2101.)

- **2019 Filing & Payment Deadline Deferred:** Extension of 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.)
 - Notice 2020-18 issued Friday evening by the Treasury confirms that the IRS will apply these deadline extensions from April 15, 2020 to July 15, 2020 for both filing of 2019 income taxes and payment thereof and that there is no cap on payment amounts deferred to July 15, 2020.
- **2020 Estimated Tax Payments Deferred:** Postponement of 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.)

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- **Corporations' Estimated Tax Payments Pushed:** Defers corporations' 2020 estimated tax payments until October 15, 2020. (See § 2201.)
- **Employer Social Security Payroll Tax Payments Deferred:** Delay of payment of employer social security payroll taxes (and 50% of self-employment taxes, which is the equivalent of the employer portion) from when the CARES Act is enacted 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.)
- **NOL Changes:** A net operating loss (NOL) arising in a taxable year beginning after December 31, 2017, and before January 1, 2020, generally can be carried back 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 100% of NOLs generally available for offset in 2018, 2019 and 2020. (See §§ 2203 and 2204.)
- **Business Interest Expense Deductions:** 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.)
- **Bonus Depreciation:** One hundred percent bonus depreciation now applies to qualified improvement property. (See § 2207.)

CARES Act—Summary of All Tax-Related Sections

Division A—Small Business Interruption Loans

- **Loan Forgiven Not Income:** A loan that is guaranteed under section 7(a) of the Small Business Act (as amended by the CARES Act), is used for certain permitted purposes (including payroll obligations) and that is made to an eligible recipient during 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")). (§ 1105.)

Division B—Relief for Individuals, Families and Businesses

Title I Rebates and Other Individual Provisions

- **Individual Rebates:** 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).

The Secretary shall refund such amount as rapidly as possible. (§ 2101.)

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- **2019 Filing & Payment Deadline Deferred:** Extension of 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. (§ 2102).
 - Notice 2020-18 issued Friday evening by the Treasury confirms that the IRS will apply these deadline extensions from April 15, 2020 to July 15, 2020 for both filing of 2019 income taxes and payment thereof and that there is no cap on payment amounts deferred to July 15, 2020.
- **2020 Estimated Tax Payments Deferred:** Postponement of 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 all at once. (§ 2102.)
- **Retirement Funds:** Provides individuals with up to \$100,000 in distributions from their eligible employer retirement plan for certain eligible COVID-related purposes without incurring any fines. Any distributed amount may be repaid over 3 years. Any increase to income due to this distribution is prorated over 3 years. (§ 2103.)
- **More Retirement Funds:** Increase the limit for loans from certain retirement accounts from \$50,000 to \$100,000. (§ 2103.)
- **Increases Deductibility of Charitable Contributions:** 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. (§§ 2104 and 2105.)

Title II Business Provisions

- **Corporations' Estimated Tax Payments Pushed:** Defers corporations' 2020 estimated tax payments until October 15, 2020. (§ 2201.)
- **Employer Social Security Payroll Tax Payments Deferred:** Delay of payment of employer social security payroll taxes (and 50% of self-employment taxes, which is the equivalent of the employer portion) from when the CARES Act is enacted to January 1, 2021. 50% of this deferred amount is paid on December 31, 2021. The remaining 50% is paid on December 31, 2022. (§ 2202.)
- **NOL Changes:** A net operating loss (NOL) arising in a taxable year beginning after December 31, 2017, and before January 1, 2020, generally can be carried back 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 100% of NOLs generally available for offset in 2018, 2019 and 2020. (§§ 2203 and 2204.)
- **AMT:** Increased credit available for prior year minimum tax liability of corporations. (§ 2205.)

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- **Business Interest Expense Deductions:** 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 use 2019 income to determine the limitation amount. (§ 2206.)
- **Bonus Depreciation:** One hundred percent bonus depreciation now applies to qualified improvement property. (§ 2207.)
- **Clarification of Impact of Installment Election under Section 965:** Prior installment election under section 965 of the tax 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. (§ 2208.)
- **Limitation on CFC Downward Attribution:** 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. (§ 2209.)

Division C—Assistance to Severely Distressed Sectors of the United States Economy

Title II – Aviation Excise Taxes

- **Suspension of Certain Aviation Excise Taxes:** 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 kerosene used in commercial aviation. (§ 3201.)

Division D—Health Care Response

Title I Health Provisions

- **Telehealth:** Increase provides a safe harbor for high deductible health plans to provide telehealth and other remote care services. (§ 4401.)
- **Increase in Qualified Medical Expenses for HSAs and MSAs:** Expanded definition of qualified medical expenses for qualified health savings accounts, medical savings accounts and health flexible spending accounts. (§§ 4402 and 4403.)

Title III Labor Provisions

- **Certain Penalties Waived (Etc.) Related to Anticipation of Enactment of Phase 2 Relief:** Pursuant to sections 7001 and 7003 of the Families First Coronavirus Response Act (“Phase 2 Relief”), subsection (h) is added to provide that the Treasury will waive any penalties imposed under section 6656 of the tax code for failing to make a tax deposit under sections 3111(a) or 3221(a) of the tax 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 Families First Coronavirus Response 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,

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and allowing for the reconciliation of the amount of the advanced payment with the amount advanced at the time of filing. (§ 4607.)