

March 31, 2020

Dear Clients and Friends:

We hope that you are keeping yourself, your loved ones, and your community safe from COVID-19 (commonly referred to as the Coronavirus). Along with those paramount health concerns, you may be wondering about some of the recent tax changes meant to help everyone coping with the Coronavirus fallout. In addition to the summary of IRS actions and earlier-enacted federal tax legislation that we previously shared, we now want to update you on the tax-related provisions in the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Congress's gigantic economic stimulus package that the President signed into law on March 27, 2020.

Recovery rebates for individuals. To help individuals stay afloat during this time of economic uncertainty, the government will send up to \$1,200 payments to eligible taxpayers and \$2,400 for married couples filing joint returns. An additional \$500 additional payment will be sent to taxpayers for each qualifying child dependent under age 17 (using the qualification rules under the Child Tax Credit).

Rebates are gradually phased out, at a rate of 5% of the individual's adjusted gross income over \$75,000 (singles or marrieds filing separately), \$122,500 (head of household), and \$150,000 (joint). There is no income floor or "phase-in"-all recipients who are under the phaseout threshold will receive the same amounts. Tax filers must have provided, on the relevant tax returns or other documents (see below), Social Security Numbers (SSNs) for each family member for whom a rebate is claimed. Adoption taxpayer identification numbers will be accepted for adopted children. SSNs are not required for spouses of active military members. The rebates are not available to nonresident aliens, to estates and trusts, or to individuals who themselves could be claimed as dependents.

The rebates will be paid out in the form of checks or direct deposits. Most individuals won't have to take any action to receive a rebate. IRS will compute the rebate based on a taxpayer's tax year 2019 return (or tax year 2018, if no 2019 return has yet been filed). If no 2018 return has been filed, IRS will use information for 2019 provided in Form SSA-1099, Social Security Benefit Statement, or Form RRB-1099, Social Security Equivalent Benefit Statement.

Rebates are payable whether or not tax is owed. Thus, individuals who had little or no income, such as those who filed returns simply to claim the refundable earned income credit or child tax credit, qualify for a rebate.

Waiver of 10% early distribution penalty. The additional 10% tax on early distributions from IRAs and defined contribution plans (such as 401(k) plans) is waived for distributions made between January 1 and December 31, 2020 by a person who (or whose family) is infected with the Coronavirus or who is economically harmed by the Coronavirus (a qualified individual). Penalty-free distributions are limited to \$100,000, and may, subject to guidelines, be re-contributed to the plan or IRA. Income arising from the distributions is spread out over three years unless the employee elects to turn down the spread out. Employers may amend defined contribution plans to provide for these distributions. Additionally, defined contribution plans are permitted additional flexibility in the amount and repayment terms of loans to employees who are qualified individuals.

Waiver of required distribution rules. Required minimum distributions that otherwise would have to be made in 2020 from defined contribution plans (such as 401(k) plans) and IRAs are waived. This includes distributions that would have been required by April 1, 2020, due to the account owner's having turned age 70 1/2 in 2019.

Charitable deduction liberalizations. The CARES Act makes four significant liberalizations to the rules governing charitable deductions:

- (1) Individuals will be able to claim a \$300 above-the-line deduction for cash contributions made, generally, to public charities in 2020. This rule effectively allows a limited charitable deduction to taxpayers claiming the standard deduction.
- (2) The limitation on charitable deductions for individuals that is generally 60% of modified adjusted gross income (the contribution base) doesn't apply to cash contributions made, generally, to public charities in 2020 (qualifying contributions). Instead, an individual's qualifying contributions, reduced by other contributions, can be as much as 100% of the contribution base. No connection between the contributions and COVID-19 activities is required.
- (3) Similarly, the limitation on charitable deductions for corporations that is generally 10% of (modified) taxable income doesn't apply to qualifying contributions made in 2020. Instead, a corporation's qualifying contributions, reduced by other contributions, can be as much as 25% of (modified) taxable income. No connection between the contributions and COVID-19 activities is required.
- (4) For contributions of food inventory made in 2020, the deduction limitation increases from 15% to 25% of taxable

income for C corporations and, for other taxpayers, from 15% to 25% of the net aggregate income from all businesses from which the contributions were made.

Exclusion for employer payments of student loans. An employee currently may exclude \$5,250 from income for benefits from an employer-sponsored educational assistance program. The CARES Act expands the definition of expenses qualifying for the exclusion to include employer payments of student loan debt made before January 1, 2021.

Break for remote care services provided by high deductible health plans. For plan years beginning before 2021, the CARES Act allows high deductible health plans to pay for expenses for tele-health and other remote services without regard to the deductible amount for the plan.

Break for nonprescription medical products. For amounts paid after December 31, 2019, the CARES Act allows amounts paid from Health Savings Accounts and Archer Medical Savings Accounts to be treated as paid for medical care even if they aren't paid under a prescription. And, amounts paid for menstrual care products are treated as amounts paid for medical care. For reimbursements after December 31, 2019, the same rules apply to Flexible Spending Arrangements and Health Reimbursement Arrangements.

BUSINESS ONLY PROVISIONS

Employee retention credit for employers. Eligible employers can qualify for a refundable credit against, generally, the employer's 6.2% portion of the Social Security (OASDI) payroll tax (or against the Railroad Retirement tax) for 50% of certain wages (below) paid to employees during the COVID-19 crisis.

The credit is available to employers carrying on business during 2020, including non-profits (but not government entities), whose operations for a calendar quarter have been fully or partially suspended as a result of a government order limiting commerce, travel or group meetings. The credit is also available to employers who have experienced a more than 50% reduction in quarterly receipts, measured on a year-over-year basis relative to the corresponding 2019 quarter, with the eligible quarters continuing until the quarter after there is a quarter in which receipts are greater than 80% of the receipts for the corresponding 2019 quarter.

For employers with more than 100 employees in 2019, the eligible wages are wages of employees who aren't providing services because of the business suspension or reduction in gross receipts described above.

For employers with 100 or fewer full-time employees in 2019, all employee wages are eligible, even if employees haven't been prevented from providing services. The credit is provided for wages and compensation, including health benefits, and is provided for the first \$10,000 in eligible wages and compensation paid by the employer to an employee. Thus, the credit is a maximum \$5,000 per employee.

Wages don't include (1) wages taken into account for purposes of the payroll credits provided by the earlier Families First Coronavirus Response Act for required paid sick leave or required paid family leave, (2) wages taken into account for the employer income tax credit for paid family and medical leave (under [Code Sec. 45S](#)) or (3) wages in a period in which an employer is allowed for an employee a work opportunity credit (under [Code Sec. 51](#)). An employer can elect to not have the credit apply on a quarter-by-quarter basis.

The IRS has authority to advance payments to eligible employers and to waive penalties for employers who do not deposit applicable payroll taxes in reasonable anticipation of receiving the credit. The credit is not available to employers receiving Small Business Interruption Loans. The credit is provided for wages paid after March 12, 2020 through December 31, 2020.

Delayed payment of employer payroll taxes. Taxpayers (including self-employeds) will be able to defer paying the employer portion of certain payroll taxes through the end of 2020, with all 2020 deferred amounts due in two equal installments, one at the end of 2021, the other at the end of 2022. Taxes that can be deferred include the 6.2% employer portion of the Social Security (OASDI) payroll tax and the employer and employee representative portion of Railroad Retirement taxes (that are attributable to the employer 6.2% Social Security (OASDI) rate). The relief isn't available if the taxpayer has had debt forgiveness under the CARES Act for certain loans under the Small Business Act as modified by the CARES Act (see below). For self-employeds, the deferral applies to 50% of the Self-Employment Contributions Act tax liability (including any related estimated tax liability).

Pension funding delay. The CARES Act gives single employer pension plan companies more time to meet their funding obligations by delaying the due date for any contribution otherwise due during 2020 until January 1, 2021. At that time, contributions due earlier will be due with interest. Also, a plan can treat its status for benefit restrictions as of December 31, 2019 as applying throughout 2020.

Certain SBA loan debt forgiveness isn't taxable. Amounts of Small Business Administration Section 7(a)(36) guaranteed loans that are forgiven under the CARES Act aren't taxable as discharge of indebtedness income if the forgiven amounts are used for one of several permitted purposes. The loans have to be made during the period

beginning on February 15, 2020 and ending on June 30, 2020.

PPP Information

- Overview - <https://home.treasury.gov/system/files/136/PPP%20--%20Overview.pdf>
- Fact Sheet - <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>
- Application - <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf>

Other Loan Programs

- SBA Disaster Loans - <https://covid19relief.sba.gov/#/>
- JARI – CWCA Program - <https://www.jari.com/financing-incentives/covid-19-working-capital-access/>
- Small Business Development Centers - <http://pasbdc.org/services/continuity/disruption-recovery>

Other CARES Act Provisions:

- *Net operating loss liberalizations.*
- *Deferral of noncorporate taxpayer loss limits.*
- *Acceleration of corporate AMT liability credit.*
- *Relaxation of business interest deduction limit.*
- *Technical correction to restore faster write-offs for interior building improvements.*
- *Accelerated payment of credits for required paid sick leave and family leave.*

IRS information site. Ongoing information on the IRS and tax legislation response to COVID- 19 can be found at <https://www.irs.gov/coronavirus>.

We wish all of you the very best in a difficult time.

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