

CARES Act Tax Provisions Responding to Coronavirus

Employee Retention Credit for Employers Subject to Closure Due to COVID-19 (Section 2301)

For employers subject to closure or significant loss of business due to COVID-19, this provision provides a refundable payroll tax credit for 50% of wages paid by employers to employees during the COVID-19 crisis.

An eligible employer includes:

- Employers whose operations were fully or partially suspended during any calendar quarter during 2020 due to a COVID-19 shutdown order, OR
- Employers whose gross receipts declined by more than 50% when compared to the same quarter in the prior year.

The credit is based on qualified wages paid to the employee. The amount of qualified wages that can be included in the calculation of the credit is dependent on the employer's number of full-time employees.

- For eligible employers with greater than 100 full-time employees in 2019, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related situations described above.
- For eligible employers with 100 or fewer full-time employees in 2019, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order.

The credit is capped at \$10,000 of compensation, including health benefits, paid to an eligible employee. The credit is applicable for wages paid or incurred from March 13 through December 31, 2020. An employer is not eligible for the credit if the employer receives a Small Business Act loan under the CARES Act.

Delay of Payment of Employer Payroll Taxes (Section 2302)

Employers generally are responsible for paying certain employment taxes, i.e. Federal Insurance Contribution Act (FICA) taxes, with respect to their employees. The employer's responsibility includes a 6.2% share of social security tax and a 1.45% share of Medicare tax on employee wages. This provision allows employers and self-employed individuals to defer payment of the employer's 6.2% share of the social security tax they otherwise are responsible for paying to the federal government with respect to their employees.

The deferral period runs through December 31, 2020. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount deferred required to be paid by December 31, 2021 and the other half by December 31, 2022. Employers who received Small Business Act loans that were forgiven under the CARES Act are not eligible for this deferral.

Modifications for Net Operating Losses (Section 2303)

Prior to the Tax Cuts and Jobs Act (TCJA), a corporation was able to carry back any net operating losses (NOL's) for up to two years. TCJA revised the NOL rules so that such losses could not be carried back at all, only carried forward. In addition, for years 2018 and forward, any NOL deduction could not be used to zero out a corporation's income as the NOL deduction could not exceed 80% of the corporation's taxable income.

This provision modifies the limitations on a corporation's use of losses. The provision provides that an NOL arising in a tax year beginning in 2018, 2019 or 2020 can be carried back five years. The provision also temporarily removes the taxable income limitation to allow an NOL to fully offset income. Companies with unused losses arising in 2018, 2019 or 2020 that paid tax in one or more of the five preceding tax years will be able to immediately file amended returns seeking a refund of taxes paid, which can provide much needed cash flow and liquidity during the crisis.

Modification of Limitation on Losses for Taxpayers Other Than Corporations (Section 2304)

In an effort to assist taxpayers with their losses that are organized as other than corporations, this provision modifies the loss limitation rules applicable to pass-through businesses and sole proprietors, so they can also utilize excess business losses and access much needed cash flow.

Modification of Credit for Prior Year Minimum Tax Liability of Corporations (section 2305)

TCJA repealed the alternative minimum tax (AMT) with respect to corporations. If a corporation had AMT credits for years prior to 2018 that were able to be carried forward, TCJA allows the credits to be refundable in 2018 through 2021. The amount refundable in each year is basically equal to 50% of the remainder of the credit in that year.

This provision modifies the refundable credit so that corporations can take the entire amount in 2018 and 2019. Also, corporations that prefer to can elect to take the entire amount in 2018.

Modifications of Limitations on Business Interest (Section 2306)

A limit on the deductibility of interest expense that a corporation pays on its loans was imposed by TCJA. The limit is equal to 30% of the corporations adjusted taxable income.

This provision increases the limitation to 50% of the corporations adjusted taxable income for 2019 and 2020. In addition, a corporation can elect to use its 2019 adjusted taxable income in 2020, allowing the 50% limitation to be higher in 2020 if earnings go down in 2020 due to the crisis.

Technical Amendments Regarding Qualified Improvement Property (Section 2307)

One of the goals of the TCJA was to expand the availability of 100% bonus depreciation. The expansion was intended to cover not only investments in new capital assets and equipment, but also to improvements made to commercial property. This would give retail establishments, such as restaurants and other hospitality businesses, a way to expense certain purchases in the year the purchases are made. Due to a drafting error, improvements to the interior of non-residential buildings were not eligible for expensing because the recovery period of such improvements was inadvertently classified as a 39-year recovery period instead of the intended 15-year recovery period. Only property with a recovery period of 20 years or less is eligible for the bonus depreciation.

This provision fixes the drafting error retroactively to property placed in service in 2018 and after. Companies will be able to amend prior year returns to take advantage of any increased bonus depreciation allowed due to the correction.

Temporary Exception from Excise Tax for Alcohol Used to Produce Hand Sanitizer (Section 2308)

To increase the availability of hand sanitizer, this provision waives the federal excise tax on any distilled spirits used for or contained in hand sanitizer that is produced and distributed in a manner consistent with guidance issued by the Food and Drug Administration. This provision is effective for calendar year 2020.

Allowance of Partial Above the Line Deduction for Charitable Contributions (Section 2204)

This provision provides a new above-the-line deduction for individuals who do not elect to itemize deductions. The above-the-line deduction is for charitable contributions of cash of up to \$300. The incentive applies to contributions made in 2020 and would be claimed on tax forms next year.

Modification of Limitations on Charitable Contributions During 2020 (Section 2205)

This provision increases the existing cap on cash contributions made in 2020 for those who itemize, raising it from 60 percent of adjusted gross income to 100 percent. For corporations, the cash contribution limit for 2020 is increased from 10 percent of taxable income to 25 percent. The limit on the deductibility of food donations from corporations is increased to 25 percent of taxable income, up from the current 15 percent cap.

Exclusion for Certain Employer Payments of Student Loans (Section 2206)

There is an exclusion from an employee's income for up to \$5,250 in employer-paid educational assistance. This provision expands the definition of educational assistance to include payments of principal and/or interest by the employer to the employee or a lender on any qualified education loan during 2020. Any such student loan payments made by the employer during 2020 will be excluded from the employee's income, subject to the \$5,250 cap.