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Coronavirus Aid, Relief, and Economic Security (CARES) Act

On March 27, 2020 President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") into law. Below is summary of the highlights of the CARES Act. Facts, figures, and analysis are based on our best efforts, but accuracy is not guaranteed. Consult a tax and/or legal professional for additional guidance.

Summary of Provisions that Impact Individuals

I. **Recovery Credit:** Provides $1,200 to Americans making $75,000 or less ($150,000 in the case of joint returns and $112,500 for head of household) and $500 for each child, to be paid "as rapidly as possible."
II. **Tax Deadline:** Tax filing deadline is now July 15th.
III. **Unemployment Insurance:** Expands eligibility for unemployment insurance and provides people with an additional $600 per week on top of the unemployment amount determined by each state.
IV. **Qualified Charitable Contribution:** New above-the-line deduction for taxpayers that do not itemize and who make charitable contributions of up to $300.
V. **AGI limit on cash contributions:** AGI limit on cash charitable contributions is eliminated for 2020.
VI. **Minimum Required Distributions:** The CARES Act temporarily waives RMD requirements for 2020. The Bill does not prevent individuals from "returning" unwanted and no longer necessary RMDs.

Recovery Credit

I. **Eligibility:** Beginning in 2020, "eligible individual" taxpayers can benefit from a tax credit equal to the sum of: (i) $1,200 for single filers ($2,400 for those filing a joint return) plus (ii) an amount equal to the product of (a) $500 multiplied by (b) the number of qualifying children. However, the aforementioned tax credits will be "phased-out" by 5% of the amount by which such eligible taxpayer's adjusted gross income exceeds: (i) $150,000 for joint-filers, (ii) $112,500 for heads of household, and (iii) $75,000 for all other types of filers.
   - Checks will be based on taxpayers 2018 or 2019 tax returns, the most recent one filed.

II. **Upfront Payment:** The credit will be "fronted" to taxpayers, but if their 2020 return shows they deserved it, they will get it when they file their return. There will be no claw back on excess payments made to individuals that would not have qualified based on their 2020 AGI.

III. **Execution:** Checks would go out to Americans "as soon as possible". If you are receiving Social Security, the checks will be deposited into the account in which your Social Security is deposited. Otherwise, the IRS plans on sending payments electronically to the account that was authorized for a 2018 refund. Within 15 days after the payment is sent, the IRS is going to mail you a notice that tells you how much your payment was, and where it was sent. If for whatever reason there's an issue with your payment (like, say, it never arrived), the notice will also include a "phone number for the appropriate point of contact at the Internal Revenue Service" so you report the issue.

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Taxes

I. **Deadline:** Filing deadline is now July 15. Individuals won't be charged any interest, fees or penalties

II. **Qualified Charitable Contribution:** The bill includes a brand new above-the-line deduction for certain taxpayers who make charitable contributions of up to $300. Now, taxpayers who don't itemize their federal return will be able to deduct up to $300 as an above-the-line deduction, effective for 2020. Rules 1) The contribution has to be in cash (so no giving away $300 of highly appreciated securities) 2) Contribution CANNOT be used to fund a donor-advised fund or a 509(a)(3) "supporting organization" 3) The provision is permanent... in as much as tax law can be. This deduction is going to be available for what the law refers to as a "Qualified Charitable Contribution".

III. **AGI limit on cash contributions:** The CARES Act temporarily increases the AGI limit on cash contributions made to charities from a maximum of 60% of AGI (previously increased from 50% by the TCJA), to a maximum of 100% of AGI for "qualified contributions".

IV. **Medical Expenses:** Beginning in 2020, the definition of qualified medical expenses, for purposes of Health Savings Accounts (HSAs), Archer Medical Savings Accounts (MSAs), and Healthcare Flexible Spending Accounts (FSAs) is expanded to include over-the-counter medications.

Retirement Accounts

I. **Coronavirus-Related Distribution:** People affected by the coronavirus crisis would get access to up to $100,000 of their retirement savings without the 10% penalty that normally applies to money taken out before age 59 1/2. The "hardship withdrawals" of up to $100,000 would still be taxable, but account owners can pay the income tax due on the withdrawal over three years, rather than in the first year. Alternatively, they can elect to put the money back into a retirement plan or an IRA within three years from the day after the distribution happens. If distributions are rolled using this option, an amended return can (and should) be filed to claim a refund of any tax paid attributable to the rolled over amount. To qualify for the hardship distribution, the account owner or his or her spouse or dependent must have been diagnosed with the coronavirus or lost income due to a layoff, business closure, quarantine, reduction in hours, or inability to work due to a lack of child care.

II. **Enhanced Participant Loans:** A participant who qualifies for coronavirus-related distributions is permitted to take loans of up to the lesser of (1) $100,000 (increased from $50,000) or (2) 100% (increased from 50%) of the participant's vested account balance. In addition, loans from qualified retirement plans with respect to participants who qualify for coronavirus-related distributions are subject to participant loan delayed repayment relief. This relief provides that any due date for a participant loan repayment that occurs during the period beginning March 27, 2020, and ending December 31, 2020, shall be delayed for one year.

III. **Minimum Required Distributions:** The CARES Act temporarily waives RMD requirements for 2020, including any RMD that otherwise needed to be taken in 2020. More specifically, individuals who turned 70 ½ in 2019, but did not take their first RMD in 2019 (and thus, would have normally been required to take such a distribution by April 1st, 2020.

- The Bill does not prevent individuals from "returning" unwanted and no longer necessary RMDs. This may be possible two different ways.
  - If distribution took place within the last 60-days, an individual could simply write a check, or otherwise transfer an amount equal to the 'RMD' back into a retirement account before the end of the 60-day rollover window.
  - For retirement accounts owners for whom the 60-day rollover window has already expired, if the individual can claim that they have been impacted by the COVID-19 crisis enough to qualify under the liberal guidelines outlined earlier for a Coronavirus-Related Distribution, then the rollover can still be completed anytime for the next three years (from the date the distribution was received). This is limited to $100,000.

IV. **Inherited IRA RMDs:** 2020 is also disregarded for purposes of the 5-Year Rule that applies when a Non-Designated Beneficiary inherits from a decedent who died before their required beginning date. So, in effect, the 5-Year Rule becomes a 6-Year Rule if one of the 5 years included 2020.

- The change DOES NOT impact the new 10-Year Rule imposed by the SECURE Act on Non-Eligible Designated Beneficiaries.

V. After 2020, an individual's required beginning date (RBD) is determined as if this 2020 waiver of RMDs never occurred.

Summary of Provisions that Impact Businesses

I. **Paycheck Protection Program:** Forgivable SBA Loan for small businesses.

II. **Employee Retention Payroll Tax Credit:** The potential SSI Tax Credit is for 50% of the first $10,000 in qualified wages (including health plan expenses) paid to each employee commencing on March 13, 2020.

III. **Payroll Tax Deferral**: In addition to potentially receiving the SSI Tax Credit, the CARES Act allows employers and self-employed individuals to defer payment of the employer share (6.2%) of the Social Security tax on wages through the end of 2020.

IV. **Net Operating Losses:** The CARES Act allows businesses to carry back NOLs incurred in 2018, 2019, and 2020 for five years (excluding offset to untaxed foreign earnings transition tax).

Businesses

I. **Paycheck Protection Program - Forgivable SBA Loan:** The CARES Act creates a new type of loan for the United States Small Business Administration (the "SBA") to administer. Unlike the disaster loans currently available through the SBA, these loans are potentially forgivable up to 100% of the principal amount borrowed. Additionally, unlike the disaster loans, these forgivable loans are not tied directly to establishing losses suffered during the national disaster — there is a presumption of negative impact from COVID-19. These loans do not require collateral or guarantees. What this means to you is that the other eligibility requirements of the SBA loan participation (e.g., average annual receipts) are not applicable, and this program is available (i)

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to many new businesses not otherwise able to avail themselves to the SBA loan programs, and (ii) provides much friendlier terms than traditional SBA loan programs.

- **Eligibility:** Businesses, nonprofits, and veterans' organizations and tribunal concerns with less than 500 employees are eligible (unless the applicable industry has a higher size standard under the SBA rules). Certain businesses (food services and accommodation) with more than 500 employees are eligible if they have no more than 500 employees at each physical location. The loan program is even available to sole proprietors, independent contractors, and self-employed individuals (subject to additional requirements). In calculating the number of employees, business generally need to include the employees of all affiliates. This could result in portfolio companies of private equity companies and other business with common controlling ownership not being eligible for the loans. The CARES Act waives the strict SBA affiliation rules for this new loan for: (i) businesses with no more than 500 employees that is assigned a NAICS code beginning with 72; (ii) businesses operating as a franchise that is assigned a franchise identifier code by the SBA; and (iii) businesses that receive financial assistance from a company licensed under section 301 of the Small Business Investment Act. Businesses that were not provided a waiver to the SBA affiliation rules by the CARES Act would need to determine if a waiver under existing law applies.
- **Amount of Loan:** Generally, the amount of the loan is capped at the lesser of $10 million and 2.5 times the average monthly payroll costs incurred in the one-year period before the date of the loan. Payroll costs include salary/wages/tips, sick/family leave/PTO, severance payments, group health benefits (including insurance premiums), retirement benefits, and state or local taxes assessed on employee compensation. However, for any employee who is paid more than $100,000 salary, only the amount up to $100,000 (prorated for the covered period) is calculated into the number.
- **Terms of Loan:** An eligible borrower may receive one covered loan, and such proceeds may be used for: payroll costs; continuation of group health care benefits during periods of paid sick, medical, or family leave, or insurance premiums; salaries or commissions or similar compensation; interest on mortgage obligations; rent; utilities; and interest on other outstanding debt. The terms of the amount of any portion of the loan that is not forgiven will be for a term not to exceed 10 years and at an interest rate of no more than 4%.
- **Forgiveness:** The amount of the loan that is forgivable is the sum of the payroll costs, mortgage interest payment, rent, and utilities incurred or paid by the borrower during the 8-week period beginning on the loan origination date. Any portion of the loan that is forgiven is excluded from taxable income. If the recipient of the loan laid off employees or reduced wages/salaries of its workforce in the period between February 15, 2020 and June 30, 2020, the amount of forgiveness is reduced proportionally by (i) any reduction in employees retained compared to historical levels, and (ii) the decrease in pay of any employee beyond 25% of their historical compensation. Notably, furloughs would necessarily impact this loan forgiveness analysis as well. To encourage workforce stabilization, the CARES Act considers that many businesses might already have or are planning to lay off personnel or cut salaries. If those changes were made between February 15, 2020 and April 26, 2020, those changes are not counted if the business rehires the number of personnel or returns the adjusted salary, as applicable, by June 30, 2020.
- **Related Assistance:** The CARES Act also creates a new grant program under the SBA's Office of Disaster Assistance to provide quick relief for applications awaiting processing

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of SBA Economic Injury Disaster Loans ("EIDL"). Loan applicants can get up to $10,000 to cover immediate payroll, mortgage, rent, and other specified expenses. This grant does not have to be repaid. A business that receives an EIDL can apply for, or refinance its EIDL into, the forgivable loan product. Further, lenders on existing SBA backed loans are encouraged to provide payment deferments and extend maturity dates to avoid balloon payment or requirements that would increase debt as a result of deferment. The SBA will pay lenders the deferred principal and interest for a period.

II. **"Employee Retention Payroll Tax Credit"** Under the CARES Act, employers may be eligible for a refundable tax credit for the employer's share of the 6.2% Social Security tax (the "SSI Tax Credit"). The potential SSI Tax Credit is for 50% of the first $10,000 in qualified wages (including health plan expenses) paid to each employee commencing on March 13, 2020. To be eligible, an employer must (i) have had operations fully or partially suspended because of a shut-down order from a governmental authority related to COVID-19, or (ii) have had gross receipts decline by more than 50% in a calendar quarter when compared to the same quarter in 2019 (and will remain eligible until the earlier of (i) gross receipts exceeding 80% relative to the same quarter in the prior year, or (ii) December 31, 2020). For employers with more than 100 employees (based on 2019 employment levels), qualified wages are limited to wages paid to employees who were not providing services due to the COVID-19 crisis. Note, however, that the SSI Tax Credit is not available if the employer receives a covered loan from the SBA, as discussed above under Forgivable SBA Loan Program.

III. **Payroll Tax Deferral**: In addition to potentially receiving the SSI Tax Credit, the CARES Act allows employers and self-employed individuals to defer payment of the employer share (6.2%) of the Social Security tax on wages through the end of 2020. Fifty percent of the deferred tax payments will be due by December 31, 2021, and the remaining portion due by December 31, 2022. Businesses who have debt forgiven from Payroll Protection Program loans (covered below) are not allowed to delay their payments.

IV. **Net Operating Losses:** The 2017 tax reform bill changed the treatment of NOLs. The CARES Act relaxes these limitations on a corporation's use of NOLs. The CARES Act allows businesses to carry back NOLs incurred in 2018, 2019, and 2020 for five years (excluding offset to untaxed foreign earnings transition tax). Previously, these NOLs could only be carried forward. This could be significant for businesses that can carry back NOLs to offset income that was taxed at 35% before 2017 tax reform. In addition, for taxable years beginning prior to January 1, 2021, taxpayers can offset 100% of taxable income with NOL carryovers and carrybacks (instead of limiting such offsets to 80% of taxable income). If there are refunds available by operation of these new rules, corporations can use the IRS's quick refund procedures (Form 1139) to claim the refund.

V. **Business Interest Deductions:** The Tax Cuts and Jobs Act had limited the deductibility of business interest to 30% of taxable income. The allowable deduction under the CARES act has been increased to 50%.

VI. **Suspension of Non-Corporate Loss Limitation:** The 2017 tax reform bill introduced new IRC Section 461(l), which disallows the deduction of "excess business losses" by a non-corporate taxpayer during taxable years 2018 through 2026. The CARES Act removes this limitation for 2018, 2019, and 2020. It will instead apply for taxable years 2021 through 2026.

VII. **Alternative Minimum Tax ("AMT") Credits:** The 2017 tax reform bill repealed the corporate AMT. Corporate AMT credits were available to corporate taxpayers as refundable credits over several years, ending in 2021. The CARES Act accelerates a corporate taxpayer's ability to recover AMT credits, which will allow the corporation to claim a refund now by amending the corporation's tax returns for 2018 and, to the extent previously filed, 2019.

VIII. **Qualified Improvement Property:** It was recognized that a drafting error was made in the 2017 tax reform bill. The legislative history showed that Congress intended for "qualified improvement property" – defined as improvement to an interior portion of a commercial building after the building was placed in service (e.g., tenant improvements) – to have a 15-year depreciation period, which would have made those improvements also eligible for 100% bonus depreciation. Due to a drafting error, the enacted bill gave such property a 39-year depreciation period, which also meant those improvements were not eligible for 100% bonus depreciation. The IRS took the position that an amendment to the statute was required to fix the error. The CARES Act fixes this so-called "retail glitch" retroactively.

Miscellaneous:

I. **Student Loan Repayment-Employee Education Assistance Program:** Employers may provide a student loan repayment benefit to employees on a tax-free basis of up to $5,250 annually towards an employee's student loans. The cap considers both any new student loan repayment benefit as well as other educational assistance currently provided by the employer. The provision applies to any student loan payments made by an employer on behalf of an employee after March 27, 2020, and before January 1, 2021.

II. **Exchange Stabilization Fund:** The CARES Act provides funding to the Treasury Department's Exchange Stabilization Fund ("ESF"), that will be a source of loans, loan guarantees or other support for certain businesses, states and municipalities. What this means to you is that there are other sources of funds available to you, but they come with strings and conditions that you should carefully evaluate.

- **Terms:** Loans under the ESF are limited to 5 years in duration, and the interest rate will not be less than the prevailing rates prior to the COVID-19 outbreak. Credit must not be otherwise available to the applicant, and the loan or loan guarantee must be sufficiently secure or made at rates that reflect the risk of the same.
- **Restrictions:** Borrowers must agree that until one year after the loan is no longer outstanding such borrower will not: (i) engage in stock buybacks (unless contractually obligated), or pay dividends; or (ii) increase compensation of any employee whose compensation exceeds $425,000 or offer them significant severance/termination benefits. Further, during such period the officers and employees of the borrower whose compensation exceeded $3 million in 2019 cannot receive compensation greater than $3 million, plus 50% of the amount over $3 million that the individual received in 2019. Borrowers must also agree to maintain employment levels as of March 24, 2020 and retain no less than 90 percent of employees as of that date until September 30, 2020.

III. **Access to Health Care:** For plan years beginning on or before December 31, 2021, a high-deductible health plan may cover all telehealth services prior to a covered individual reaching the applicable deductible without risking the plan's status as a high deductible health plan. Employees covered under a high deductible health plan providing these services prior to reaching the deductible will continue to be eligible to make contributions to a health savings account. The purpose of this change is to increase access for patients who may have the coronavirus and to protect other patients from potential exposure. Individuals may also use funds in health savings accounts and health flexible spending accounts for the purchase of over-the-counter medical products, without a prescription from a physician.

IV. **Unemployment Compensation Benefits:** Federal funding is provided for unemployment benefits for workers adversely impacted by COVID- 19. Employees that are not eligible for state provided unemployment benefits or have otherwise exhausted such unemployment benefits will be eligible to receive the same amount of assistance that is provided under the state's unemployment benefits program for the period beginning on January 27, 2020 and ending on December 31, 2020. Additionally, employees will be eligible to receive an additional $600 per week for up to 4 months, whether such employees are eligible for state provided unemployment benefits or they are receiving the unemployment benefits set forth above. If employees remain unemployed after their state employment benefits are exhausted, the federal government will fund up to 13 weeks of unemployment benefits.

V. **Student Loans:** All payments of principal and interest for certain federal student loans are suspended. The suspended payments are treated as if made for consumer credit reporting. The CARES Act also waives or modifies requirements with respect to the receipt of federal education grants and allows deviations in the use and distribution of such grants. Further, provisions are made for students who have withdrawn from school or relocated due to the COVID-19 crisis.

VI. **Credit Reporting:** From January 31, 2020, through the expiration of the national emergency declaration, reports to credit reporting agencies must show accounts current, event where there is a forbearance or agreement to defer or modify payments of a person affected by the COVID-19 crisis.

VII. **Federally Backed Mortgages:** Borrowers under federally backed family mortgages may submit a forbearance request if they are experiencing financial hardship due to the COVID-19 crisis. The lender must grant the request, without penalties, fees or interest, for a period of up to 180 days (subject to another 180-day extension at borrower's request). Foreclosure action is prohibited for the 60-day period beginning March 18, 2020. Multi-family borrowers (assets designed for occupancy of 5 or more families) are entitled to forbearance and foreclosure protection on slightly different terms, and renters of such dwellings are provided eviction protection.

VIII. **Funding Relief for Defined Benefit Plans:** Any required minimum contributions for a single employer defined benefit that are due during the 2020 calendar year are not required to be made until January 1, 2021, with accrued interest from the original payment due date to the actual payment date. Additionally, plan sponsors of defined benefit plans may treat the last plan year's adjusted funded target attainment percentage as the percentage applicable to plan years which include the 2020 calendar year for purposes of applying the funding-based limitation on shutdown benefits and other unpredictable contingent event benefits.