On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act, or the “CARES Act” to provide nearly 2 trillion dollars in aid and relief to individuals, businesses, and other entities in the wake of the spread of COVID-19. Included in the CARES Act are tax and loan provisions intended to provide financial relief to people and businesses suffering as a result of the disease.

The following summarizes certain key tax-related provisions in the CARES Act.

**BUSINESSES**

The following provisions are intended to provide immediate liquidity to businesses:

**Employer Payroll Tax Payments.** Employers and self-employed individuals may defer payment of the employer share of Social Security taxes incurred between the date the CARES Act is enacted and December 31, 2020. Such amounts are to be paid over the following two years, with half due on December 31, 2021, and the other half due on December 31, 2022.

**Paycheck Protection Program Loans with Loan Forgiveness.** The Small Business Administration is to provide $349 million in loans to eligible recipients including small businesses, self-employed individuals and nonprofits. The loan
proceeds may be used for payroll, rent, mortgage payments and utility costs. To the extent such funds are so used within the 8-week period beginning on the date the loan is originated, such amounts may be forgiven without the recognition of cancellation of indebtedness income. The amount forgiven is determined by reference to the number of employees retained.

**Employee Retention Tax Credits.** Eligible employers will be allowed a refundable payroll tax credit equal to 50% of qualified wages paid or incurred between March 13, 2020, and December 31, 2020, if (1) the employer’s operations were fully or partially suspended because of a shut-down order due to COVID-19 or (2) the employer’s gross receipts declined by more than 50% when compared to the same quarter in the prior year. The credit is generally provided for up to $10,000 of qualified wages (including eligible health benefits) per eligible employee. The credit is not available to employers who receive a paycheck protection loan.

**NOL Carrybacks.** Net operating losses (NOLs) that are generated in a taxable year beginning in 2018, 2019, or 2020, may be carried back five years. As a result, taxpayers with NOLs may be able to file amended returns to carry those NOLs back to previous years to generate immediate refunds. In addition, the taxable income limitation is temporarily removed, allowing NOLs to fully offset net taxable income.

**Loss Limitations.** Rules enacted by the 2017 Tax Cuts and Jobs Act limiting the deductibility of certain “excess losses” of non-corporate taxpayers (e.g., pass-through entities and sole proprietors) will not apply for tax years ending on or before December 31, 2020. As a result, non-corporate taxpayers that were subject to these limitations in 2018 (and 2019, to the extent the taxpayer has already filed a 2019 tax return) may be able to file amended returns to claim such deductions and generate immediate refunds. Taxpayers that have not yet filed a 2019 tax return will be able to prepare those tax returns without regard to those limitation rules.

**Business Interest Modification.** The limitation on business interest deductions enacted as part of the 2017 Tax Cuts and Jobs Act has been increased from 30% to 50% of taxable income for 2019 and 2020. Special rules apply for partners that are allocated excess business interest.

**Limitations on Certain Employee Compensation—General.** The Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the Senate CARES Act) applies to defined eligible businesses which receive loans, loan guarantees, and other investments from the Federal Government, which include both (i) air carriers and (ii) United States businesses that have not otherwise received loans or loan guarantees provided under the CARES Act.

The Coronavirus Economic Stabilization Act of 2020 provides that the Treasury Secretary may only enter into an agreement with an eligible business to make a loan or loan guarantee, if that agreement provides that during the period beginning on the execution date of the agreement and ending on the date that is one (1) year after the date on which the loan or loan guarantee is no longer outstanding, no officer or employee of the eligible business whose total compensation for calendar year 2019 exceeded $425,000 (A) will receive total compensation during any 12 consecutive months of such period which exceeds the total compensation received by that officer or employer from the eligible business during calendar year 2019; or (B) will receive
severance pay or other benefits upon termination of employment which exceeds twice the maximum total compensation received by the officer or employee in calendar year 2019.

Additionally, the loan or loan guarantee agreement must also provide that no officer or employee whose total compensation exceeded $3 million in calendar year 2019 may receive during any 12 consecutive months of such period total compensation in excess of the sum of (A) $3 million; and (B) fifty percent (50%) of the excess over $3 million of the total compensation received by the officer or employee from the eligible business in calendar year 2019.

For the purposes of the Coronavirus Economic Stabilization Act of 2020, “total compensation” is defined to include salary, bonuses, awards of stock and other financial benefits provided by an eligible business to an officer or employee.

**Limitation on Certain Employee Compensation—Air Carriers and Contractors.** Similar compensation limits as described in the section above are imposed upon air carriers and contractors of passenger air carriers who receive financial assistance pursuant to Subtitle B of Title IV of the CARES Act, entitled “Air Carrier Worker Support.”

**Single-Employer Plan Funding Rules.** Plan sponsors of single-employer defined benefit plans are permitted to delay 2020 required contributions until January 1, 2021. The amount of the delayed contribution accrues interest at the plan’s effective interest rate for the plan year that includes the payment date. In addition, the plan sponsor may elect to treat the plan’s adjusted funding target attainment percentage for the last plan year ending before January 1, 2020 as the adjusted funding target attainment percentage for the plan year(s) which includes 2020.

**Plan Amendments.** Sponsors of retirement plans have until the last day of the plan year beginning after January 1, 2022 (for calendar plan years by December 31, 2022) to amend their plans to reflect any of new rules under the CARES Act.

**Filing Deadlines under ERISA.** The Labor Secretary is permitted to postpone certain filing deadlines applicable to employer-sponsored ERISA plans by up to one year if the Secretary of HHS declares a “public health emergency” pursuant to Section 319 of the Public Health Services Act.

**Coverage of Testing for COVID-19.** Group health plans are now required to cover COVID-19 diagnostic testing and related visits at no cost to consumers. The CARES Act expands this coverage to include in vitro diagnostic testing for the detection of SARS CoV-2 or COVID-19 provided such tests are approved, cleared or authorized by the FDA, furnished to a participant during an office visit (in person or by telehealth), urgent care visit, and emergency room visit resulting in an order for or administration of such test. The CARES Act also requires group health plans to cover “qualifying coronavirus preventive service.” A qualifying coronavirus preventive service is an item, service or immunization that is intended to prevent or mitigate COVID-19. The requirement to cover a qualifying coronavirus preventive service takes effect 14 business days after the date on which a recommendation is made relating to such service.
High Deductible Health Plans. Pursuant to IRS Notice 2020-15, a high deductible health plan’s payment of testing or treatment for COVID-19 without a deductible will not affect such plan’s status as a high deductible health plan. In addition the CARES Act provides another exception for high deductible health plans. For plan years beginning before December 31, 2021, a plan shall not fail to be treated as a high deductible health plan merely because it fails to have a deductible for telehealth and other remote care services.

Recovery of AMT Credits. Companies may more quickly recover AMT credits by claiming a refund for such amounts.

Qualified Improvement Property. Businesses may immediately deduct amounts spent to improve property rather than having to depreciate such amounts over the life of the building.

Suspension of Aviation Excise Taxes. Certain federal excise taxes related to commercial aviation are repealed through December 31, 2020.

Charitable Contribution Limitations. Charitable contribution deduction limitations are increased from 10 percent to 25 percent of taxable income for corporations.

Employee Student Loans. The CARES Act allows employers to contribute up to $5,250 annually to the repayment of an employee’s student loans on a tax-free basis. The $5,250 annual cap applies in the aggregate to a new student loan repayment benefit and to other education assistance. The loan repayment may be made to the employee or to the lender on any qualified education loan (as defined under Section 221(d)(1) of the Code) and applies to student loan payments made by an employer after the date of enactment of the CARES Act and before January 1, 2021.

Forthcoming Treasury Guidance for Executive Compensation. We anticipate that the Treasury Department’s Interim Final Rule issued with respect to the executive compensation provisions of the Emergency Economic Stabilization Act of 2008 (EESA), as amended by the American Recovery and Reinvestment Act of 2009, may provide a preview of forthcoming Treasury rules or regulations with respect to the CARES Act.

Of particular note, that Interim Final Rule broadly defined “compensation” as including all renumeration for employment, including but not limited to salary, commissions, tips, welfare benefits, retirement benefits, fringe benefits and perquisites.

INDIVIDUALS

Individual Rebates. As anticipated, the CARES Act contains measures to provide rebates to U.S. residents with adjusted gross income of up to $75,000 ($150,000 for joint returns) that are not dependents of other U.S. taxpayers. Such persons are eligible to receive $1,200 ($2,400 in the case of eligible individuals filing a joint return), which amounts are reduced by $5 for every $100 that a taxpayer’s income exceeds the thresholds—thus, persons with income exceeding $99,000 ($198,000 for
joint filers) will not be entitled to any rebates. In addition, eligible individuals are entitled to an additional $500 rebate for each child of such individual.

Rebates are to be issued as rapidly as possible, and may be disbursed electronically to accounts authorized by a payee on or after January 1, 2018, for the delivery of a refund of taxes. Rebates will be issued based on 2019 tax returns (or 2018 tax returns) filed by such individuals. No action will be required by eligible recipients to receive their rebate.

**Tax-Favored Withdrawals.** Eligible retirement plans are permitted to allow certain distributions during 2020 in an amount of up to $100,000 (in the aggregate from all plans maintained by the employer or any ERISA affiliate of the employer) to participants without such participants incurring the 10% penalty tax for early withdrawal. A distribution is eligible for this exception to the 10% penalty tax if the distribution is made during the 2020 calendar year to an individual (i) who is diagnosed with the virus SARS-CoV-2 or COVID-19 by a test approved by the CDC; (ii) whose spouse or dependent is diagnosed with such virus; or (iii) who experiences adverse financial consequences as a result of being quarantined, laid-off, furloughed, working reduced hours or is unable to work due to lack of childcare (a “Qualified Individual”). A Qualified Individual has the opportunity to repay the distribution within three years of taking the distribution and such repayment will be treated as a tax free rollover. A coronavirus distribution otherwise is included in a Qualified Individual’s income ratably over a three-year period beginning with the taxable year in which the distribution is made unless the Qualified Individual elects to include it income earlier (or makes a tax-free repayment of the distribution) and such distribution is not subject to 20% withholding that applies to eligible rollover distributions. Plans may, but are not required, to permit such distributions and may need to be amended to permit in-service withdrawals.

**Plan Loans.** The limit on loans made during the 180-day period beginning on the date the CARES Act is enacted is increased to the lesser of $100,000 and 100% of the participant’s account balance (which doubles the current limit of the lesser of $50,000 and 50% of the participant’s account balance). In addition, a Qualified Individual with an outstanding loan may delay loan repayments that occur during the period beginning with the enactment of the CARES Act and ending on December 31, 2020 for one year. The remaining payments plus interest are re-amortized over the extended period. These plan loan provisions appear to be mandatory.

**Temporary Waiver of Required Minimum Distributions from Retirement Plans.** The minimum distribution requirements relating to certain defined contribution plans and IRAs are waived for 2020. In addition, amounts subject to the required minimum distribution rules may be rolled over.

**Qualified Medical Expenses.** The CARES Act eliminates the requirement that any amount paid for medicine or drugs must be pursuant to a prescription and expands qualified medical expenses reimbursable under these plans to include menstrual care products.

**Charitable Deductions.** Persons claiming the standard deduction may still be eligible to receive an above-the-line deduction, up to $300, for charitable contributions made in cash in tax year 2020 and beyond. Charitable contribution
deductions are generally limited to 50 percent of a taxpayer’s adjusted gross income, but that limitation is suspended for 2020.

Copyright © 2020, Sheppard Mullin Richter & Hampton LLP.

Source URL: https://www.natlawreview.com/article/cares-act-tax-relief