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Certified Public Accountants

BRSW Summary: Coronavirus Aid, Relief and Economic Security Act (CARES Act)

As of March 30, 2020

This is a new law, and the guidance is changing on a daily basis. This is intended to provide guidance and should not be relied upon as authoritative as it may be out of date in a few days.

Each business must consider its own unique circumstances before it makes a decision.

The President signed the legislation on March 27, which was passed by unanimous vote in the Senate and by voice vote in the House of Representatives. The bill is the largest rescue package in American history with $300 billion marked for direct payment to Americans, $260 billion for expansions of the unemployment program, $100 billion for hospitals responding to COVID-19 and an estimated $500 billion to major industries like airlines. The CARES Act has both personal and business tax provisions that will be described below.

INDIVIDUAL TAX PROVISIONS

- **Individual recovery rebate/credit**
  - The recovery rebate is an advance payment of a Federal tax credit that individuals will receive on their 2020 tax return. The IRS will use the taxpayer's most current tax return information to determine payment eligibility. This means a 2018 tax return will be used if your 2019 tax return has yet to be filed.
    - When taxpayers file their 2020 tax return, they will make a final determination if they were eligible for the recovery credit. If they are not eligible, there will be no repayment of the credit. If their eligibility has changed since their 2018 or 2019 tax return based on a change in filing status or a decrease to their adjusted gross income, they will receive the portion of the credit they did not initially receive.
  - Under the CARES Act, an eligible individual will receive a $1,200 credit ($2,400 for married filing jointly) plus $500 for each qualifying child claimed by the taxpayer. This is a refundable tax credit which will be sent out in the next three weeks according to the Secretary of the Treasury.
  - An eligible individual is any individual other than a nonresident alien or an individual who is being claimed as a dependent on another taxpayer's tax return, such as college age children still being claimed on their parent's return. The parent's claiming these individuals will receive $500 for them.
  - Individuals who have no income, as well as those who have income that comes from non-taxable programs such as Social Security are eligible for the credit and the advance rebate.
  - The credit is available to taxpayers with an adjusted gross income of less than:
    - $150,000 married filing joint
    - $112,500 head of household

        - $75,000 for all other taxpayers
    - The refund begins to phase out if the individual's adjusted gross income (AGI) exceeds $75,000 ($150,000 for joint filers and $112,500 for head of household filers). The credit is completely phased out for individuals with no qualifying children if their AGI exceeds $99,000 ($198,000 for joint filers and $136,500 for head of household filers).
    - The CARES Act provides that the IRS will make automatic payments to individuals who have previously filed their income tax returns electronically, using direct deposit banking information provided on a return any time after January 1, 2018. Those without direct deposit information will receive a check by mail.

- **Coronavirus-related retirement plan distributions**
    - The CARES Act provides that the 10% tax penalty on early withdrawals from a retirement plan do not apply to a coronavirus-related distribution up to $100,000.
        - *Coronavirus-related distribution: A*ny distribution made from January 1, 2020 until December 31, 2020, from an eligible retirement plan to a qualified individual.
        - *A qualified individual:* An individual:
            - Diagnosed with the virus SARS-CoV-2 or with COVID-19 by a test approved by the Centers for Disease Control and Prevention (CDC)
            - Whose spouse or dependent has been diagnosed as listed above
            - Who experiences adverse financial consequences as a result of being quarantined, furloughed or laid off from work or having work hours reduced due to the virus or disease, being unable to work due to lack of child care, and other factors determined by the Secretary of the Treasury
    - Any individual who receives a coronavirus related distribution may, at any time during a 3-year period starting on the day after the distribution was received, make one or more contributions not to exceed the amount distributed back into the retirement plan.
    - Any amount of the distribution required to be included in taxable income will be done so ratably over a 3-tax year period unless the taxpayer elects otherwise.

- **Required minimum distributions (RMDs) waived for 2020**
    - The CARES Act provides that the RMD requirements do not apply for the year 2020.
    - This also applies to individuals who would have had a RMD beginning date in 2020.

- **Changes to limitations on individual cash charitable contributions in 2020**
    - The CARES Act adds a deduction from adjusted gross income, for tax years beginning in 2020, for the amount not to exceed $300 of charitable contributions made by an eligible individual during the tax year.
    - The CARES Act provides for charitable deductions allowed as an itemized deduction only to the extent they do not exceed their adjusted gross income where they were previously limited to a deduction up to 60% of their AGI.

- **Employer paid student loan repayments**
    - The CARES Act adds eligible student loan repayments made before January 1, 2021 to the types of eligible education payments that are excluded from employee gross income. The payments are subject to a $5,250 limit per employee for all educational payments.

- **High deductible health plan safe harbor for telehealth services**
    - Under the CARES Act, in the case of plans starting on or before December 31, 2021, a health plan will not fail to be treated as a high deductible health plan by reason of failing to have a deductible for telehealth and other remote care services.
        - The fact that an individual's health plan does not require a deductible for telehealth and other remote services does not prevent that individual, who would otherwise be an eligible individual, from being an eligible individual.

BUSINESS TAX PROVISIONS

- **Employee retention credit for employers**
    - This provision provides a refundable payroll tax credit for 50% of wages paid by eligible employers to certain employees during the COVID-19 crisis
        - *Eligible employer:* Employers whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel or group meetings. It is also provided to employers with a greater than 50% reduction in quarterly receipts, measured in a year-over-year basis.
            - *The credit is not available to employers receiving Small Business Interruption Loans.*
        - *Qualifying wages:* For employers with an average of less than 100 employees in 2019, all employee wages are eligible, regardless of whether the employee has been furloughed. For employers with an average of more than 100 employees in 2019, only the wages of employees who are furloughed or faced reduced hours as a result of their employer's closure or reduced gross receipts are eligible for the credit.
            - *Wages include health benefits and are capped at the first $10,000 in wages paid by the employer to an eligible employee.*
            - *Wages do not include amounts taken into account for purposes of payroll credits, for required paid sick leave or required paid family leave in the Families First Coronavirus Act, nor for wages taken into account for Code 45S employer credit for paid family and medical leave.*
        - *Work Opportunity Tax Credit:* No credit is available for an employee for any period for which the employer is allowed a Work Opportunity Tax Credit.
        - *Effective Date:* The credit applies to wages paid after March 12, 2020 and before January 1, 2021.

- **Delay of payment of employer payroll taxes**
    - The CARES Act allows taxpayers to defer paying the employer portion of certain payroll taxes through the end of 2020. This includes Social Security taxes from the beginning of the Act on April 1, 2020 until December 31, 2020.
        - *Payment dates:* 50% of applicable taxes must be paid by December 31, 2021 with the remainder paid by December 31, 2022.
        - *Self-employment tax:* 50% of the estimated taxes due by self-employed individuals, the employer portion, is subject to the same deferral periods as taxes being withheld by employers for W-2 employees.

- **Temporary repeal of taxable income limitation for net operating losses (NOL)**
    - Under the Tax Cut and Jobs Act of 2018, NOL deductions were limited to 80% of taxable income computed without regard to the deduction, thus couldn't fully offset taxable income. The CARES Act eliminates this limitation to allow NOL's to fully offset income.
        - This applies to tax years beginning on or after December 31, 2017, to which NOLs arising after December 31, 2017 are carried.

- **Modification of rules relating to net operating loss (NOL) carrybacks**
    - The CARES Act provides that NOLs arising in a tax year beginning after December 31, 2018 and before January 1, 2021 can be carried back to each of the five tax years preceding the tax year of such a loss.

- **Modification of limitation on losses for noncorporate taxpayers**
    - The Tax Cuts and Jobs Act of 2018 disallowed the deduction of excess business losses by noncorporate taxpayers beginning after December 31, 2017 and ending before January 1, 2026.
        - *Excess business loss:* The excess of the taxpayer's aggregate trade or business deductions for the tax year over the sum of the taxpayer's aggregate trade or business income or gain plus $250,000.
    - The CARES Act temporarily modifies the loss limitation for noncorporate taxpayers so they can deduct excess business losses arising in 2018, 2019 and 2020.

- **Deductibility of interest expense temporarily increased**
    - The TCJA of 2018 limited the amount of business interest allowed as a deduction to 30% of adjusted taxable income.
    - The CARES Act temporarily and retroactively increases the limitation from 30% to 50% for tax years beginning in 2019 and 2020.
        - *Special rules for partnerships:* The increase in the limitation will not apply to partnerships in 2019, applies only in 2020. 50% of the excess business interest will be treated as paid or accrued by the partner in the partner's first tax year beginning in 2020 and isn't subject to any limits in 2020. The remaining 50% will be subject to rules under Code Sec. 163(j)(4)(B)(ii) in the same manner as any other excess business interest that is so allocated. Taxpayers may elect out of

the increase for any tax year in the time and manner the IRS prescribes. The taxpayers can elect to calculate the interest limitation for their tax year beginning in 2020 using the adjusted taxable income for their last tax year in 2019 as the relevant base. This election must be made by the partnership.

- **Bonus depreciation technical correction for qualified improvement property**
    - The CARES Act provides a technical correction to the TCJA and specifically designates qualified improvement property as 15-year property for depreciation purposes. This makes qualified improvement property eligible for 100% bonus depreciation.
        - *Effective date:* This correction is effective for property placed in service after December 31, 2017.

- **Families First Coronavirus Response Act**
    - The IRS announced that April 1 is the beginning date for the rules applicable to employer credits for wages paid for family and medical leave and sick leave, that were provided in the Families First Coronavirus Response Act. There was previously a disagreement between the IRS and Department of Labor on when this Act would take effect.
    - The rules under the Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Act that were a part of the Families First Coronavirus Response Act provide tax credits to employers to cover wages paid to employees taking time off under these acts. BRSW previously released a summary of these Acts and who is subject to them.
        - The act also provided similar refundable credits against self-employed tax for self-employed individuals.

- **Forgiveness for certain Small Business Association (SBA) guaranteed loans**
    - In response to the COVID-19 pandemic, small business owners in all U.S. states are eligible to apply for an Economic Injury and Disaster Loan advance of up to $10,000. The loan advance is to provide economic relief to businesses that are currently experiencing a temporary loss of revenue. Funds will be made available within three days of a successful application, and this loan advance will not have to be repaid per the Small Business Association.
    - Under the CARES Act, an eligible recipient is eligible for forgiveness on a covered loan in an amount equal to the sum of the following costs incurred and payments made during the covered period:
        - Payroll costs.
            - Includes most compensation of any nature, health insurance premiums, retirement plan contributions and Ohio unemployment tax
            - Payroll to any employee, including owners, exceeding $100,000 is limited to $100,000 annually.
        - Interest payments on any covered mortgage obligation.

        - A covered mortgage is any indebtedness or debt instrument incurred in the ordinary course of business and is a liability of the borrower, is a mortgage on real or personal property and was incurred before February 20, 2020.
    - Any payment for any covered rent obligation.
        - Must have valid lease agreement.
    - Covered utility payments.
- Detailed documentation will be required for forgiveness after the fact and any amount that is not forgiven will be subject to interest at 4%.
- The number of employees can't go down or the loan isn't forgiven or only partially forgiven.
- **CALL YOUR LOCAL BANKER** – this is administered through Federally insured depository banks. It appears they are all aware and willing to assist.

The fast moving and wide-ranging nature of the COVID-19 pandemic has led Congress and the President to pass huge Acts very quickly. These Acts are trying to be implemented as quickly as possible, but there are many portions that are still trying to be understood as to how exactly they will work, and many of the organizations involved are having to come up with ways to make these mandates work. More information will be provided as it becomes available and as changes are made. Please contact your CPA by email if you have a question specific to your situation.