



# A Six Foot Look at the Business, Loan, and Tax Reform Legislation In Response to COVID-19

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## **A Six Foot Look at the Business, Loan, and Tax Reform Legislation In Response to COVID-19**

### **LOAN ASSISTANCE PROVISIONS**

#### **Express Bridge Loan Pilot Program:**

*Unilateral pronouncement of the SBA*

- While not part of the CARES legislation, the SBA announced as a response to COVID-19, small businesses that currently have a business relationship with an SBA Express Lender may access up to \$25,000 with less paperwork. These loans may provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing and can be a term loan or used to bridge the gap while applying for a direct SBA Economic Injury Disaster Loan. If a small business has an urgent need for cash while waiting for a decision and disbursement an Economic Injury Disaster Loan, they may qualify for an SBA Express Disaster Bridge Loan.
- Terms:
  - Up to \$25,000
  - Fast turnaround
  - Will be repaid in full or in part by proceeds from the EIDL loan

#### **Small Business Administration's Emergency Injury Disaster Loan ("EIDL")**

*Section 1110 of Coronavirus Aid, Relief and Economic Security Act "CARES Act"*

- The CARES Act expands the existing Small Business Administration's Emergency Injury Disaster Loan ("EIDL") Program under Section 7(b)(2) of the Small Business Act which allows an applicant to borrow up to \$2 million at 3.75% interest for a period of up to 30 years. The bill expands the covered period for the hardship is from January 31, 2020, through December 31, 2020. Nonprofits receive a better rate at 2.75%.
- Eligible entities for participation in this loan program include small businesses (500 or fewer employees); sole proprietors; independent contractors; cooperatives (500 or fewer employees); Employee Stock Owned Plans (500 or fewer employees); and Tribal small business concerns.
- The EIDL loan program waives the following requirements under Section 7(b)(2):
  - Any required personal guarantee on loans of \$200,000 or less;
  - The requirement that an applicant be in business for at least one year before the disaster; and
  - The requirement that an applicant is unable to obtain credit elsewhere.
- The CARES Act allows the SBA to approve an applicant solely on credit score, without requiring that the applicant submit a tax return or by "alternative appropriate methods" to determine the applicant's ability to repay.
- The CARES Act allows an applicant to request from the SBA an emergency advance of up to \$10,000 as a "grant." This grant does not have to be repaid, even if the applicant's EIDL loan application is subsequently denied. The SBA is charged with verifying an applicant's eligibility via "self-certification."

- The "grant" may be used to provide paid sick leave to employees unable to work because of COVID-19, maintaining payroll to retain employees, meeting increased costs to obtain materials unavailable due to supply chain disruption; making rent or mortgage payments; and repaying obligations that cannot be met due to loss of revenue.

### **Paycheck Protection Program**

*Section 1102 of Coronavirus Aid, Relief and Economic Security Act "CARES Act"*

*Appropriations - \$350 billion*

- **General** – The CARES Act (the "Act") expands the existing Small Business Administration's Loans to Small Business Concerns Program under Section 7(a) of the Small Business Act. Under this Program, before expansion by the Act, only businesses defined as small businesses by the SBA and operated for profit are eligible for loans, which are capped at \$5 million and are only 75% or 85% guaranteed. The loans are not offered directly through the SBA; instead, financial institutions like banks, credit unions, and other business lenders loan the money, and the SBA guarantees the loan.
- **Eligibility for Loan** – The Act expands eligibility during February 15, 2020 – June 30, 2020, to businesses (including sole proprietorships and self-employed) and nonprofits, veterans organizations, or tribal businesses and
  - with **fewer than 500 employees** (subject to the limited exceptions); or
  - that meet the Small Business Administration's ("SBA") industry-based "size standard" requirements for the applicable NAICS code (based either on number of employees or annual receipts)
- **Loan Duration and Amount** – With a **maximum maturity of 10 years**, the amount may be no more than the lesser of (a) \$10 million or (b) 2.5 multiplied by the average total monthly payroll payments by the applicant for generally the one year preceding the date on which the loan is made. Note that (b) above is different for newer companies or those with seasonal employees.
  - "Payroll costs" means "the sum of payments of any compensation for employees that is a salary, wage, commission, or similar compensation; payment of cash tip or equivalent; payment for vacation, parental, family, medical or sick leave; allowance for dismissal or separation; payment required for the provisions of group health care benefits, including insurance premiums; payment of any retirement benefit; or payment of State; or local tax assessed on the compensation of employees."
  - However, the term "payroll costs" shall not include "the compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period; taxes imposed or withheld under chapters 21, 22 or 24 of the Internal Revenue Code of 1986 during the covered period; any compensation of an employee whose principal place of residence is outside of the United States; qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116-127); or qualified

family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act (Public Law 116-127)."

- **Interest Rate** – The Act establishes a 4% cap on interest.
- **EIDL Loan** – A borrower cannot get a Paycheck Protection Payment loan in addition to an EIDL loan for the same purpose.
- **Allowable Uses of Loan** – The proceeds of a loan can be used for payroll costs, costs related to health care benefits and regular paid leave; salaries, commission, or similar compensations; interest on any mortgage obligation (excluding payment or prepayment of principal); rent (including rent under a lease agreement); utilities; and interest on any other debt obligations that were incurred before the covered period.
- **Borrower Requirements** – Borrower must make a good faith certification that the loan is necessary due to uncertainty of current economic conditions caused by COVID-19, that the loan will be used for a permitted purpose as specified in the Act, and that the funds are not duplicative funds for the same uses. Must have been "**substantially affected by COVID-19,**" which is described as:
  - supply chain disruptions;
  - staffing challenges;
  - a decrease in sales or customers; or
  - shuttered businesses
- **Loan Forgiveness**
  - The borrower shall be eligible for loan forgiveness *equal to the following costs incurred and paid by the borrower during the 8-week period after the origination date of the loan*: payroll costs; interest payments on any mortgage incurred prior to February 15, 2020; payment of rent on any lease in force prior to February 15, 2020; and payment on any utility for which service began before February 15, 2020.
  - **Taxability** – The borrower will have no taxable income (discharge of indebtedness income) stemming from the forgiveness of the loan.
  - **General Limit on Forgiveness** – The amount forgiven shall not exceed the principal of the loan.
  - **Reduction Based on Employee Reduction** – The amount forgiven will be reduced by multiplying the forgiveness amount, as detailed above, by the quotient of the average number of full-time equivalent employees per month during the covered period over the average number of full-time equivalent employees during one of two specified periods: (1) the period beginning on February 15, 2019, and ending on June 30, 2019, or (2) the period beginning on January 1, 2020, and ending on February 29, 2020. The borrower chooses which period is ultimately used for the quotient.
  - **Reduction Based on Salary & Wage Reduction** – Loan forgiveness is reduced by the amount of any reduction in salary or wages of any employee who did not

receive, during any pay period during 2019, wages or salary in an amount more than \$100,000 during the covered period that is in excess of 25% of the total salary or wages during the most recent full quarter preceding the covered period.

- **Tipped Workers** – Borrowers with tipped employees may receive forgiveness for additional wages paid to those employees.
  - **Reduction Exemptions** – During the period between February 15, 2020, and thirty days after enactment of the Act, forgiveness is not reduced for reductions in employees or salary or wages if the reduction at the beginning of the period is eliminated by June 30, 2020.
  - **Application** – In order to receive loan forgiveness, a borrower must submit an application with documentation detailed in the Act. The lender has sixty days from receipt of an application for forgiveness to issue a decision.
  - **Remittance** – The Administrator has ninety days from forgiveness to remit the amount forgiven, increased by accrued interest, to the lender.
  - **Remaining Amount** – Any loan amounts not forgiven at the end of one year is carried forward as an ongoing loan with terms of a maximum of ten years, at maximum 4% interest. The 100% loan guarantee remains intact.
- **Business Concern with more than 1 Physical Location** – During the covered period, any business concern that employs not more than 500 employees per physical location and is assigned a North American Industry Classification System (NAICS) code beginning with 72 at the time of disbursement is eligible to receive a covered loan.
  - **Remaining Balance after Forgiveness** – If there is a remaining balance after the loan forgiveness detailed in Section 1106 of the Act, the remaining balance shall continue to be guaranteed by the SBA, and the maximum maturity of the balance will be ten years from the application for forgiveness.
  - **Loan Deferment** – For all Paycheck Protection Program Loans, all lenders are required to provide complete payment deferment (including principal, interest, and fees) for at least six months, but no more than one year. The length of the deferment appears to be at the discretion of the lender. This deferment is guaranteed even if the loan is bought on the secondary market.
  - **SBA Guarantee** – The SBA's guarantee is increased to 100% for loans under the Paycheck Protection Program.
  - **Lenders**<sup>1</sup> – Lenders that are currently approved to make SBA 7(a) loans are authorized to make Program loans and are given delegated authority to determine a borrower's eligibility and creditworthiness without going through typical SBA channels.

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<sup>1</sup> Hundreds of lenders across the country make 7(a) loans. Here is a list of the most active section 7(a) lenders as published by the SBA: <https://www.sba.gov/article/2020/mar/02/100-most-active-sba-7a-lenders>.

- **Additional Lenders** – The Act provides an avenue, through the U.S. Department of Treasury, for additional lenders to be approved to help keep workers paid and employed. Additional lenders approved by Treasury are only permitted to make Paycheck Protection Program loans, not regular 7(a) loans.
- **Lender Considerations** – For eligibility purposes, in lieu of determining repayment ability, lenders are required to simply determine whether a business was operational on February 15, 2020, and had employees for whom it paid salaries and payroll taxes, or a paid independent contractor.
- **Nonrecourse and Refinancing** – The Act waives the personal guarantee and collateral requirement of SBA 7(a) loans and allows loans made within a set period to be refinanced as a Payment Protection Loan.
- **Waivers** – The SBA 7(a) loans' typical guarantee and yearly fees are waived. Additionally, borrowers cannot be charged a prepayment fee and are not required to have looked for and exhausted other loan options.
- **Lender Fees** – The Act requires the Administrator to provide a lender with a process fee for servicing the loan and sets the fee based on the amount loaned.

### **Subsidy for Certain Existing Loan Payments**

*Section 1112 of Coronavirus Aid, Relief and Economic Security Act "CARES Act"*

- The SBA is required to pay the principal, interest, and any associated fees that are owed on the covered loans for a six-month period starting on the next payment due date. Loans that are already in deferment will include an additional six months of payment by the SBA beginning with the next payment. Loans made up until six months after the enactment of the legislation will also receive a full six months of loan payments by the SBA.
- The Act defines a covered loan as an existing 7(a) (including Community Advantage Pilot Program loan), 504, or microloan product. Paycheck Protection Program (PPP) loans are not covered.
- The SBA must make payments no later than 30 days after the date on which the first payment is due. It requires the SBA to still make payments even if the loan was sold on the secondary market.
- Other Requirements – Requires SBA to encourage lenders to provide deferments and allows lenders, up until one year after enactment, to extend the maturity of SBA loans in deferment beyond existing statutory limits.

### **Coronavirus Economic Stabilization Act of 2020**

*Section 4003 of Coronavirus Aid, Relief and Economic Security Act "CARES Act"*

*Appropriations – \$500 billion*

**The Coronavirus Economic Stabilization Act (CESA)** provides \$500 billion for the Secretary to provide loans, loan guarantees, and other investments in accordance with the Federal Credit

Reform Act of 1990 (2 U.S.C. § 661) to eligible businesses, states, and municipalities to provide liquidity related to losses incurred as a result of the coronavirus to be made available as follows:

- (1) \$25 billion for air carriers;
  - (2) \$4 billion for cargo air carriers;
  - (3) \$17 billion for “businesses critical to maintaining national security,” which term is not defined in the Act. This term may be defined in the Secretary's procedures and rules when released.
  - (4) \$454 billion to programs or facilities established by the Federal Reserve to provide liquidity to the financial system that supports lending to eligible businesses, states, or municipalities by:
    - a. Making "direct loans" to eligible businesses;
    - b. Purchasing obligations or other interests directly from issuers of such obligations or other interests; or
    - c. Purchasing obligations or other interests in secondary markets or otherwise.
- A loan, loan guarantee, or other investment under CESA shall be on such terms and conditions as the Secretary determines appropriate. A loan shall be at a rate determined by the Secretary based on the risk and current average yield on outstanding market obligations of the United States or comparable maturity.
  - Within 10 days after enactment, the Secretary shall publish procedures dealing with these loans and programs.

**Loans and loan guarantees for the three enumerated industries. Items (1), (2), and (3) above must meet the following criteria:**

- Alternative credit is not reasonably available;
- The loan or loan guarantee is sufficiently secured or is made at a rate that
  - Reflects the risk; and
  - Is to the extent practicable, not less than an interest rate based on market conditions for comparable obligations prior to the outbreak of the virus;
- The term of the loan is as short as practical and not longer than 5 years;
- Until 12 months after the loan is no longer outstanding, the eligible business nor any affiliate will not purchase an equity security listed on the national securities exchange of the eligible business or any parent company, unless contractually obligated prior to the enactment of the Act;
- Until 12 months after the loan is no longer outstanding, the eligible business will not pay dividends or make other capital distributions with respect to common stock;
- Until September 30, 2020, the eligible business shall maintain employment levels as of March 24, 2020, to the extent practicable, and in any case not reduce employment levels by more than 10%;
- Certification that the eligible business is organized in the United States or under its laws and has significant operations in the U.S. and a majority of its employees based in the U.S.;
- The eligible business must have incurred or is expected to incur covered losses such that continued operations of the business are jeopardized, as determined by the Secretary.
- The Secretary may only enter into an agreement under paragraph (1), (2), or (3) of § 4003(b) if such agreement provides that during the period beginning on the date on which the agreement is executed and ending 1 year after the obligation is no longer outstanding:

- No officer or employee whose total compensation exceeded \$425,000 in calendar year 2019 (unless determined by a collective bargaining agreement) will:
  - Receive total compensation which exceeds the total compensation received in 2019; or
  - Receive severance pay or other benefits which exceeds twice the maximum compensation received in 2019.
- No officer or employee whose total compensation exceeded \$3 million in 2019 may receive compensation in excess of the sum of:
  - \$3 million; and
  - 50% of the excess over \$3 million received in 2019
- The Secretary shall not issue a loan unless:
  - The eligible business has issued securities that are traded on a national securities exchange; and
  - The Secretary receives a warrant or equity interest in the eligible business; or
  - In case the preceding two bullets do not apply, the Secretary receives:
    - A warrant or equity interest in the eligible business; or
    - A senior debt instrument.

**Loans, loan guarantees, and other investments referenced in Item (4) above for general businesses (approximately 90% of the allocated \$500 billion) can either be through "direct loans" or "bank loans."**

**Direct Loans:**

- For purposes of this paragraph, "direct loan" means a loan under a bilateral loan agreement that is:
  - Entered into directly with an eligible business as borrower and
  - Not part of a syndicated loan, a loan originated by a financial institution in the ordinary course of business, or a securities or capital markets transaction.
- The Secretary may make a loan, loan guarantee, or other investment under paragraph (4) as part of a program or facility that provides direct loans upon the following criteria (the Secretary may waive to protect the interests of the federal government):
  - Until 12 months after the loan is no longer outstanding, the eligible business nor any affiliate will not purchase an equity security listed on the national securities exchange of the eligible business or any parent company, unless contractually obligated prior to the enactment of the Act;
  - Until 12 months after the loan is no longer outstanding, the eligible business will not pay dividends or make other capital distributions; and
  - Complies with the limitations on compensation set forth in § 4004.
- Applicable requirements under § 13(3) of the Federal Reserve Act (12 USC § 343(3)) apply.
- The eligible business must be organized in the United States or under its laws and has significant operations in the U.S. and a majority of its employees based in the U.S.

**Assistance for Mid-Sized Businesses:**

- The Secretary shall endeavor to implement a program or facility described in Direct Loans above that provides financing to banks and other lenders that make direct loans to



eligible businesses, including nonprofits, with between 500 and 10,000 employees; an annualized interest rate that is not higher than 2% per annum; and for the first 6 months (or longer if determined by the Secretary), no principal or interest is due. The borrower shall make a certification that:

- The uncertainty of economic conditions makes the loan necessary to support ongoing operations;
  - The funds received will be used to maintain 90% of the workforce at full compensation and benefits until September 30, 2020;
  - The recipient intends to restore 90% of the workforce as existed on February 1, 2020, and to restore all compensation and benefits no later than 4 months after the termination of the public health emergency;
  - The recipient is domiciled in the U.S. with significant employees and operations in the U.S.;
  - The recipient is not a debtor in bankruptcy;
  - The recipient business is organized in the United States or under its laws and has significant operations in the U.S. and a majority of its employees based in the U.S.
  - The recipient will not pay dividends or make other capital distributions with respect to common stock or repurchase an equity security that is listed on a national securities exchange while the loan is outstanding, except as contractually obligated prior to enactment;
  - The recipient will not outsource or offshore jobs for the term of the loan and 2 years after repayment;
  - The recipient will not abrogate existing collective bargaining agreements for the term of the loan and 2 years after repayment; and
  - The recipient will remain neutral in any union organizing effort for the term of the loan.
- The Secretary will endeavor to implement a similar program to provide liquidity to states and municipalities.
  - The principal amount of any obligation issued under this section shall not be reduced through loan forgiveness and shall be treated as indebtedness for purposes of the Internal Revenue Code.
  - The provisions of § 4025 relating to protection of collective bargaining agreements apply to loans or loan guarantees made under this section.

### **Foreclosure Moratorium and Consumer Right to Request Forbearance**

- "Federally backed mortgage loan" means any loan secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of 1-4 families that is:
  - Insured by the FHA;
  - Insured under 12 USC. § 1715z-20 (National Housing Act);
  - Guaranteed under 12 USC. 1715z-13a, 1715z-13b (Housing and Community Development Act of 1992);
  - Guaranteed or insured by the VA;
  - Made, guaranteed or insured by USDA; or

- Purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.
- A borrower with a Federally backed mortgage loan experiencing financial hardship due to, directly or indirectly, the COVID-19 emergency, may request forbearance by submitting a request and certifying the financial hardship is due to the emergency.
- The forbearance shall be granted for up to 180 days and may be extended by up to 180 days at the request of borrower.
- During the forbearance, no fees, penalties, or interest beyond the amounts scheduled or calculated shall be assessed as if the borrower made all payments on time and in full shall accrue.
- Except with respect to vacant or abandoned property, a servicer of a Federally backed mortgage loan may not initiate judicial or non-judicial foreclosure, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction for foreclosure sale for not less than the 60-day period beginning on March 18, 2020.

**Forbearance of Residential Mortgage Loan Payments for Multifamily Properties with Federally Backed Loans.**

- "Federally backed multifamily mortgage loan" means any loan (other than temporary financing such as a construction loan) that is:
  - Secured by a first or subordinate lien on residential multifamily real property designed principally for 5 or more families; and
  - Is made in whole or in part, insured, guaranteed, supplemented, or assisted in any way by an officer of an agency of the Federal Government or under or in connection with a HUD program or is purchased or securitized by Fannie Mae or Freddie Mac.
- "Covered Period" means the period from the date of enactment to the earlier of the termination of the national emergency or December 31, 2020.
- A borrower with a Federally backed multifamily mortgage loan that was current as of February 1, 2020, experiencing financial hardship due to, directly or indirectly, the COVID-19 emergency may request forbearance by submitting an oral or written request and certifying the financial hardship is due to the emergency.
- The servicer shall document the financial hardship, provide forbearance for up to 30 days, and extend forbearance for up to 2 additional 30-day periods at the request of the borrower; provided the request is made at least 15 days prior to the end of the forbearance period.
- A borrower who receives a forbearance may not evict a tenant solely for nonpayment of rent, fees, or charges, or charge any late fees, penalties, or other charges to a tenant for late payment of rent.
- A borrower who receives a forbearance may not require a tenant to vacate with less than 30 days' notice and may not issue a notice to vacate until the expiration of the forbearance period.

**Temporary Moratorium on Eviction Filings.**

- "Covered Property" means any property that participates in:
  - A covered housing program under 34 USC. § 12491(a) (Violence Against Women Act of 1994); or

- The rural housing voucher program under 42 USC. 1490r (Housing Act of 1949); or
- Has a "Federally backed mortgage loan" (see § 4022); or
- A "Federally backed multifamily mortgage loan" (see § 4023).
- During the 120-day period beginning on the date of enactment, the lessor of dwelling on covered property may not initiate eviction for nonpayment of rent or other fees or charges or charge fees, penalties, or other charges to a tenant for nonpayment of rent.
- The lessor may not require a tenant to vacate with less than 30 days' notice and may not issue a notice to vacate until the expiration of the 120-day period.

## **TAX BENEFITS FROM THE FEDERAL LEGISLATION**

### **BUSINESS PROVISIONS**

#### **Employee retention credit for employers subject to closure due to COVID-19.**

*Section 2301 of Coronavirus Aid, Relief and Economic Security Act "CARES Act"*

Provides a refundable payroll tax credit for each calendar quarter for 50 percent of qualified wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended, due to a COVID-19-related shutdown order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year. The credit is at the election of the employer.

The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above (may not exceed the amount the employee would have been paid for working an equivalent duration during the 30 days immediately preceding such period). For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

There are provisions that prevent employers from taking advantage of the employee retention credit and other credits for the same employee, including the work opportunity credit under IRC § 51 and the employer credit or paid family leave under IRC § 45S.

#### **Delay of payment of employer payroll taxes.**

*Section 2302 of Coronavirus Aid, Relief and Economic Security Act "CARES Act"*

Allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees, with the deferral period beginning March 25, 2020 and ending December 30, 2020. All employers are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the

following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. However, employers who received Small Business Act loans that are forgiven under the CARES Act do not qualify for the deferral program.

**Modifications for net operating losses.**

*Section 2033 of Coronavirus Aid, Relief and Economic Security Act "CARES Act"*

Relaxes the limitations on a company's use of losses from prior years. NOLs are currently subject to a taxable income limitation, and they cannot be carried back to reduce income in a prior tax year. This provision provides that a loss from 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. These changes will allow companies to utilize losses and amend prior years' returns, which will provide critical cash flow and liquidity during the COVID-19 emergency.

**Modification of limitation on losses for taxpayers other than corporations.**

*Section 2034 of Coronavirus Aid, Relief and Economic Security Act "CARES Act"*

Modifies the loss limitation applicable to pass-through businesses and sole proprietors, so they can benefit from the NOL carryback rules described above and access critical cash flow to maintain operations and payroll for their employees.

**Modification of credit for prior year minimum tax liability of corporations.**

*Section 2035 of Coronavirus Aid, Relief and Economic Security Act "CARES Act"*

The corporate AMT was repealed as part of the Tax Cuts and Jobs Act, but corporate AMT credits were made available as refundable credits over several years, ending in 2021. The provision accelerates the ability for companies to recover those AMT credits, permitting companies to claim a refund now and obtain additional cash flow during the COVID-19 emergency.

**Modifications of limitation on business interest.**

*Section 2036 of Coronavirus Aid, Relief and Economic Security Act "CARES Act"*

Temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30-percent limitation to 50 percent of the taxable income for 2019 and 2020. As businesses look to weather the storm of the current crisis, this provision will allow them to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll. A taxpayer may elect not to claim the increased percentage but may revoke the election only with the consent of the Treasury Secretary.

**Technical amendments regarding qualified improvement property.**

*Section 2037 of Coronavirus Aid, Relief and Economic Security Act "CARES Act"*

Enables businesses, especially in the hospitality industry, to immediately write off costs associated with improving facilities instead of having to depreciate those improvements over the

39-year life of the building. The provision, which corrects an error in the Tax Cuts and Jobs Act, not only increases companies' access to cash flow by allowing them to amend a prior year return, but also incentivizes them to continue to invest in improvements as the country recovers from the COVID-19 emergency.

## **INDIVIDUAL PROVISIONS**

### **Recovery Rebates for Individuals.**

*Section 2201 of Coronavirus Aid, Relief and Economic Security Act "CARES Act"*

All U.S. residents with adjusted gross income up to \$75,000 (\$150,000 married), who are not a dependent of another taxpayer and have a work eligible social security number, are eligible for the full \$1,200 (\$2,400 married) rebate. In addition, they are eligible for an additional \$500 per qualifying child (children who have not attained age 17). This is true even for those who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as SSI benefits. For the vast majority of Americans, no action on their part will be required in order to receive a rebate check as IRS will use a taxpayer's 2019 tax return if filed, or in the alternative their 2018 return. This includes many low-income individuals who file a tax return in order to take advantage of the refundable Earned Income Tax Credit and Child Tax Credit. The rebate amount is reduced by \$5 for each \$100 that a taxpayer's income exceeds the phase-out threshold. The amount is completely phased-out for single filers with incomes exceeding \$99,000, \$146,500 for head of household filers with one child, and \$198,000 for joint filers with no children.

### **Special rules for use of retirement funds.**

*Section 2202 of Coronavirus Aid, Relief and Economic Security Act "CARES Act"*

Consistent with previous disaster-related relief, this provision waives the 10-percent early withdrawal penalty for distributions up to \$100,000 from qualified retirement accounts for coronavirus-related purposes. In addition, income attributable to such distributions would be subject to tax over three years, and the taxpayer may recontribute the funds to an eligible retirement plan within three years without regard to that year's cap on contributions. Further, the provision provides flexibility for loans from certain retirement plans for coronavirus-related relief. A coronavirus-related distribution is a distribution made to an individual: (1) who is diagnosed with COVID-19, (2) whose spouse or dependent is diagnosed with COVID-19, or (3) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury Secretary.

### **Temporary waiver of required minimum distribution rules for certain retirement plans and accounts.**

*Section 2203 of Coronavirus Aid, Relief and Economic Security Act "CARES Act"*

Waives the required minimum distribution rules for certain defined contribution plans and IRAs for calendar year 2020. This provision provides relief to individuals who would otherwise be

required to withdraw funds from such retirement accounts during the economic slowdown due to COVID-19.

**Allowance of partial above the line deduction for charitable contributions.**

*Section 2204 of Coronavirus Aid, Relief and Economic Security Act "CARES Act"*

Encourages Americans to contribute to churches and charitable organizations in 2020 by permitting them to deduct up to \$300 of cash contributions, whether they itemize their deductions or not.

**Modification of limitations on charitable contributions during 2020.**

*Section 2205 of Coronavirus Aid, Relief and Economic Security Act "CARES Act"*

Increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations. For individuals, the 50-percent of adjusted gross income limitation is suspended for 2020. For corporations, the 10-percent limitation is increased to 25 percent of taxable income. This provision also increases the limitation on deductions for contributions of food inventory from 15 percent to 25 percent.

**Exclusion for certain employer payments of student loans.**

*Section 2206 of Coronavirus Aid, Relief and Economic Security Act "CARES Act"*

Enables employers to provide a student loan repayment benefit to employees on a tax-free basis. Under the provision, an employer may contribute up to \$5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income. The \$5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law. The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.