

Capitol Tax Partners Summary of Business Tax Provisions in Coronavirus Aid, Relief, and Economic Security (CARES) Act

1. Employee Retention Credit (Sec. 2301). An eligible employer receives a refundable credit for up to 50 percent of qualified wages for each calendar quarter. The maximum amount of qualified wages per employee that may be taken into account for **all** calendar quarters is \$10,000. The credit is first allowed against the tax imposed by section 3111(a) or 3221(a), and then any credit in excess of such payroll tax liability will be treated as an overpayment and refunded to the eligible employer under sections 6402(a) and 6413(b). The payroll tax trust funds are held harmless under this provision through a transfer from the general fund.

- a. **Eligible Employer.** An eligible employer means an employer (other than an employer receiving a business interruption loan) that conducted an active trade or business during calendar year 2020 and with respect to that business:
 - i. The operation of that business was fully or partially suspended by governmental order due to the coronavirus (COVID-19) during such calendar quarter; or
 - ii. The calendar quarter is within a defined period in which such business has experienced a significant decline in gross receipts. The defined period runs (i) from the first calendar quarter beginning after 2019 in which the business has suffered a more than 50% drop in gross receipts as compared to the same calendar quarter for the prior year, to (ii) the first subsequent calendar quarter in which the business's gross receipts are at least 80% as compared to the same calendar quarter for the prior year.

An employer that receives a small business loan under the paycheck protection program, as added by section 1102, is not an eligible employer.

- b. **Qualified wages.** The rules are different depending on the size of the employer. For employers with 100 or less full-time equivalent employees, they may take into account all wages paid to employees during the relevant period. For employers with more than 100 full-time equivalent employees, they may only take into account wages paid to employees who are not providing services (for the circumstances described in (i) and (ii) above) during the relevant period, and such wages taken into account shall not exceed the amount they would have been paid previously. Qualified wages include any qualified health plan expenses allocable to such other qualified wages, but does not include wages taken into account under the paid sick leave and family and medical leave credit provisions (sections 7001 or 7003) of the Families First Coronavirus Response Act.
- c. **Aggregation rule.** Persons treated as a single employer under section 52(a) or (b) (relating to the work opportunity tax credit) or section 414(m) or (o) (relating to certain employee benefit plans) are treated as a single employer for purposes of the credit.

- d. Other entities. Tax exempt organizations may be eligible for these credits in certain cases, but governmental entities are not.
- e. This section only applies to wages paid after March 12, 2020 and before January 1, 2021.

- 2. Deferral of certain payroll taxes (Sec. 2302).** An employer's share of social security taxes (and railroad retirement act taxes) from the effective date through the remainder of 2020 is deferred and is due 50% on December 31, 2021 and 50% on December 31, 2022. No interest and penalties apply provided payment is made when due. Additionally, (i) if payroll agents of an employer act at the direction of that employer with respect to deferring payroll taxes in accordance with this relief, the payroll agent will not be liable for any such taxes (employer solely liable); and (ii) if a certified professional employer organization acts at the direction of a customer with respect to deferring payroll taxes in accordance with this relief, the certified PEO will not be liable (customer solely liable). Taxpayers are ineligible for this relief if they have indebtedness forgiven under sections 1106 or 1109 of the bill, which apply to the paycheck protection program. The payroll tax trust funds are held harmless through a transfer from the general fund.
- 3. Net operating losses (Sec. 2303).** The Tax Cuts and Jobs Act (TCJA) eliminated net operating loss (NOL) carrybacks and generally restricted the deduction of NOLs to 80 percent of taxable income. The bill allows a five-year NOL carry back for losses incurred in tax years beginning in 2018, 2019 and 2020. Also, for taxable years beginning before 2021, a taxpayer would be permitted to deduct 100% of loss carry forwards and carry backs. For taxable years beginning after 2020, a taxpayer would be permitted to deduct 100 percent of loss carry forwards from years beginning before 2018, but loss carry forwards from years beginning after 2017 would remain subject to the 80 percent of taxable income limitation. The bill does not modify the ordering rule that generally requires the NOL deduction to apply before the FDII/GILTI deduction. Also, the provision contains certain special rules: (i) for life insurance companies, any NOL carryback to a year beginning before January 1, 2018 shall be treated in the same manner as an operations loss carryback within the meaning of section 810 as in effect prior to its repeal; (ii) if any NOL is carried back to a taxable year in which a section 965(a) inclusion amount is includible in gross income, any such NOL deduction will not be applied to such section 965(a) inclusion amount (as if the taxpayer made an election under section 965(n)); (iii) if the five-year carryback period includes any taxable year in which a section 965(a) inclusion amount is includible in gross income, a taxpayer may elect to exclude all such taxable years from the five-year carryback period; and (iv) an NOL from a REIT year cannot be carried back and an NOL from a taxable year that is not a REIT year cannot be carried back to a REIT year.
- 4. Loss limitation for non-corporate taxpayers (Sec. 2304).** The TCJA imposed a limitation on certain "excess business losses" under section 461(l)(1)(B). The bill delays the applicability date of the section 461(l)(1)(B) excess business loss

limitation applicable to non-corporate taxpayers from tax years beginning after December 31, 2017 to tax years beginning after December 31, 2020, along with some technical corrections.

- 5. Interest limitation (Sec. 2306).** Under the TCJA, the deduction for net business interest expense is generally limited to 30 percent of adjusted taxable income (ATI). The bill modifies the section 163(j) interest limitation in two principal respects: (i) the limitation would be increased to 50 percent (rather than 30 percent) of ATI for taxable years beginning in 2019 and 2020; and (ii) for taxable years beginning in 2020, the taxpayer would be able to determine its interest limitation by using its ATI from 2019 (rather than 2020). With respect to the increased 50 percent limitation, the bill (i) provides the ability to elect out of the increased limitation for any taxable year beginning in 2019 and 2020, and (ii) provides that the increased limitation does not apply to a partnership with respect to a taxable year beginning in 2019, but a partner who has excess business interest allocated to it from the partnership for a taxable year beginning in 2019 can (unless the partner elects otherwise) treat 50 percent of the interest as business interest in the partner's first taxable year beginning in 2020 that is not subject to the 163(j) limitation (with the remaining 50 percent of such excess business interest treated as subject to the 163(j) limitation). With respect to the election to use 2019 ATI, the bill provides that (i) in the case of a partnership, such election shall be made at the partnership level, and (ii) if such election is made for a taxable year that is a short year, the 2019 ATI for the short taxable year is adjusted on a pro rata basis to reflect the number of months in the short taxable year.
- 6. Acceleration of AMT credits (Sec. 2305).** The TCJA repealed the corporate alternative minimum tax (AMT) and allowed taxpayers the use of all remaining AMT credits over a four-year period beginning in 2018. The bill accelerates the use of remaining AMT credits by allowing taxpayers to apply the entire refundable credit amount in tax years beginning in 2018 and 2019. Taxpayers may make an election to take the entire refundable credit amount in 2018. The provision also provides that any application for refund of an amount pursuant to such election is subject to section 6411 "quickie" refund provisions with no JCT review and any such claims for refund should be processed within 90 days of the date the claim is filed.
- 7. Qualified improvement property (Sec. 2307).** The bill includes a technical correction treating "qualified improvement property" as 15-year property. As a result, such property is eligible for immediate expensing. This bill also provides QIP a class life of 20 years for purposes of ADS. This provision is effective as if originally include in the TCJA.
- 8. Increase of charitable contribution limitation (Sec. 2205).** A percentage of taxable income limitation is imposed on the total amount of charitable contributions that a corporation or individual can deduct in a given taxable year.

For charitable contributions paid in cash in 2020, the bill increases the percentage income limitation for corporations (from 10 percent) to 25 percent of taxable income and suspends the limitation entirely for individuals. For purposes of this section, contributions to private foundations or donor advised funds do not qualify for the increased limitation. Also, the limitation on business contributions of food inventory is increased to 25 percent (from 15 percent).

- 9. Exclusion for employer payments of student loans (Sec. 2206).** The bill excludes from gross income amounts up to \$5,250 paid by an employer to an employee for the principal or interest on a qualified education loan (as defined in section 221(d)(1)). This provision applies to payments made after enactment of the bill and before January 1, 2021. The employer may either directly pay the employee or the lender.

- 10. Temporary Abatement of Distilled Spirits Excise Tax for Use in Hand Sanitizer (Sec. 2308).** Distilled spirits that are removed from a bonded premise during calendar year 2020 will not be subject to excise tax if used or contained in hand sanitizer in a manner consistent with FDA guidance related to the coronavirus outbreak.

- 11. Single-employer plan funding rules (Sec. 3608).**
 - a. Funding delay. The bill provides companies with more time to meet their funding obligations by delaying the due date for any contribution otherwise due under Code section 430(j) during 2020 until January 1, 2021. At that time, contributions that had been due earlier would be paid with interest (effective rate of interest for the plan) during the delay.
 - b. Benefit restriction can be based on 2019 plan year. Additionally, a plan may elect to determine the applicability of benefit restrictions for the 2020 plan year based on the plan's funded status for the 2019 plan year to avoid restrictions due to declining returns.