



03.27.20 HIGHLIGHTS REVISED

President Trump signed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act" or "Act") (H.R. 748) on March 27, 2020. The major highlights that BEATTY CPA LLC released on March 27th reflected the provision covered in S. 3548. The major highlights have been revised to reflect H.R. 748 which include corrections to the Individual Recover Rebate/Credit and the Employee Retentions Credit. The specifics of these provisions must be evaluated to determine how they might apply to your particular facts and circumstances.

Federal Income Tax Filing and Payment Relief (expanded)

The CARES Act delays all returns required to be filed for taxable year 2019 by substituting July for April. The IRS issued Notice 2020-20 which indicates that this relief applies to federal gift (and generation-skipping transfer) tax returns.

As of April 9, 2020, Q1 and Q2 2020 estimated tax payments for individuals and corporations are now due on July 15, 2020 as one installment.

Individual Provisions

Individual Recovery Rebate / Credit

In general, an "eligible individual" is allowed an income tax credit for 2020 which is equal to the sum of—

1. \$1,200 (\$2,400 in the case of a joint return), plus
2. An amount of \$500 for each "qualifying child" of the taxpayer. A qualifying child means a qualifying child of the taxpayer, as defined for purposes of the dependency exemption, who hasn't attained age 17.

"Eligible Individual": Any individual other than a nonresident alien or an individual whom a dependency deduction is allowable to another taxpayer. Estates and Trusts are not eligible.

"Phase Out": The credit is reduced by 5% of the taxpayer's adjusted gross income (AGI) in excess of:

- \$150,000 for Married Filing Joint, completely phased out at \$198,000
- \$112,500 for Head of Household, completely phased out at \$146,500
- \$75,000 for all other taxpayers, completely phased out at \$99,000

"Valid Identification Number": No credit will be allowed to an eligible individual who doesn't include the individual's valid identification number on the tax return for the tax year. A "valid identification number" means a social security number, as defined in [Code Sec. 24\(h\)\(7\)](#). For a qualifying child who is adopted or placed for adoption, the child's adoption taxpayer identification number is a valid identification number. Under [Code Sec. 24\(h\)\(7\)](#), a "social security number" must be issued

by the Social Security Administration to a U.S. citizen or to an alien who is eligible to be employed in the U.S. Also, the number must have been issued by the due date of the return.

Other Highlights:

- The credit is based on 2019 tax return filings. If 2019 return not filed, the IRS will determine the amount of the rebate based on 2018 tax return. If no 2018 return filed, the IRS will use information based on 2019 Form SSA-1099 / Form RRB-1099.
- IRS may make the rebate electronically if refunds from prior / current year direct deposited. No rebate made or allowed after December 31, 2020
- No later than 15 days after the date a payment was made, the Secretary will mail a notice to the taxpayer to their last known address. The notice shall indicate the method of payment, the amount, and an IRS contact to report any failure to receive payment.

No 10% Additional Tax for Coronavirus-Related Retirement Plan Distributions

Under the CARES Act, the §72(t) 10% additional tax does not apply to any coronavirus-related distribution, up to \$100,000. The distribution must be made between January 1, 2020 and December 31, 2020. Must be made from an eligible retirement plan, to a “qualified individual”.

“Qualified Individual”: Any individual that meets one of the following:

1. who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention (CDC),
2. whose spouse or dependent is diagnosed with such virus or disease by such a test, or
3. who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury.

Any individual who receives a coronavirus-related distribution may, at any time during the 3-year period beginning on the day after the date on which such distribution was received, make one or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made.

The coronavirus-related distribution will be included in gross income ratably over a three-year period beginning in the tax year of the distribution, unless the taxpayer elects not to.

RMD Requirement Waived for 2020

In general, owners of a retirement plan or IRA are required to take “required minimum distributions” (RMDs) annually once the taxpayer reached age 72. Under the CARES Act, the RMD requirements do not apply for the calendar year 2020 for:

- Defined Contribution Plans under §403 (a) and (b), and §457(b)
- Individual Retirement Plans

\$300 Above-The-Line Charitable Deduction

The CARES Act adds a deduction to the calculation of gross income, beginning with the 2020 tax year, for the amount of “qualified charitable contributions” (not to exceed \$300) for any individual who does not itemize deductions. “Qualified Charitable Contributions” must meet the following requirements:

- Made in cash
- Must be allowable under §170
- Made to a qualifying charitable organization
- Cannot be made to a Donor-Advised Fund

Modification of Limits on Individual Cash Charitable Contributions During 2020

Individuals are allowed a deduction for cash contributions to certain charitable organizations (such as churches, educational organizations, hospitals, and medical research organizations) up to 60% of their adjusted gross income (AGI). If the amount of an individual's cash contributions to these charities for the year exceeds 60% of the individual's AGI, then the excess is carried forward and is treated as a deductible charitable contribution in each of the five succeeding tax years.

Under the CARES Act, for the 2020 tax year only, the 60% of AGI limit does not apply. Qualifying contributions are allowed up to the taxpayer's AGI.

- Contributions must be paid in cash during the calendar year 2020
- Contributions to Donor-Advised Funds do not qualify.

Tax-excluded Education Payments by an Employer Temporarily Include Student Loan Repayments

Under present law, payments up to \$5,250 per year for educational assistance programs paid for an employee are not included in gross income of the employee. This does not presently include student loan repayments.

The CARES Act, for the 2010 calendar year, includes student loan repayments in the definition of educational assistance. The \$5,250 annual limit still applies.

Modification of Limits on Losses of Noncorporate Taxpayers

Under present law, the deduction of excess business losses by noncorporate taxpayers for tax years beginning after Dec. 31, 2017 and ending before Jan. 1, 2026 is disallowed. Generally, an "excess business loss" is the excess of the (1) taxpayer's aggregate trade or business deductions for the tax year over (2) the sum of the taxpayer's aggregate trade or business gross income or gain plus \$250,000 (as adjusted for inflation). The CARES Act temporarily modifies the loss limitation for noncorporate taxpayers so they can deduct excess business losses arising in 2018, 2019, and 2020.

Business Provisions

Employee Retentions Credit

The CARES Act provides for a refundable payroll tax credit for 50% of the wages paid by "eligible employers" to certain employees during the COVID-19 crisis. An "eligible employer" is as follows:

- Employers, including non-profits, whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel, or group meetings, or
- Employers who have experienced:
 - a) For the first calendar quarter beginning after December 31, 2019, a greater than 50% reduction in quarterly receipts, measured on a year-over-year basis.
 - b) Once the gross receipts go above 80% of a comparable quarter in 2019, the credit is no longer available.

The credit is not available to employers receiving Paycheck Protection Plan loans under §1102 of this Act.

For employers who had an average number of full-time employees in 2019 of 100 or fewer, all employee wages are eligible, regardless of whether the employee is furloughed. For employers who had a larger average number of full-time employees in 2019, only the wages of employees who are furloughed or face reduced hours as a result of their employers' closure or reduced gross receipts are eligible for the credit.

- "Wages" includes health benefits and is 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 the 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 the employer credit for paid family and medical leave.

Delay of Payment of Employer Payroll Taxes

The CARES Act allows employers to defer the payment of certain payroll taxes through the end of 2020. The provision allows for the payment for “applicable employment taxes” for the “payroll tax deferral period” to be deferred until the “applicable date”.

“Applicable employment taxes”: Includes the Old-Age, Survivors, and Disability Insurance (Social Security) tax under §3111(a). It does not include the Hospital Insurance (Medicare) tax under §3111(b). This applies to self-employed persons as well.

“Payroll Tax Deferral Period”: This is the period on the date of enactment and ending before January 1, 2021.

“Applicable Date”: 50% of the “applicable employment taxes” are due by December 31, 2021, and the balance is due by December 31, 2022.

This deferral of employment taxes does not apply to taxpayers which have had indebtedness forgiven with respect to a loan under Small Business Act §7(a)36, or §1102 or §1109 of this Act.

Temporary Repeal of Taxable Income Limitation for Net Operating Losses (NOL) and Modification of NOL Carrybacks

Under present law as modified by the TCJA of 2017, the current NOL deduction is equal to the lesser of 1) the aggregate of NOL carryovers and carrybacks to the current year, or 2) 80% of taxable income before the NOL. In addition, any NOL (with certain exceptions) cannot be carried back to prior tax years.

Under the CARES Act, the 80% taxable income limitation is temporarily suspended, allowing for the NOL to fully offset income. This rule applies to tax years beginning after December 31, 2017, and to tax years beginning on or before December 31, 2017 to which NOLs arising in tax years beginning after December 31, 2017 are carried.

In addition, the 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 loss.

Corporate Minimum Tax Credit (MTC) Accelerated

Corporations (for which the alternative minimum tax was repealed for tax years after 2017) may claim outstanding MTCs (subject to limits) for tax years before 2021, at which time any remaining MTC may be claimed as fully refundable. Thus, the MTC is refundable for any tax year beginning in 2018, 2019, 2020, or 2021, in an amount equal to 50% (100% for tax years beginning in 2021) of the excess MTC for the tax year, over the amount of the credit allowable for the year against regular tax liability.

The CARES Act changes "2018, 2019, 2020, or 2021" (above) to "2018 or 2019," and changes "(100% for tax years beginning in 2021)" to "(100% for tax years beginning in 2019)". The Act also provides for an election to take the entire refundable credit in 2018.

Deductibility of Interest Expense Temporarily Increased

The Tax Cuts and Jobs Act of 2017 ("TCJA") generally 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 on the deductibility of interest expense from 30% to 50% for tax years beginning in 2019 and 2020.

Under a special rule for partnerships, the increase in the limitation will not apply to partners in partnerships for 2019 (it applies only in 2020). For partners that don't elect out, any excess business interest of the partnership for any tax year beginning in 2019 that is allocated to the partner will be treated as follows:

- 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.
- 50% of the excess business interest will be subject to the limitations of paragraph 163(j)(4)(B)(ii) (relating to the usual treatment of excess business interest allocated to partners) in the same manner as any other excess business interest that is so allocated. In other words, it will remain suspended until the partnership allocates excess taxable income or excess interest income to the partner.

Taxpayers may elect out of the increase, for any tax year, in the time and manner IRS prescribes. Once made, the election can be revoked only with IRS consent. For partnerships, the election must be made by the partnership and can be made only for tax years beginning in 2020. In addition, 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 beginning in 2019 as the relevant base. For partnerships, this election must be made by the partnership. If an election is made to calculate the interest limitation using 2019 adjusted taxable income for a tax year that is a short tax year, the adjusted taxable income for the taxpayer's last tax year beginning in 2019 which is substituted under the election will be equal to the amount which bears the same ratio to such adjusted taxable income as the number of months in the short taxable year bears to 12.

Bonus Depreciation Technical Correction for Qualified Improvement Property

The Tax Cuts and Jobs Act of 2017 ("TCJA") allows for a 100% additional first year depreciation deduction (100% Bonus Depreciation) for certain qualified property. The TCJA eliminated pre-existing definitions for (1) qualified leasehold improvement property, (2) qualified restaurant property, and (3) qualified retail improvement property. It replaced those definitions with one category called qualified improvement property ("QI Property"). A general 15-year recovery period was intended to have been provided for QI Property. However, that specific recovery period failed to be reflected in the statutory text of the TCJA. Thus, under the TCJA, QI Property falls into the 39-year recovery period for nonresidential rental property. That makes the QI Property category ineligible for 100% Bonus Depreciation.

The CARES Act provides a technical correction to the TCJA, and specifically designates QI Property as 15-year property for depreciation purposes. This makes QI Property a category eligible for 100% Bonus Depreciation. QI property also is specifically assigned a 20-year class life for the Alternative Depreciation System.

The amendments are effective for property placed in service after December 31, 2017.

Modification of Limitations on Corporate Cash Contributions and Food Inventory During 2020

Under present law, the deduction for charitable contributions paid by a corporation is limited to 10% of taxable income. The excess contribution is carried over to the succeeding five tax years.

A donation of food inventory to a charitable organization that will use it for the care of the ill, the needy, or infants is deductible in an amount up to basis plus half the gain that would be realized on the sale of the food (not to exceed twice the basis). In the case of a C corporation, the deduction cannot exceed 15% of the corporation's income. In the case of a taxpayer other than a C corporation, the deduction cannot exceed 15% of aggregate net income of the taxpayer for that tax year from all trades or businesses from which those contributions were made, computed without regard to the taxpayer's charitable deductions for the year.

The CARES Act modifies this income limitation to 25% of taxable income.