

Business Provisions Under the CARES Act

Employee Retention Credit for Employers Subject to Closure or Experiencing Economic Hardship Due to COVID-19.

This provision provides a refundable payroll tax credit for 50 percent of wages paid by eligible employers to certain employees during the COVID-19 crisis. The credit is available to 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. The credit is also provided to employers who have experienced a greater than 50 percent reduction in quarterly receipts, measured on a year-over-year basis.

Wages of employees who are furloughed or face reduced hours as a result of their employers' closure or economic hardship are eligible for the credit. For employers with 100 or fewer full-time employees, all employee wages are eligible, regardless of whether an employee is furloughed. The credit is provided for wages and compensation, including health benefits, and is provided for the first \$10,000 in wages and compensation paid by the employer to an eligible employee. Wages do not include those taken into account for purposes of the payroll credits for required paid sick leave or required paid family leave, nor for wages taken into account for the employer credit for paid family and medical leave.

The employee retention credit is effective for wages paid after March 12, 2020, and before January 1, 2021.

Delay of Payment of Employer Payroll Taxes.

This provision would allow taxpayers to *defer* paying the employer portion of certain payroll taxes through the end of 2020, with all 2020 deferred amounts due in two equal installments, one payment due on December 31 of 2021, the other on December 31, 2022. Deferral is not provided to employers that avail themselves of SBA 7(a) loans designated for payroll.

Payroll taxes that can be deferred include the employer portion of FICA taxes, the employer and employee representative portion of Railroad Retirement taxes (that are attributable to the employer FICA rate), and 50% of self-employment taxes related to Social Security.

Modification of Net Operating Losses (NOLs).

The Tax Cuts and Jobs Act of 2017 (TCJA) limited net operating losses (NOLs) arising after 2017 to 80 percent of taxable income and eliminated the ability to carry NOLs back to prior taxable years.

In general, this provision would modify the treatment of NOL carrybacks. In the case of taxable years beginning *before* 2021, taxpayers will be eligible to carry back NOLs to the prior five taxable years. Effectively, this delays the 80 percent taxable income limitation until 2021 and temporarily extends the carryback period from zero to five years. C corporations may elect to file for an accelerated refund to claim the carryback benefit.

The provision also eliminates loss limitations applicable to sole proprietors and pass through entities to enable them to use the NOL carryback provisions.

Modification of Limitation on Losses for Taxpayers other than Corporations.

This provision would retroactively turn off the excess active business loss limitation rule implemented with TCJA by amending the provision to apply to tax years beginning after December 31, 2020 (rather than December 31, 2017). It also turns off active farming loss rules for tax years beginning after December 31, 2017 and before December 31, 2020.

An active business loss is defined as deductions in excess of income and gain attributable to a trade or business in which the taxpayer actively participates plus \$250,000 (\$500,000 for joint filers) (i.e. active business losses in excess of \$250,000 (\$500,000 for joint filers) were disallowed by the 2017 Tax Law and treated as NOL carryforwards in the following tax year).

Modification of Credit for Prior Year Minimum Tax Liability of Corporations.

The TCJA repealed the corporate alternative minimum tax (AMT) and allowed corporations to claim outstanding AMT credits subject to certain limits for tax years prior to 2021, at which time any remaining AMT credit may be claimed as fully-refundable. This provision allows corporations to claim 100% of AMT credits in 2019 as fully-refundable and provides an election to accelerate claims to 2018, with eligibility for accelerated refunds.

Modification of Limitation on Business Interest.

The TCJA generally limited the amount of business interest allowed as a deduction to 30% of adjusted taxable income (ATI). This provision generally allows businesses to elect to increase the interest limitation from 30% of ATI to 50% of ATI for 2019 and 2020, and allows businesses to elect to use 2019 ATI in calculating their 2020 limitation.

A special rule for partnerships allows 50% of any excess business interest allocated to a partner in 2019 to be deductible in 2020 and not subject to the 50% (formerly 30%) ATI limitation. The remaining 50% of excess business interest from 2019 is subject to the ATI limitation. The 2019 ATI limitation remains at 30% of partnership ATI rather than 50% of ATI. The ATI limitation for 2020 is 50% of partnership ATI and partnerships may elect to use 2019 partnership ATI in calculating their 2020 limitation.

Qualified Improvement Property Technical Correction.

This provision is a technical correction to the TCJA that would allow the interior improvements of buildings to be (1) immediately expensed (i.e., 100%) in the case of restaurant, retail, and most other property (classified as 15-year property), or (2) depreciated over 20 years in the case of a real property trade or business.