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CARES Act Tax Changes Aim to Provide Businesses Relief

by Karen A. Hayes

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On March 27, 2020, Congress approved the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). The CARES Act includes several changes in tax law intended to provide economic relief to businesses affected by the COVID-19 crisis.

Highlights of those changes include:

- Delayed Payment of Payroll Taxes: The CARES Act permits employers to defer payment of the employer share of the 6.2% Social Security tax they otherwise are responsible for paying. The deferred tax is required to be paid over the following two years, with half the amount due in 2021 and the other half due in 2022.

- Paycheck Protection Loan Program: The CARES Act establishes a new loan program called the "Paycheck Protection Program" (PPP) and allocates $349 billion for the making of PPP loans. For eligible borrowers a portion, if not all, of the amount of funds borrowed under this program may be forgiven without payment. Any PPP Loan funds that are forgiven are not treated as taxable income to the recipient.

- Employee Retention Tax Credit: Eligible employers may be entitled to a refundable payroll tax credit equal to 50% of qualified wages paid to employees during the COVID-19 crisis.
  - The credit is available to employers who satisfy either one of the following conditions:
    - The employer's operations were fully or partially suspended due to a COVID-19 related shut-down order, or
    - The employer's gross receipts declined by more than 50% when compared to the same quarter last year.
  - The credit is provided for the first $10,000 of qualified wages, including health benefits, paid to an employee.
  - For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit. For employers with more than 100 full-time employees, qualified wages include wages paid to employees who are not working due to the COVID-19-related circumstances described above.
  - The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.
  - If the amount of the credit exceeds the amount of payroll taxes owed by the employer, the employer will receive the excess amount in the form of a refund.
  - Employers who want to claim the credit will report their total qualified wages and the related credits for each calendar quarter on their federal employment tax returns (typically, IRS Form 941). Eligible employers who anticipate receiving the credits may reduce the amount of federal employment taxes they otherwise would be required to deposit with the IRS by the amount of the anticipated credit. If the amount of the anticipated credit exceeds the amount of employment tax deposits for that quarter, an employer can request an advance refund by filing IRS Form 7200.
  - An employer who receives a PPP Loan described above will not be entitled to the tax credit. If a taxpayer claims the tax credit and subsequently receives a PPP Loan, the tax credit will be subject to recapture.

- **<u>Losses and Interest Deductions:</u>** The CARES Act reverses certain limitations on deductions of net operating losses (NOLs) and interest expense that were imposed by the Tax Cuts and Jobs Act (TCJA). A taxpayer may need to file an amended tax return to take advantage of these new rules for prior tax years.
  - Companies may now carry back NOLs incurred in tax years 2018-2020 for up to five years (this carry-back rule had been eliminated by the TCJA).
  - Companies are able to fully offset their taxable income for tax years 2020 and prior with NOLs (temporarily lifting the 80% limitation that was imposed by the TCJA).
  - Loss limitations for pass-through businesses are modified, so that those taxpayers can deduct excess business losses arising in 2018, 2019, and 2020.
  - The limitation on deductions for interest expense that was imposed by the TCJA has been increased from 30% of taxable income (with adjustments) to 50% for 2019 and 2020.

- **<u>Corporate AMT Refunds:</u>** Corporate taxpayers who were subject to the alternative minimum tax (AMT) that was repealed as part of the TCJA may be receiving refundable AMT credits through the tax year 2021. The CARES Act accelerates the recovery of those credits.

- **<u>Depreciation for Qualified Improvement Property:</u>** The TCJA unintentionally caused certain costs associated with improving facilities to be depreciable over the 39-year life of the building. The CARES Act corrects that error and enables businesses to depreciate those costs over a shorter period.

We will continue to follow this and the other CARES Act programs and offer updates as further developments arise. If you have any questions, please contact Karen A. Hayes or another member of the CARES Act team: Steven M. Hartmann, Meghan E, Tepas and Anthony J. Zeoli, and stay tuned for more developments on [Freeborn's COVID-19 webpage.]

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Karen advises clients on federal income tax matters. She represents corporations, partnerships and private equity funds involved in a variety of taxable and non-taxable transactions, domestic and cross-border mergers and acquisitions, divestitures, investments, reorganizations, partnerships and joint ventures. In addition, Karen has represented tax credit syndicators, banks and other institutional investors with respect to investments in affordable housing projects.

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