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On March 27, 2020, President Trump signed the CARES Act which contains the following major provisions that relate primarily to businesses.

Credit For Employer Payroll Taxes

Employers are allowed a tax credit of 50% of qualifying wages (subject to a \$10,000 cap per employee) for each calendar quarter to be taken against the employer's payroll taxes. The credit is refundable subject to normal rules about refunds of overpayments. Qualifying wages for employers with under 100 full-time employees include all wages paid to employees who are not providing services. Qualifying wages for employers with under 100 full-time employees include **any wages paid to employees**. Note that the term "qualified wages" also includes any health insurance benefits paid by the employer on behalf of the employees.

Must be an "eligible employer" defined as carrying on a trade or business during a calendar quarter in which the business was fully or partially suspended due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings due to COVID-19, or the business' first calendar quarter where gross receipts were less than 50% of the same quarter in the previous year through the first quarter where gross receipts exceed 80% of the gross receipts in the same quarter from the previous year. As an example, it could be a restaurant that was ordered closed except for carryout. Alternatively, it could be a debt collection agency that was allowed to keep working, but gross receipts were down more than 50% from the year ago quarter because their customers were not submitting debts to be collected. The employer would be eligible for the credit up through the first quarter where gross receipts exceed 80% of the year ago period.

Nonprofits are eligible for the credit and all of their operations are included for purposes of the 50% to 80% test. For example, if a church (exempt under IRC §501(c)(3)) also operates a preschool, then for purposes of the gross receipts test both contributions and preschool tuition would have to be counted as gross receipts for both the current quarter and the year ago quarter.

The law does not allow employers to count wages taken as credit for paid leave under Families First Coronavirus Act or wages used to qualify for the Work Opportunity Credit or the Paid Family and Medical Leave Credit. Further the wages paid for purposes of the credit must be paid at a consistent rate as was paid to the employee for the 30 days immediately preceding the first eligible calendar quarter.

Employers are not eligible for this credit if they take a 7(a) SBA loan.

The law is silent on this point, but it appears that you could take the credit against payroll tax deposits. The IRS should issue guidance about the exact mechanism for taking the credit soon.

Deferral of Payment of Employer Payroll Taxes

Normally, payroll tax deposits are subject to strict requirements requiring timely deposit of both amounts withheld from employees and the employer's portion of payroll taxes. The new law allows for the employer's share of payroll tax payments due between the enactment of the Act and December 31, 2020 to be deferred with 50% of the balance payable on 12/31/2021 the remaining amount due 12/31/2022. Employers are not eligible for this deferment for tax payments if you take a loan from SBA under the 7(a) program and any of the loan is forgiven.

Common law employers can direct their Section 3504 paying agent (PEO – employee leasing company such as ADP) to defer the payment of employer payroll taxes. If you do this, the 3504 Agent is relieved of any responsibility for the taxes.

For self-employed taxpayers, 50% of the Social Security portion of SE tax is not subject to applicable penalties for failure to pay estimated tax or any other penalty or interest. Payments of this portion of the self-employment tax are due on the same schedule as mentioned above for the employer's share of payroll taxes (50% on 12/31/21 and remainder on 12/31/22).

NOLs

The new tax law in 2017 created a limitation for the deduction for Net Operating Loss carryforwards of 80% of the current period's taxable income prior to the Net Operating Loss deduction. For example, if you had \$10,000 of taxable income in a year before considering the net operating loss carryforward, your deduction for the net operating loss would be limited to \$8,000. This Act suspends the 80% limitation for the 2020 tax year. This would make NOL carryforwards available to offset all taxable income for 2020.

For tax years beginning in 2021, the NOL deduction is limited to NOL carryforwards carried forward from before January 1, 2018 plus the lesser of NOL carryforwards beginning after 12/31/17 or 80% of the excess of taxable income in that year before considering the NOL deduction or the qualified business income deduction over the NOL carryforwards beginning 2017 or before.

The 2017 tax law change eliminated the possibility to carry back net operating losses and allow the taxpayer to claim a refund of taxes previously paid. The new law allows NOLs arising in 2018, 2019, and 2020 to be carried back to each of the 5 taxable years preceding the loss. For example, a loss in 2020 would be carried back to offset income from 2015. The taxpayer would have to file a claim for refund (for claims made within 1 year of the year of loss) or an amended tax return (for claims made more than 1 year after the year of loss) to carryback the loss and claim the refund of previously paid taxes.

Prior to the elimination of NOL carrybacks, which the Tax Cut and Jobs Act of 2017 mostly disallowed, taxpayers normally were required to first use NOLs as a carryback to prior years unless they elected to forego the carryback period with their timely filed (including extensions) tax return in the year of loss. The new law allows taxpayers to make this election with respect to any net operating losses arising in 2018 and 2019 with their timely filed 2020 tax return. This frees the taxpayer that wants to forego the NOL carryback from having to make any additional filing (other than attaching the election to his 2020 return) relative to his 2018 or 2019 net operating losses.

Suspension of Excess Business Loss Rules

The TCJA limited business losses that would be deductible to noncorporate taxpayers to \$250,000 (\$500,000 for a married filing joint return). This Act suspends this rule from taking effect until 2021.

Loosening of Limitations on Business Interest Expense

The TCJA imposed a limit for deductibility of interest expense to 30% of adjusted taxable income for taxpayers with over \$25 million in gross receipts in a year. The new law expands this limit to 50% of adjusted taxable income and allows affected taxpayers to elect to use their 2019 adjusted taxable income in place of their current year adjusted taxable income for purposes of calculating the deductible interest expense limit.

Qualified Improvement Property

The Congress intended for the 2017 tax cut law to make qualified improvement property (generally improvements to real estate that has already been placed in service prior to the improvement) 15-year property eligible for 100% depreciation in the year placed in service. However, a drafting error in that law caused qualified improvement property to have a 39 year life thus making it ineligible for 100% depreciation. This new law implements the long-awaited technical correction of the depreciable life of qualified improvement property to a 15-year property. This makes qualified improvement property now eligible for 100% depreciation for the year placed in service. This change is retroactive to implementation of the 2017 tax cut law. We will await more guidance from the IRS about how taxpayers should implement this change for qualified improvement property placed in service in 2018 and 2019.

These are the major business provisions of the CARES Act. There are always small exceptions and special rules that are beyond the scope of a general letter, so be sure that you get proper, individualized tax advice prior to making any moves. This is particularly true for significant ones. We are always available to help.

Very truly yours,

Treadwell, Tamplin & Co.