



Tax Breaks and Benefits for Businesses Impacted by COVID-19

Hinckley Allen Corporate & Business

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The pandemic of COVID-19 has drastically impacted the United States economy. Over the past few weeks, federal legislation has quickly been enacted to help stimulate the economy and provide much needed cash flow to individuals and businesses. In this alert, we highlight some of the key federal tax breaks and benefits available for businesses affected by COVID-19.

Families First Coronavirus Response Act

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (“FFCRA”), which covers a broad array of programs and funding in response to the COVID-19 crisis. The FFCRA provides two types of mandatory paid leave for employees (i.e., paid sick leave and child care leave) and also provides payroll tax credits to help employers pay for this mandatory paid leave. These payroll tax credits apply to wages required to be paid by the FFCRA for the period beginning on April 1, 2020, and ending on December 31, 2020.

The mandatory paid leave amount varies based on the type of paid leave taken and the reason the employee is unable to work (i.e., paid sick leave or child care leave). Employers will have to make the determination of the amount and duration of mandatory paid leave based on an individual employee’s facts and circumstances. For more information on the mandatory paid leave, please see our [“Families First Coronavirus Response Act \(FFCRA\) DOL Guidance Issued”](#) publication.

1. Paid Sick Leave Credit

The FFCRA provides new payroll tax credits to help alleviate the cost to employers of the paid leave requirements. Employers can take payroll tax credits for the amount of qualified paid sick leave wages actually paid, up to \$511 per employee per day, and \$5,110 in the aggregate, for a total of 10 days. This paid sick leave credit is available to employers to cover costs of employees who are unable to work because of COVID-19 quarantine, self-quarantine, or due to COVID-19 symptoms for which the employee is seeking a medical diagnosis.

The FFCRA provides a separate paid sick leave credit for employees who are caring for someone with COVID-19, or are caring for a child because the child’s school or child care facility has closed or the child care provider is unavailable due to COVID-19. In this case, the employer can take payroll tax credits for two-thirds of the employee’s regular rate of pay, up to \$200 per employee per day and \$2,000 in the aggregate, for up to 10 days.

2. Child Care Leave Credit

In addition to the paid sick leave credits discussed above, the FFCRA provides employers with an additional child care leave credit. If an employee is unable to work because of a need to care for a child whose school or child care facility is closed, or whose child care provider is unavailable due to COVID-19, employers may receive a refundable payroll credit.

The amount of this credit is equal to two-thirds of the employee's regular pay, capped at \$200 per day or \$10,000 in the aggregate, for up to 10 weeks.

3. Prompt Payroll Credit for the Cost of Providing Leave

To provide these payroll credits quickly and efficiently, the FFCRA permits employers, who pay qualifying sick or child care leave, to retain an amount of payroll taxes equal to the amount of qualifying sick and child care leave paid to eligible employees, rather than deposit these monies with the IRS. The payroll taxes which can be retained by the employer include: federal income taxes withheld from employees; the employee's share of Social Security and Medicare taxes; and the employer's share of Social Security and Medicare taxes with respect to all employees. In the event the amount of the payroll credits for paid sick and child care leave exceeds the payroll taxes otherwise required to be withheld, the employer will be able to file a request for an accelerated payment from the IRS.

For example, if an eligible employer paid \$5,000 in paid sick leave, and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of payroll taxes intended as a deposit for qualified leave payments. The employer would only be required under the FFCRA to deposit the remaining \$3,000 on the next regular deposit date.

As another example, if an eligible employer paid \$10,000 in paid sick leave, and was required to deposit \$8,000 in payroll taxes, the employer could use the entire \$8,000 of payroll taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.

Equivalent paid sick leave and child care leave credit amounts are available to self-employed individuals. These credits can be claimed by the self-employed individual on their federal income tax return and will reduce the amount of the estimated tax payments to be paid to the IRS.

The Coronavirus Aid, Relief, and Economic Security Act

1. Small Business Interruption Loans Under the Paycheck Protection Program

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was enacted. The CARES Act provides numerous provisions for tax relief for individuals and businesses, as well as a variety of programs designed to quickly inject cash into the economy.

Included under the CARES Act is a program for significant low-interest loans ("Small Business Interruption Loans") to businesses with not more than 500 employees (or potentially more, if certain exceptions are applicable to your business), and also provides that up to all of the principal amount of the loan will be forgiven, if used for certain permitted purposes. For more information on Small Business Interruption Loans, please see our "[Payroll Loans and Loan Forgiveness: New Relief Opportunities for Small Businesses under the CARES Act's Paycheck Protection Program](#)" publication.

The CARES Act forgives the principal on the Small Business Interruption Loan, if the loan proceeds are used for payroll costs and/or rent, mortgage interest, or utilities (in each case in effect before February 15, 2020), during an eight-week period beginning on the loan origination date. However, forgiveness is reduced (based on a formula) that takes into account reductions in full-time employees and certain reductions in compensation paid. The amount forgiven is limited to the principal amount of the Small Business Interruption Loan and does not include any interest. In determining forgiveness, the Small Business Administration ("SBA") will not penalize a borrower, who re-hires previously laid off workers, for having a reduced payroll at the beginning of the period. Importantly, the CARES Act excludes from federal gross income any forgiveness amount that ordinarily would be includible in gross income of the eligible borrower. State taxation of the forgiveness will depend upon whether the state has a similar exclusion from gross income, or will adopt a similar exclusion from gross income. We expect most states to adopt a similar exclusion from gross income.

2. Employee Retention Credit for Employers Subject to Closure Due to COVID-19

The CARES Act generally provides for a refundable tax credit against the employer's 6.2% portion of Social Security payroll tax paid to employees during the COVID-19 crisis. An employer is not eligible for the refundable tax credit if the employer takes a Small Business Interruption Loan discussed above.

An employer is eligible for this tax credit, for wages paid after March 12, 2020 through December 31, 2020, if the operation of the trade or business is fully or partially suspended during any calendar quarter as a result of a government order limiting commerce, travel, or group meetings. An employer is also eligible for this tax credit in the first calendar quarter in which the employer has a reduction of gross receipts of more than 50% in a calendar quarter, as compared to the same calendar quarter in the prior year, and eligibility for the credit continues in each calendar quarter until there is a quarter in which receipts are greater than 80% of the receipts for the corresponding calendar quarter in the prior year.

The amount of the tax credit is 50% of the qualifying wages of the employer (up to \$10,000 in wages) for each employee, subject to additional limitations or exclusions (i.e., different treatment for employers with more than 100 employees). This credit is applied against the employer's 6.2% portion of Social Security payroll tax after it is reduced by credits for employment of qualified veterans; research expenses for qualified small businesses, and the payroll credits for either paid sick leave or child care leave discussed above.

3. Delay of Payment of Employer Payroll Taxes

Pursuant to the CARES Act, many employers will be allowed to defer paying their share of the Social Security tax through the end of 2020. Half of this deferred amount would be due on December 31, 2021, and the other half by December 31, 2022. Similar provisions apply to self-employed individuals, however, 50% of the self-employment tax still needs to be remitted pursuant to the existing estimated income tax deadlines.

Employers or self-employed individuals who have indebtedness forgiven with respect to a Small Business Interruption Loan will not qualify for this payroll tax delay.

4. Modification of Net Operating Loss Provisions and Excess Business Loss Limitations

The CARES Act modifies the rules for net operating loss ("NOL") carryforwards and carrybacks previously enacted as part of the Tax Cuts and Jobs Act ("TCJA") in 2017. The TCJA enacted a limitation on the amount of NOLs that a corporation may deduct in a single tax year equal to the lesser of the available NOL carryover or 80% of a taxpayer's pre-NOL deduction taxable income (the "80% Limitation"), and eliminated the ability to carryback NOLs to prior tax years.

The CARES Act provides that for tax years beginning before 2021, taxpayers can carryback 100% of the NOLs to the prior five tax years. In addition, as was the case under pre-TCJA law, the taxpayer may make an election to waive the carryback, and instead treat losses arising in those years as NOL carryforwards. Note that carrybacks cannot offset repatriation tax liability under section 965 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code").

The CARES Act delays application of the 80% Limitation until years beginning after December 31, 2021. As a result, taxpayers can take an NOL deduction equal to 100% of taxable income for tax years beginning before December 31, 2021. The 80% Limitation will apply again to any NOL arising in the year after December 31, 2021.

Additionally, the CARES Act would remove the excess business loss limitation applicable to pass-through business owners through December 31, 2020, so they can also benefit from the modified NOL carryback rules.

5. Modification to the Alternative Minimum Tax Credit

The CARES Act accelerates the payment of alternative minimum tax (“AMT”) credit refunds to corporations. Corporations with AMT credit carryforwards may be able to claim tax refunds under these new rules. The full remaining refundable AMT credit amount will be available for a corporation’s first taxable year beginning in 2019. Alternatively, a corporation may elect to use 100% of its AMT credits for its first taxable year beginning in 2018.

6. **Modification of the Limitation on Business Interest**

The CARES Act made changes to the applicable business interest deduction limitation rules of Internal Revenue Code Section 163(j). These changes will permit many taxpayers to deduct a greater amount of interest expense than previously under the TCJA. The CARES Act temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the adjusted taxable income limitation from 30% to 50% for 2019 and 2020 respectively.

For partnerships, the 2019 limitation remains at 30%. However, 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%) adjusted taxable income limitation. The remaining 50% of excess business interest from 2019 is subject to the adjusted taxable-income limitation. The adjusted taxable income limitation for 2020 is 50% of partnership adjusted taxable income, and partnerships may elect to use 2019 partnership adjusted taxable income in calculating their 2020 limitation.

Disclaimer

This summary does not include or address every provision of the FFCRA or CARES Act; both should be read in their entirety. Any information contained in this communication is not intended as a thorough, in-depth analysis of specific issues. It is also not sufficient to avoid tax-related penalties. This has been prepared for informational purposes and general guidance only, and does not constitute legal advice. You should not act upon the information contained in this publication without obtaining specific legal advice. No representation or warranty (express or implied) is made as to the accuracy or completeness of the information contained in this publication, and Hinckley, Allen & Snyder LLP, its members, employees, and agents accept no liability, and disclaim all responsibility, for the consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

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