

COVID-19

TAX UPDATE (03/28/2020)

BUSINESS TAX PROVISIONS

SENATE-PASSED THIRD CORONAVIRUS RELIEF PACKAGE
House approved without changes
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Employee Retention Credit for Employers

Eligible Employers

- 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% reduction in quarterly receipts, measured on a year-over-year basis.
- The credit is **not available** to employers receiving Small Business Interruption Loans

Wages paid to which employees?

- 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.
- No credit is available with respect to an employee for any period for which the employer is allowed a Work Opportunity Credit with respect to the employee

Wages.

- The term "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.

Other.

- IRS is granted authority to advance payments to eligible employers and to waive applicable penalties for employers who do not deposit applicable payroll taxes in anticipation of receiving the credit

Effective date.

- The credit applies to wages paid after March 12, 2020 and before Jan. 1, 2021

Delay of payment of employer payroll taxes

New law.

- The CARES Act allows taxpayers to defer paying the employer portion of **certain** payroll taxes through the end of 2020. Thus, notwithstanding any other provision of law, the payment for "applicable employment taxes" for the "payroll tax deferral period" won't be due before the "applicable date."

"Applicable employment taxes"

- the taxes imposed under Code Sec. 3111(a) (social security taxes),
- so much of the taxes imposed under Code Sec. 3211(a) as are attributable to the rate in effect under Code Sec. 3111(a), and
- so much of the taxes imposed under Code Sec. 3221(a) as are attributable to the rate in effect under Code Sec. 3111(a) (RRTA taxes).

"payroll tax deferral period"

- the period beginning on the date of enactment of the Act and ending before Jan. 1, 2021

"applicable date" means:

- Dec. 31, 2021, with respect to 50% of the amounts to which Act Sec. 2302(a) (employment taxes) and Act Sec. 2302 (self-employment tax), as the case may be, apply, and (B) Dec. 31, 2022, with respect to the remaining 50% of those amounts.
- An employer will be treated as having timely made all deposits of applicable employment taxes required to be made during the payroll tax deferral period if all such deposits are made not later than the applicable date.
- The above rules won't apply to any taxpayer which has had indebtedness forgiven under Act Sec. 1106 with respect to a loan under Small Business Act Sec. 7(a)(36), as added by Act Sec. 1102, or indebtedness forgiven under Act Sec. 1109.
- Notwithstanding any other provision of law, the payment for 50% of the taxes imposed under Code Sec. 1401(a) (self-employment taxes) for the payroll tax deferral period won't be due before the applicable date.
- the employer will be solely liable for the payment of the applicable employment taxes before the applicable date for any wages paid by that that person on behalf of that employer during that period.
- Notwithstanding any other provision of law, the payment for 50% of the taxes imposed under Code Sec. 1401(a) (self-employment taxes) for the payroll tax deferral period won't be due before the applicable date. Effective date. The provisions of Act Sec. 2302 apply to the period beginning on the date of enactment of the Act. (Act Sec. 2302(d)(2))

Temporary Repeal of taxable income limitation for net operating losses (NOLs)

Old law.

- The amount of the NOL deduction is equal to the lesser of
 - the aggregate of the NOL carryovers to such year and NOL carrybacks to such year, or
 - 80% of taxable income computed without regard to the deduction allowable in this section.Thus, NOLs are currently subject to a taxable-income limitation and can't fully offset income.

New law

- The CARES Act temporarily removes the taxable income limitation to allow an NOL to fully offset income.

Effective date.

- Apply to tax years beginning after Dec. 31, 2017, and to tax years beginning on or before Dec. 31, 2017, to which NOLs arising in tax years beginning after Dec. 31, 2017 are carried.

Modification of rules relating to net operating loss (NOL) carrybacks

Old law:

- Except for farming losses and losses of property and casualty insurance companies, an NOL for any tax year is carried forward to each tax year following the tax year of the loss but isn't carried back to any tax year preceding the tax year of the loss.

New law:

- NOLs arising in a tax year beginning after Dec. 31, 2018 and before Jan. 1, 2021 can be carried back to each of the five tax years preceding the tax year of such loss.

Effective date.

- Apply to NOLs arising in tax years beginning after Dec. 31, 2017 and to tax years beginning before, on or after such date to which such NOLs are carried.

Modification of limitation on losses for noncorporate taxpayers

Old law

- Disallows the deduction of excess business losses by noncorporate taxpayers for tax years beginning after Dec. 31, 2017 and ending before Jan. 1, 2026. 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).

New law.

- Temporarily modifies the loss limitation for noncorporate taxpayers so they can deduct excess business losses arising in 2018, 2019, and 2020.

Effective date.

- Apply to tax years beginning after Dec. 31, 2017.

- **AMT credit accelerated (Talk to your CPA)**
 - The CARES Act allows corporations to claim 100% of AMT credits in 2019.

- **Deductibility of interest expense temporarily increased**
 - **Background.**
 - Generally limited the amount of business interest allowed as a deduction to 30% of adjusted taxable income.
 - **New law.**
 - Temporarily and retroactively increases the limitation on the deductibility of interest expense from 30% to 50% for tax years beginning in 2019 and 2020
 - **Special rules 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 limitations (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 (or the partnership is no longer subject to Code Sec. 163(j)).
 - **Effective date.**
 - Apply to tax years beginning after Dec. 31, 2018.

Bonus depreciation technical correction for qualified improvement property

Background.

- 100% additional first-year depreciation deductions ("100% Bonus Depreciation") for certain qualified property. 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, QI Property falls into the 39-year recovery period for nonresidential rental property. That makes the QI Property category ineligible for 100% Bonus Depreciation.

New law.

- Provides a technical correction, 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.

Effective date.

- Effective for property placed in service after Dec. 31, 2017.