CARES Act - Changes to TCJA Provisions and other CARES Act Business Tax Provisions

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The CARES Act, the third COVID-19 relief bill, contains numerous tax provisions that were drafted to assist businesses in dealing with the economic effects of the coronavirus. It rolls back some of the provisions of the Tax Cuts and Jobs Act of 2017 (TCJA) including, among others, loosening restrictions on deducting net operating losses and interest expenses.

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For information on CARES Act provisions related to direct payments to individuals, employment taxes and labor provisions and the paycheck protection program, click here.

Changes to Use of Net Operating Losses (NOL)

The CARES Act changes limitations on a company?s use of NOLs imposed by the TCJA. Under the TCJA provisions, NOLs could not be carried back to reduce income in prior years and could only be used to offset 80 percent of taxable income.

The CARES Act now allows for NOL carrybacks for losses arising in any taxable year beginning after December 31, 2017 and before January 1, 2021. Such losses can be carried back for five years. The CARES Act also provides for a temporary removal of the 80 percent taxable income limitation to allow NOLs to fully offset income for years beginning before January 1, 2021. The 80 percent taxable income limitation is modified slightly for years beginning after December 31, 2020.

Changes to Limitation on Excess Business Losses of Non-Corporate Taxpayers

The CARES Act changes the years in which excess business loss will be disallowed for non-corporate taxpayers. Instead of excess business losses being disallowed in tax years beginning after December 31, 2017 and before January 1, 2026, as per TCJA provisions, the limitation will apply to tax years beginning after December 31, 2020 and before January 1, 2026.

Modification of Credit for Prior Year Minimum Tax Liability of Corporations

After the TCJA repealed the corporate alternative minimum tax (AMT), AMT credit refunds were payable incrementally each year through 2021. As part of the CARES Act, payments of AMT credit refunds are accelerated through 2019.

A specific election may be made to take the entire refundable credit for the 2018 tax year. Applications to do so must be filed prior to December 31, 2020 and must set forth the amount of the credit claimed for the taxable year, set forth the amount of the refundable credit claimed under the section for any previously filed return for such taxable year and show the amount of the refund claimed. The Secretary must, within 90 days, review the application and apply or refund the amount.

Modifications of Limits on Deduction of Business Interest

One of the most significant changes to the Internal Revenue Code (the ?Code?) made under the TCJA was the limitation of interest expense deductions to 30 percent of adjusted taxable income. The CARES Act increases the current 30 percent limitation to 50 percent for tax years beginning in 2019 and 2020. Furthermore, taxpayers may elect to use 2019 adjusted taxable income in lieu of current year adjusted taxable income for taxable years beginning in 2020.

The 50 percent threshold does not apply to partnerships for any taxable year beginning in 2019. Instead, unless they elect otherwise, 50 percent of a partner?s allocated share of the partnership?s 2019 excess business interest will be treated as paid or accrued by a partner in the partner?s first taxable year beginning in 2020 and will not be subject to Code Section 163(j).

A taxpayer may elect not to have the 50 percent limit apply to any taxable year. However, once the election is made, it may only be revoked with consent from the Secretary. Partnerships making the election may only do so for taxable years beginning in 2020.

Amendment to Depreciation Rules for Businesses

The CARES Act makes a technical correction to the depreciation of qualified improvement property (QIP). The CARES Act now includes any QIP within the definition of 15-year property. Accordingly, QIP is now eligible for bonus depreciation such that businesses may now immediately write off costs associated with improvements of facilities meeting the definition of QIP. The amendments shall take retroactive effect to the 2018 year.

Excise Tax Exception for Alcohol Used to Produce Hand Sanitizer

For businesses normally subject to excise tax resulting from distilling spirits, the CARES Act waives certain Federal excise tax on distilled spirits used in the production of hand sanitizer after December 31, 2019 and before January 1, 2021. The hand sanitizer must be produced and distributed in a manner consistent with FDA guidance related to the outbreak of COVID-19.

Corporate Charitable Contributions

The CARES Act increases the limit on deductions for qualified contributions made by corporations from 10 percent to 25 percent of modified taxable income. Contributions must be paid in 2020 in cash to Code Section 170(b)(1)(A) organizations and the taxpayer must elect for this threshold increase to apply. In the case of partnerships and S corporations, the election is made separately by the partner or shareholder. Donations to Code section 509(a)(3) organizations and donor advisor funds are not considered qualified contributions.

Evolution of the CARES Act

The CARES Act underwent changes throughout the course of negotiations. Originally marked as S. 3548, the Senate bill contained a provision that restored limitations on downward attribution of stock ownership for constructive ownership rules under Code Section 958(b)(4), the repeal of which under TCJA has caused confusion and increased administrative burden for taxpayers. The bill also provided a provision that would stop installment payments from preventing a credit or refund of overpayments or increase in estimated taxes. This provision would have provided relief to taxpayers, who, since TCJA, have installment obligations being paid over eight years pursuant to Code 965(h) and are unable to receive a credit or refund until those installment obligations are paid in full. S. 3548 also included provisions allowing for the delay of estimated tax payments for corporations. The final version of the bill sent to the house for a vote, labeled as H.R. 748, has removed these provisions.

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