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Highlights of the CARES Act

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Provisions for Individuals

Recovery Rebates for Individuals. An immediately refundable credit for 2020 to eligible taxpayers up to $1,200 (or $2,400 for couples filing jointly), subject to income limits. The amount increases by $500 per child. The credit is phased out for single taxpayers whose income exceeds $99,000 ($198,000 for joint filers). The phase out could extend to $218,000 for a couple with two children. The phase out begins after $75,000 in income ($146,500 for head of household filers with one child and $150,000 for joint filers). The credit is calculated based on a taxpayer's 2018 tax return (or 2019 return if filed). Taxpayers with little or no income liability, but at least $2,500 of qualifying income, are eligible for a minimum rebate check of $600 ($1,200 for joint filers).

All U.S. residents with adjusted gross income up to $75,000 ($150,000 married), who are not a dependent of another taxpayer and have a work eligible social security number, are eligible for a full $1,200 "rebate," $2,400 married. In addition, they are eligible for an additional $500 per child.

This is true even for those who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as Social Security benefits. Estates and trusts are not eligible for this rebate. The rebates are being treated as advance refunds of a 2020 tax credit and taxpayers will reduce the amount of the credit available on their 2020 tax return by the amount of the advance refund payment they receive.

The rebate amount is reduced by $5 for each $100 that a taxpayer's income exceeds the phase-out threshold. The amount is completely phased-out for single filers with incomes exceeding $99,000, $146,500 for head of household filers with one child, and $198,000 for joint filers with no children.

No action is required for a taxpayer to receive a check. The U.S. Treasury will issue "refund" checks for such credits "as rapidly as possible." The checks will be paid by direct deposit for those whose information is on file with the IRS and checks will be mailed to the address on the tax return for those who do not have such information on file with the IRS. As such, the payments are expected to be made electronically if possible. However, the Act states that *"Not later than 15 days after the date on which the Secretary distributed any payment to an eligible taxpayer, notice shall be sent by mail to such taxpayer's last known address. Such notice shall* *indicate the method by which such payment was made, the amount of such payment, and a phone number for the appropriate point of contact at the Internal Revenue Service to report any failure to receive such payment."*

Retirement. Early withdrawals. The bill waives the 10 percent early withdrawal penalty for certain coronavirus-related distributions up to $100,000 made during 2020 from an eligible retirement plan. Additionally, any income inclusion attributable to such distributions would be subject to tax only over a three-year period. The amount distributed may be recontributed to an eligible plan within 3 years, without regard to the annual cap on contributions.

Required Minimum Distributions. The bill also suspends Required Minimum Distributions (RMD) for 401(k)s, 403(b)s and IRAs in 2020. This would include an RMD normally due by April 1 for individuals who turned age 70.5 in 2019, but only if the individual did not take their RMD in 2019.

401k loans. The bill provides an increase in the loan threshold from $50,000 to $100,000 and provides additional flexibility for certain retirement plans for coronavirus-related relief. The CARES Act provides that for plan loans made during the 180-day period beginning on the date of enactment and December 31, 2020 the maximum loan amount is increased from $50,000 or 50% of the vested account balance to $100,000 or 100% of the vested account balance. The due date for any repayment on a loan is delayed for one year (normally five years).

Student Loans. The bill suspends payments on federal student loans for six months, through September 30th, during which time no interest will accrue. The bill also allows employers to provide a student loan repayment benefit to employees on a tax-free basis. An employer may contribute up to $5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income. The $5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law. The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.

Charitable Contributions. The bill allows Americans to contribute to churches and charitable organizations in 2020 by permitting them to deduct up to $300 of cash contributions against their 2020 tax liability, whether they itemize their deductions or not. The bill also increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations. For individuals, the 50% of adjusted gross income limitation is suspended for 2020. For corporations, the 10% limitation is increased to 25% of taxable income. This provision also increases the limitation on deductions for contributions of food inventory from 15 percent to 25 percent.

Provisions for Small Business

Small Business "Paycheck Protection Program." In an attempt to support payroll for small to medium size businesses, the CARES Act leverages the Small Business Administration's Section 7(a) loan program because it's the primary program for providing financial assistance to small businesses. The loans under this program will be backed with a 100% government guarantee (as opposed to a 75% guarantee for existing Small Business Administration (SBA) lending.)

Eligible business/entity. Small businesses up to 500 employees are eligible. In addition, businesses with up to 1,500 employees depending on the sector may qualify. Non-profits with fewer than 500 employees who are 501(c)3s and do not receive Medicaid funding will also be eligible. Sole proprietors, the self-employed, and independent contractors are also eligible for this program.

Guidelines. SBA's standard "no credit elsewhere" test is waived, and non-SBA-lenders approved by Treasury and already approved as SBA lenders can provide loans. Loan amounts can include monthly payroll costs for 2 ½ months, not to exceed $10 million. Payroll costs exclude compensation paid to individuals, including the self-employed, above $100,000 a year.

The employer will be required to certify that they will maintain their average full-time equivalent employment, with incentives to re-hire if employees have been furloughed. Borrowers who receive Small Business Interruption Loans are not eligible to receive SBA Economic Injury Disaster Loans (EIDLs).

Loan Forgiveness. The borrower may have a portion of their loan forgiven in the amount equal to their payroll costs (not including costs for compensation above $100,000 annually), interest payments on mortgages, rent payments, and utility payments between February 15 and June 30, 2020. Loan forgiveness will be reduced if the borrower reduces employment by a ratio similar to their reduction in employment or if borrower reduces salaries and wages by more than 25%.

Additional relief. The legislation also provides for an increase in the SBA Express loan program to $1,000,000. Emergency assistance of up to $10,000 will also be available through an expedited process for eligible small businesses.

Provisions for Employers

Suspend Remittance of Employer Payroll Taxes. Employers generally are responsible for paying one half of the employment taxes on employee wages. Employers will be allowed to <u>defer</u> payment of their share of employer payroll taxes for the remainder of 2020. <u>Half of that amount is due on December 31, 2021, and the remainder on December 31, 2022.</u>

Increased Ability for Corporations to Deduct NOLs ("Net Operating Losses"). The bill allows corporate NOLs from 2018, 2019, and 2020 to be <u>carried back five years</u>. <u>For 2020, the bill allows corporate NOLs to fully offset income in 2020,</u> free of certain income limitations that would otherwise apply, and for 2021 and later years, relaxes the income limitations on the use of corporate NOLs that would otherwise apply. Both provisions will permit corporations to utilize their NOLs from 2018, 2019, and 2020 to obtain refunds of taxes paid in prior years and/or to reduce their tax payments in 2020 and later years.

Increased Ability of Noncorporate Taxpayer to Deduct NOLs. Defers until 2021 certain rules that would limit the ability of noncorporate taxpayers, such as owners of pass-through businesses and sole proprietors, to deduct NOLs from 2018, 2019 and 2020, so that <u>such NOLs are subject to the same rules as corporate NOLs</u>. This will permit noncorporate taxpayers to claim refunds and/or reduce their tax payments in respect of their NOLs.

Workforce Retention Tax Credits. The legislation creates a <u>refundable payroll tax credit for 50 percent of wages paid by employers during the public health emergency</u>. The credit is available to employers who retain employees and whose operations were fully or partially suspended due to a shut-down order or gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

Acceleration of Recovery of AMT Tax Credits. The 2017 tax reform bill repealed the corporate AMT and allowed corporate taxpayers to recover certain AMT taxes paid prior to repeal as refundable credits against their regular tax liability, but only over four years starting in 2018. The bill accelerates the ability of corporations to recover these credits entirely into 2018.

Qualified Improvement Property (QIP). The bill fixes an error in the 2017 tax reform law that will permit taxpayers to immediately write off costs associated with improving their facilities, rather than having to depreciate such improvements over 39 years. The provision is retroactive to the enactment of the 2017 tax reform law.

Relaxation of Limits on Business Interest Deductions. The bill increases the limitation on the ability to deduct business interest expense from 30% to 50% of adjusted taxable income for 2019 and 2020. It also permits a taxpayer to elect to determine its deductible interest expense for 2020 based on its adjusted taxable income for 2019.

Emergency Stabilization Program

Money market guarantees. The legislation suspends the statutory restriction on guarantees to money market funds. The suspension is in place for the duration of the public health emergency.

Troubled Debt Relief/CECL Delay. Financial institutions will be permitted to modify loans due to problems resulting from the public health emergency without violating FASB requirements. Additionally, banks may delay implementing the CECL requirements until the earlier of December 31, 2020 or the end of the national emergency.

IDI Debt Guarantees. The legislation temporarily provides authority for the FDIC to guarantee debt of solvent insured depositories and depository institution holding companies. Noninterest bearing transaction accounts may be treated as a debt-guarantee program. This authority would terminate no later than December 31, 2020.

Emergency Loan Assistance. The legislation authorizes emergency assistance of $500 billion to distressed industries, including the aviation industry and other industries that are critical to maintaining national security. The program will also be available for loans, loan guarantees, and investments to institutions as well as States and municipalities. The program builds on programs already running at the Federal Reserve to permit the purchase of corporate, state, and municipal bonds.

Secured loans or loan guarantees via the Exchange Stabilization Fund are authorized up to an aggregate amount of $500 billion:

- $25 billion for passenger air carriers and $4 billion for cargo air carriers
- $17 billion for other “eligible businesses”
- “Eligible businesses” are those whose business operations are jeopardized by losses incurred as a direct result of coronavirus and that have not otherwise applied for economic relief

The Secretary has significant discretion in administering the program. In language similar to TARP program conditions, Treasury’s compensation of risk is ensured by participating in gains of the borrowers through warrants, stock options, common or preferred stock.

Terms. The assistance is available for a term of up to 5 years. Restrictions include a prohibition on share repurchases or dividends for the period of the loan plus an additional one year unless there is an existing contractual obligation that must be met. The Secretary of Treasury is authorized to require warrants and other provisions. Recipients of direct loans would also be required to maintain their workforce at a 90 percent level as of March 24, 2020.

Mid-size and non-profit direct lending program. Another lending program may also be implemented for entities (both businesses and non-profits) with at least 500 employees but not more than 10,000 employees. Organizations that participate in this program would be subject to a different set of restrictions, including no outsourcing or offshoring for the period of the loan and two years after, stay neutral in union organizing activities, and use the funds to retain at least 90 percent of their workforce.

Additional restrictions / oversight. Executive compensation restrictions will apply to companies that access direct lending assistance or obtain loan guarantees. The restrictions prohibit increases in compensation for officers and employees whose compensation exceeds $425,000 in 2019. These limits would apply for the duration of the loan. For executives who earn $3 million or more, their compensation would be limited to $3 million plus an additional 50 percent of the compensation received in 2019 in excess of $3 million. Additional oversight of the program will be established through an inspector general and a congressional oversight board.

Air Carrier Excise Taxes. For air carrier borrowers, the Treasury Secretary must coordinate with Department of Transportation on lending and can require continued service of existing routes "to the extent reasonable and practicable". The proposal also includes a holiday from the 7.5% aviation excise tax for the transportation of passengers, the 6.25% aviation excise tax for the transportation of cargo and taxes on certain uses and transportation of kerosene as aviation fuel, in each case until January 1, 2021.

Mortgage Relief/Credit Reports. The legislation also adds a consumer right to request a temporary forbearance on mortgage loan payments for federally backed loans. There are also provisions relating to reporters to credit agencies to report them as "current."

Healthcare Provisions

Health Savings Accounts. The legislation would allow a high-deductible health plan (HDHP) with a health savings account to cover telehealth services prior to a patient reaching the deductible. The legislation also would allow patients to use funds in HSAs and Flexible Spending Accounts for the purchase of OTC medical products, including those needed in quarantine and social distancing, without a prescription from a physician.

We have not provided a comprehensive review of provisions in the legislation which relate to Medicare and other expanded benefits. In addition, the legislation includes significant new appropriations to both federal agencies and the states to address the public health crisis and provide administrative support to implement various programs.

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