Business Tax Changes under CARES

Friday, March 27th President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES). The CARES Act's $2+ trillion price tag includes extraordinary public health spending to battle the COVID-19 pandemic, immediate cash relief for individual citizens; a broad lending program for small businesses; and, targeted relief for industries hit especially hard. The bill is 880 pages, and this post will summarize the important changes to business taxes.

Business Tax Relief

The CARES Act provides assistance to businesses through the modification of rules related to net operating losses (NOLs), interest expense deductions, alternative minimum tax credits, and trade or business losses of non-corporate taxpayers. These modifications are designed to provide critical cash flow and liquidity to businesses during this COVID-19 emergency, through amending prior tax returns to obtain tax refunds. You, as an employer, now have several new tools to help with cash flow, claiming tax refunds, and reducing upcoming tax payments.

Employee Retention Credits

Under CARES, employers may be eligible for a refundable tax credit for the employer's share of the 6.2% Social Security tax (the SSI Tax Credit). The potential SSI Tax credit is for 50% of the first $10,000 in qualified wages (including health plan expenses) paid to each employee commencing March 13, 2020. To be eligible an employer must (i) have operations partially or fully suspended because of a shut-down order from a government authority (related to COVID-19), or (ii) have had gross receipts decline by more than 50% in a calendar quarter when compared to the same quarter in 2019 (and will remain eligible under the earlier of (i) gross receipts exceeding 80% relative to the same quarter in the prior year, or (ii) December 31st, 2020). For employers with more than 100 employees (based on 2019 employment levels), qualified wages are limited to wages paid to employees who were not providing services due to the COVID-19 crisis. It is important to note that the SSI Tax Credit is not available if the employer received a covered loan from the Forgivable SBA Loan program. Read more about the SBA Loan program here *Link to blog 1*

Payroll Tax Deferral

In addition to a potential receipt of the SSI Tax Credit, CARES allows employers to defer payment of the employer's share of the 6.2% Social Security tax on wages being paid beginning on March 27st 2020 and ending on December 31st, 2020. Further, a corresponding deferral is also permitted for the equivalent portion of the self-employment taxes. The deferred amounts are payable in two installments, with the first 50% being due December 31st, 2021, and the remainder on December 31st, 2022. This is not permitted where an employer has had a covered loan forgiven, such as under the Forgivable SBA Loan program.

Net Operating Loss

The 2017 tax reform bill had changed the treatment of NOLs. The CARES Act, however, relaxes these limitations on corporations' use of the NOLs. Businesses are now able to carry back NOLs incurred in 2018, 2019, and 2020 for five years (excluding the offset to untaxed foreign earnings transaction tax). Previously the NOLs could only be carried forward. This is significant for businesses that have the ability to carry back NOLs to offset income that was taxed at 35% before the 2017 tax reform. Additionally, for taxable years beginning prior to January 1, 2021, taxpayers can offset 100% of taxable income with NOL carryovers and carrybacks (instead of the former limit of 80% of taxable income). If there are refunds available by the operation of these new rules, corporations can use the IRS's quick refund procedures (Form 1139) to claim the refund.

Business Interest Deductions

Also under the 2017 tax reform, was a bill which introduced the new IRC Section 163(j), which limited the amount of interest that could be deducted by most taxpayers in a taxable year to 30% of the "adjusted tax income" (ATI) of such a taxpayer for such taxable year. For tax years before 2022, ATI is computed in a manner similar to EBITDA. For 2019 and 2020 tax years, taxpayers may elect to increase this limit on allowable business interest deductions from 30% to 50% of ATI. Further, taxpayers can elect to use their ATI in 2019 in place of their 2020 ATI for purposes of determining the deductibility of their business interest expenses for 2020 (which could increase the business interest deduction). It is important to note that partnerships are subject to special provisions, which intend to allow businesses to increase liquidity with a reduced cost of capital (so businesses are able to continue operations and keep employees on the payroll.

Suspension of Non-Corporate Loss Limitation

The IRC Section 461(l) under the 2017 tax reform bill, which disallowed the deduction of "excess business losses" by a non-corporate taxpayer, has been removed by CARES for 2018-2020. The reform will instead apply for 2021-2026.

AMT Credits

The 2017 tax reform repealed the corporate Alternative Minimum Tax (AMT) credits. Corporate AMT credits were available to corporate taxpayers as refundable credits over several years, ending in 2021. Now CARES accelerates a corporate taxpayer's ability to recover AMT credits, which will allow the corporation to claim a refund by amending the corporation's tax returns for 2018, and 2019.

For specific details on each policy read the full act here.