Highlights of Tax Relief in the CARES Act

March 29, 2020

On March 27, 2020, the President signed the $2 trillion Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act" or the "Act"). The Act provides emergency assistance and health care response for individuals, families and businesses affected by the 2020 coronavirus pandemic, including certain tax reliefs and rebates. This Alert addresses certain tax provisions contained in the CARES Act.

1. <u>Rebates and Other Individual Tax Provisions</u>

Rebates for individuals

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 rebate or refundable credit of $1,200 ($2,400 married) plus $500 per dependent child under age 17. For higher earning taxpayers, the benefits are subject to phase-out and will not be available if income exceeds $99,000 ($198,000 for joint filers with no children). For the vast majority of Americans, no action on their part will be required in order to receive a rebate check.

Early withdrawal of retirement funds and temporary waiver of minimum distribution requirements

The Act waives the 10-percent early withdrawal penalty for distributions up to $100,000 from qualified retirement accounts for coronavirus-related purposes made on or after January 1, 2020. In addition, income attributable to such distributions would be subject to tax over three years (generally 2020-2022) and the taxpayer may recontribute the funds to an eligible retirement plan within three years without regard to that year's cap on contributions.

Further, the Act provides flexibility for loans from certain retirement plans for coronavirus-related relief. The permitted loan amount is generally doubled from $50,000 to $100,000, and the repayment of certain existing loans may be deferred for one year.

The Act also waives the required minimum distribution for certain defined contribution plans and IRAs for calendar year 2020.

Allowance of more deduction for charitable contributions

The Act encourages charitable contributions in 2020 (and possibly later years) by permitting taxpayers to deduct up to $300 of cash contributions, whether they itemize their deductions or not. The Act also increases the limitations on deductions for charitable contributions of cash by individuals who itemize, as well as corporations. For individuals, the 50-percent of adjusted gross income limitation is suspended for 2020. For corporations, the 10-percent limitation is increased to 25 percent of taxable income.

Exclusion for certain employer payments of student loans

The Act enables employers to provide a student loan repayment benefit to employees on a tax-free basis. The Act applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.

2. Business-Related Tax Provisions

Employee retention credit for employers subject to closure due to COVID-19

The Act provides a refundable payroll tax credit for 50 percent of wages paid by an eligible employer during the COVID-19 crisis, paid or incurred from March 13, 2020 through December 31, 2020 to an eligible employee for the first $10,000 of compensation, including health benefits. The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order.

Notably, however, if eligible small business employer receives a covered loan under the Paycheck Protection Program added by the Act (see our memorandum regarding this program **linked here**) such employer is not eligible for this credit. The Act provides that the Treasury shall issue regulations as necessary to provide for the recapture of the credit if such credit is allowed to a taxpayer which receives a loan described above during a subsequent quarter.

Delay of payment of employer payroll taxes

The Act allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax, to be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

However, this relief does not apply to any taxpayer if such taxpayer has had indebtedness forgiven under the Act with respect to a loan under the Paycheck Protection Program added by the Act, or other indebtedness forgiven under the Act.

Net operating losses carryback

The Act relaxes the limitations on a company's use of net operating losses (NOL), such that an NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years. The Act also temporarily removes the taxable income limitation to allow an NOL to fully offset income.

Modification of limitation on losses for taxpayers other than corporations

The Act allows pass-through businesses and sole proprietors to utilize excess business losses in order to maintain operations and payroll for their employees.

Modification of credit for prior year minimum tax liability of corporations

The Act accelerates the ability of companies to recover AMT credits, permitting companies to claim a refund now and obtain additional cash flow during the COVID-19 emergency.

Modification of limitation on business interest

The Act temporarily increases the amount of interest expense that businesses are allowed to deduct, by increasing the 30-percent limitation to 50 percent of taxable income (with adjustments) for 2019 and 2020.

Bonus depreciation regarding qualified improvement property

The Act extends to certain retail businesses, including those in the hospitality industry, the ability to write off immediately costs, including those incurred in the last two years, associated with improving facilities, as if this ability to write off had been included in the laws that were amended by the Tax Cuts and Jobs Act of 2017.

For further assistance in evaluating this program for your needs and for guidance on the application process, please contact your primary GEABP attorney, or the attorneys listed below:

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