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Continuing COVID-19 Impacts on Federal Taxation - UPDATED

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Practices

Tax Law

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This is an update to an article originally released on March 31, 2020. The updates account for most of the administrative guidance released by the IRS and the descriptions in the JCT's Bluebook.

After some tense negotiations, near-misses, and threatened hold-outs, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law No. 116-136, into law on March 27, 2020. This third stimulus bill aims to provide relief and boost the economy via $2 trillion in aid and stimulus money via tax breaks, rebates, small business loans, industry specific aid, and unemployment benefits. Here, we focus on the tax provisions of the CARES Act, which the Joint Committee on Taxation has scored here and described in their "Bluebook" here. The CARES Act temporarily suspends or adjusts the three largest revenue raisers (allowing NOL carrybacks with no income limitation, suspending the excess business loss rules of IRC § 461(l), and relaxing the business interest limitation of IRC § 163(j)) from the Tax Cuts and Jobs Act – P.L. 115-97 (TCJA) enacted in December 2017, along with making several other technical corrections. As to individuals, the CARES Act provides for direct payments that the IRS is calling Economic Impact Payments. This article summarizes the new tax provisions, provides our perceived impact of these new provisions, and highlights administrative guidance issued by the IRS since the CARES Act was enacted.

Business Provisions

Employee Retention Credit – Sec. 2301

The CARES Act provides a refundable payroll tax credit for 50% of wages paid by eligible employers to certain employees during the COVID-19 pandemic. The employee retention credit (ERC) is only available in 2020 and a business is considered an eligible employer if:

- → Business operations were fully or partially suspended due to COVID-19 related governmental
- → Business operations continued, but during any quarter in 2020, gross receipts for that quarter were less than 50% of what they were for the same quarter in 2019. The business will remain eligible for the credit in 2020 until the business has a quarter where its gross receipts exceed 80% of what they were for the same quarter in the previous year.

An employer is not eligible for the employee retention credit if the employer receives a Paycheck Protection Program (PPP) loan under Section 7(a) of the Small Business Act, unless the employer returns the PPP before the expiration of the safe harbor date, which is currently May 14, 2020.

The ERC is for 50% of "qualified wages," the definition of which depends on the employer's size. For employers who had an average number of 100 or fewer full-time employees in 2019, all employee wages are eligible, regardless of whether the employee is furloughed. For employers who averaged more than 100 full-time employees in 2019, only the wages of employees who are furloughed or faced reduced hours as a result of their employers' closure or reduced gross receipts are eligible for the credit. The effective period for paying qualified wages runs from March 13, 2020 through December 31, 2020. The employee retention credit is capped at the first $ of compensation, including health benefits, paid to an employee. It is refundable if it exceeds the business's liability for payroll taxes.

Takeaways

1. Given the credits provided for paid sick leave and family leave in the also recently enacted Family First Coronavirus Response Act (FFCRA) and the impact of the COVID-19 pandemic, the employee retention credit may be refundable to many employers, but the burden of computing the ERC will be substantial.
2. The ERC is subject to the aggregation rules of IRC §§ 52 and 414 when determining which entities are treated as a single employer for determining the employee count.
3. Voluntary suspensions of operations by employers without any restrictive government orders will mean the employer is not eligible for the ERC.

4. Employers need to understand that this retention credit cannot be claimed if they took out a PPP loan and did not return the loan proceeds.
5. The IRS has posted over 90 FAQs on the ERC, but the FAQs come with this disclaimer, "[t]his FAQ is not included in the Internal Revenue Bulletin, and therefore may not be relied upon as legal authority. This means that the information cannot be used to support a legal argument in a court case." The IRS has yet to issue more significant administrative guidance on the ERC that would be binding on the IRS and relied upon as legal authority.

Delay of Payment/Deposit of Employer Payroll Taxes and Self-Employment Taxes – Sec. 2302

On top of the credits in the FFCRA and the ERC noted above, the CARES Act allows for the deferral of the employer's share of the 6.2% Social Security tax that would otherwise be due in 2020 from the date of enactment through December 31, 2020, to be paid on December 31, 2021 (50%) and December 31, 2022 (50%).

Similarly, a self-employed taxpayer can defer paying 50% of his or her self-employment tax that would be due from the date of enactment through the end of 2020 until the end of 2021 (25%) and 2022 (25%).

Takeaways

1. Employers will be able to: (1) defer payment of its share of Social Security tax until 2021 and 2022, but (2) receive immediate credits against those to-be-paid later payroll taxes in through the sick leave and family leave credits in the FFCRA and the employee retention credit.
2. Social Security Trust Funds will be held harmless under this provision.
3. The CARES Act includes special rules for third-party payroll providers and professional employer organizations.
4. The deferral does not apply to employers who took out a loan under section 7(a) of the SBA, like a PPP loan.
5. The IRS has posted FAQs on the deferral here and specific penalty relief here for the failure to make deposits. The IRS has also released a Draft Form 941 and Instructions for 2020 demonstrating the IRS's current thinking of how report this deferral and the various payroll credits.

Technical Correction for Qualified Improvement Property – Sec. 2307

The TCJA amended IRC § 168(k) to allow for 100% bonus depreciation for certain qualified property. Then the TCJA eliminated pre-existing definitions for several categories of property generally eligible for bonus depreciation and replaced them with one category called qualified improvement property (QIP). It was intended by the drafters that QIP have a 15-year recovery period and be eligible for bonus depreciation, but a specific recovery period was not reflected in the TCJA. Thus, under the TCJA, QIP technically had a 39-year recovery period and was ineligible for 100%

bonus depreciation.

The CARES Act provides a needed and much anticipated technical correction concerning QIP. It specifically and retroactively designates QIP as 15-year property (20-year for ADS) for depreciation purposes; thus, QIP is eligible for 100% bonus depreciation if placed in service after December 31, 2017. It also clarifies that the 15-year recovery period only applies if the QIP is made by the taxpayer. Thus, if a taxpayer purchases a building in a taxable transaction, any QIP previously placed in service by the seller with respect to such building does not qualify as QIP with respect to the buyer.

Takeaways

1. Automatic accounting method changes will likely need to be filed to comply with this technical correction and obtain the benefit through an IRC § 481(a) adjustment. Taxpayers are generally required to file a change of accounting method when the depreciation method changes. Here, QIP placed in service after 2017 that has initially been depreciated as 39-year building property, will need to be changed to 15-year property that is eligible for 100% bonus depreciation.
2. Rev. Proc. 2020-23 provides partnerships (and LLCs taxed as partnerships) subject to the centralized audit regime enacted as part of the Bipartisan Budget Act of 2015 ("BBA") with the option to file amended returns (using a Form 1065) for 2018 and 2019 to account for the retroactive tax aspects of the CARES Act instead of having to file an Administrative Adjustment a recap of the BBA's centralized audit regime and why partnerships will generally have to file AARs instead of amended returns, read this.
3. By giving partnerships (and partners) the option to file amended returns for 2018 and 2019, the IRS is accelerating when partnerships (and ultimately the partners) can receive the applicable tax benefits provided by the CARES Act. If an AAR was required, the partners would not be able to realize the CARES Act tax benefits until they filed their 2020 tax returns in April (or as late as October) of 2021.
4. The CARES Act does not permit the ability to change prior-year elections concerning the depreciation of QIP. Nothing in the CARES Act allows for a taxpayer to go back and elect out of bonus depreciation for property placed in service in 2018 or election to use ADS.
5. This technical correction will create a multimillion swing in depreciation deductions available for many taxpayers, particularly those in the commercial real estate and hospitality industries, who have been lobbying for this correction since December of 2017.

Modification of Net Operating Losses – Temporary Carryback Allowance – Sec. 2303

The CARES Act provides for a temporary five-year carryback period for net operating losses (NOLs) arising in calendar years 2018, 2019, and 2020 and allows NOLs for those calendar years to offset 100% of taxable income until the 2021 tax year. Taxpayers may elect out of this five-year carryback regime, but that election is irrevocable. The creation of

this temporary five-year carryback regime will require some taxpayers to track three different groupings of federal NOLs:

- → Incurred prior to 2018 (pre-TCJA) -year carryback, 20-year carryforward, and eligible to offset 100% of taxable income.
- → Incurred after 12/31/2017 and before 1/1/2021 (CARES Act) – 5-year carryback, indefinite carryforward, eligible to offset 100% of taxable income when carried forward to 2019 and 2020, but only eligible to offset 80% of taxable income when carried forward to 2021 and subsequent years.
- → Incurred after 12/31/2020 (TCJA adjusted by CARES Act) – no carryback, indefinite carryforward, and eligible to offset 80% of taxable income.

Real Estate Investment Trusts (REITs) are carved-out of the CARES Act carryback rules.

Takeaways

1. A corporation can carryback 2018, 2019, and 2020 NOLs to offset pre-2018 ordinary income or capital gains that were taxed at a rate up to 35%, which generates a current refund and a significant favorable rate differential. In other words, to the extent NOLs can be increased in 2020 via accelerated deductions, deferred revenue, or the impacts of COVID-19, permanent cash tax savings could be generated if those NOLs can be carried back to profitable, higher tax rate years. In addition, if NOLs were already on the books in 2018 and 2019, prior income tax liabilities could be offset as far back as 2013 or 2014.
2. Rev. Proc. 2020-24 provides guidance concerning how to file the net operating loss (NOL) carryback elections available as a result of the CARES Act for the 2018, 2019, and 2020 tax years; specifically: (1) waiving the carryback period for NOLs arising in a taxable year beginning after December 31, 2017, and before January 1, 2020; (2) excluding from the carryback period NOLs arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, any taxable year in which the taxpayer has a IRC § 965(a) inclusion, and (3) waiving a carryback period, reducing a carryback period, or revoking an election to waive a carryback period for a taxable year that began before January 1, 2018, and ended after December 31, 2017.
3. Notice 2020-26 grants taxpayers a six-month extension of time to file Applications for Tentative Refunds (Forms 1045 or 1139 as applicable) with respect to the carryback of an NOL that arose in any tax year that began during calendar year 2018 and that ended on or before June 30, 2019.
4. The IRS posted FAQs concerning tentative refund claims here, which indicate that these claims may be filed via fax. FAQs about NOL carrybacks for taxpayers with section 965 inclusions may be found here.

Temporary Reversal of the Limitation of Excess Business Losses – Sec. 2304

The CARES Act removes the excess business loss limitation (the fourth limitation on an individual's ability to use losses from a business added via the TCJA) under IRC § 461(l) for the calendar years 2018, 2019, and 2020, by changing the effective date of the excess business loss limitation rule to apply for any tax year beginning after 12/31/2020, and before 1/1/2026. This modification is retroactive back to December 31, 2017. Further, the CARES Act includes some technical corrections to IRC § 461(l), namely that wages will not be considered business income, which should result in more losses being limited in most cases when it becomes effective again in 2021.

Takeaways

1. Amended returns will need to be filed for 2018 (and 2019 if already filed) to account of the retroactive nature of the removal of IRC § 461(l).
2. These amended returns will likely report larger losses given the removal of the limitation leading to potential refunds for the individual owners of the pass-through entities.
3. Given the delay of the effective date of IRC § 461(l) until after 2020, pass-through entities may not even need to report IRC § 461(l) information on Schedules K-1 until the 2021 tax year.
4. The CARES does not change the applicability of three other loss limitation rules that may affect a taxpayer for those taxable years, such as the passive activity loss limitation, the at-risk limitation, and in the case of a taxpayer who is a partner or S corporation shareholder, the rules limiting the taxpayer's distributive or pro rata share of loss to the taxpayer's adjusted basis.

Temporary Relaxation of the Limitation on Business Interest – Sec. 2306

The TCJA added IRC § 163(j), which limits the ability of a business to deduct its interest expense to 30% of its adjusted taxable income (ATI) while any excess interest is carried forward. ATI equals a taxpayer's taxable income computed without regard to: (1) any item of income, gain, deduction, or loss that is not properly allocable to a trade or business; (2) business interest or business interest income; (3) the amount of any NOL deduction; (4) the 20% deduction for certain pass-through income; and (5) for tax years beginning before January 1, 2022, any deduction allowable for depreciation, amortization, or depletion.

The CARES Act increases the ATI limit from 30% to 50% for 2019 and 2020, and allows a business to elect to use its 2019 ATI when computing its 2020 limitation (since many businesses in 2020 will likely not have taxable income in 2020). Taxpayers are allowed to elect-out of the application to the temporary new rule.

For partnerships, the 50% ATI limitation does not apply to 2019. Instead, interest disallowed at the partnership level is allocated to the partners and suspended at the partner-level under the normal rules. However, in 2020 there is a bifurcation, 50% of the suspended interest becomes available and deductible, while the other 50% 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 IRC § 163(j).

Takeaways

1. The ability of a business to elect to use its 2019 ATI limitation in 2020 could generate significant tax savings. For example, if a business had ATI of $8 million in 2019 but a negative ATI in 2020, it could elect to deduct $4 million of interest expense in 2020 (50% of $8 million), generate a bigger loss, and then use the favorable new NOL provisions to carryback the loss to 2019 (or prior years) and recover taxes paid in that year (or prior years).
2. If NOLs arise in 2019 or 2020 on account of either the increased IRC § 163(j) limitation or the treatment of excess business interest expense allocated to a partner for a taxable year beginning in 2019, those NOLs are now available for carryback and is not subject to the 80 percent limitation pursuant the CARES Act changes to the NOLs rules discussed above.
3. Rev. Proc. 2020-22 provides guidance under IRC § 163(j) relating to: (1) late elections (and late revocations of elections) to be an electing real property or farming trade or business, which are generally excepted-out of the IRC § 163(j) limitation on excess business interest; and (2) the time and manner for making three elections created by the CARES Act relating to the IRC § 163(j) limitation. The three CARES Act elections consist of electing: (1) out of 50% adjusted taxable income (ATI) limitation for tax years beginning in 2019 and 2020 (an sticking with the 30% limitation); (2) to use the taxpayer's ATI for 2019 to calculate the taxpayer's IRC § 163(j) limitation for tax year 2020; and (3) out of deducting 50% of excess business interest expense for tax years beginning in 2020 without limitation.

Acceleration of the Ability to Use Corporate Minimum Tax Credits – Sec. 2305

The CARES Act allows corporations to accelerate the utilization of their remaining minimum tax credits (MTCs) from the pre-TCJA alternative minimum tax (AMT) regime. The TCJA repealed corporate AMT and allowed corporations to claim outstanding AMT credits or MTCs subject to certain limits for tax years prior to 2021, at which time any remaining AMT credit may be claimed as fully-refundable. The CARES Act allows corporations to claim 100% of MTCs in 2019 as fully refundable and provides an election to accelerate claims to 2018, with eligibility for accelerated refunds.

Takeaways

1. Taxpayers that used MTCs to offset regular tax liabilities in 2018 may be able to use the new NOL carryback rules to get a refund.
2. The accelerated refund claims for 2018 will be treated as tentative carryback refund claims under IRC § 6411. The application must be filed before 12/31/2020. An amended return is not required.
3. It appears that these CARES Act amendments are intended to provide a cash refund for carryforward MTCs following the TCJA's elimination of corporate AMT.

PPP Loan Forgiveness and the Deductibility of PPP Loan Expenses – Sec. 1106

Section 1106(i) of the CARES Act excludes from gross income the amount of any PPP loan that is forgiven under section 1106(b) of the CARES Act, but it does not address whether corresponding PPP loan expenses are deductible given the income exclusion. In Notice 2020-32, the IRS took the position that no deduction is allowed via section 265 of the Internal Revenue Code for PPP loan expenses if the payment of those expenses results in forgiveness of the PPP loan under section 1106(b) of the CARES Act, and that forgiven amount is excluded from gross income via section 1106(i) of the CARES Act. For a more in depth explanation, read this.

The position taken by the IRS in Notice 2020-32 did not sit well with Congress and quickly resulted in a letter from Senate Finance Committee Chair Chuck Grassley and others indicating that their legislative intent was contrary to the IRS's position, along with introduction of a bipartisan bill, S. 3612, that would create a legislative fix to this issue and override the IRS's current position.

Takeaways

1. Given the Congressional backlash to Notice 2020-32 and the pending bipartisan efforts to create a legislative fix, it appears that the guidance in Notice 2020-32 will be short-lived and PPP loan expenses will ultimately be deductible even with the income exclusion.
2. If the pending legislative fix runs into some road blocks and Notice 2020-32 remains in effect, some businesses (and accountants) could run into compliance issues when it's time to file 2020 tax returns since PPP loan forgiveness is not a given when the loan is issued and therefore it is uncertain if the expenses funded by the PPP loan are deductible. The deductibility can only be determined after the forgiveness amount is determined.

Temporary Suspension of Alcohol Taxes on Spirits Used in Emergency Production of Hand Sanitizer – Sec. 2308

Distilled spirits are generally subject to an excise tax upon removal from the distillery; however, denatured spirits for non-beverage use may be removed free of tax. The Food and Drug Administration (FDA) has issued recent guidance on the emergency production of hand sanitizer in connection with the COVID-19 outbreak, which taken together, provides that undenatured spirits may be produced by a distillery for use in the production of hand sanitizer, provided such spirits are later denatured prior to use in such production. The CARES Act exempt from tax spirits removed during 2020 and used for the production of hand sanitizer in compliance with all FDA guidance.

Takeaways

1. This should further encourage an already significant number of distilleries to shift some of their resources to produce hand sanitizer to combat COVID-19.
2. In addition, the Alcohol and Tobacco Tax and Trade Bureau has waived certain permitting, bond, and formula requirements to expand the ability of distilleries to provide hand sanitizer in connection with COVID-19.

Temporary Suspension of Aviation Excise Taxes – Sec. 4007

There are several aviation-related taxes in IRC §§ 4261 and 4271, including a 7.5% ticket tax and domestic and international segment taxes paid by passengers (ticket taxes), as well as a 6.25% tax on the transportation of air cargo, and a per gallon aviation fuel excise taxes, which range from 4.3 to 21.8 cents per gallon. The CARES Act suspends the collection of these taxes from the date of enactment through 1/1/2021.

Takeaways

1. This will provide instant relief to the aviation industry and free up cash to cover other expenses.
2. The relief for transportation taxes seems to apply broadly to all payors of these taxes, including airlines, charter companies, and private and business aviation.

Individual Provisions

Economic Impact Payments for Individuals – Sec. 2201

Perhaps the most discussed provision of the CARES Act concerns the direct individual stimulus payments, dubbed "Economic Impact Payments" by the IRS, which involves the IRS sending over $500 billion via check or direct deposit to most American adults. The new statute er qualifying child (using the Child Tax Credit provisions). Thus, a jointly-filing family of four would get $3,400 before the application of any phase out rules.

The direct payments start to phase out at a 5% rate above adjusted gross incomes (AGI) of $75,000 for single-filers, $122,500 for heads of households, and $150,000 for joint-filers. The point at which a taxpayer no longer will receive any direct payment depends on filing status and qualifying children. For example:

- → Single-filer with no children is completely phased out if AGI exceeds $99,000 | (1,200 / 5%) = 75,000 = 99,000).
- → Head of Household with one child completely phased out if AGI exceeds $156,500 | ((1,200 + 500) /5%) + 122,500 = $156,500.
- → Joint-filer with no children is completely phased out if AGI exceeds $198,000 | (2,400 / 5%) + 150,000 = 198,000.
- → Joint-filer with two children is completely phased out if AGI exceeds $218,000 | ((2,400 + 1,000) / 5%) + $150,000 = $218,000.

Generally, taxpayers must submit the SSNs for each family member claiming the direct payments. But, since these direct payments are going to be advanced refunds for 2020 and the IRS is supposed to send these direct payments as soon as possible, a taxpayer's AGI will initially be determined by referencing the 2019 tax return. If a 2019 tax return has not been filed, the IRS will look at your 2018 return. The IRS created a portal, issued a Revenue Procedure, and posted FAQs to help various types of non-filers receive Economic Impact Payments. Note, the Economic Impact Payment credit will be recomputed again on the filing of taxpayer's 2020 return in calendar year 2021 based on 2020 data.

Takeaways

1. For most taxpayers, no action will be required on their part to receive the direct payment. However, the credit payment amount must be recalculated on the filing of 2020 tax returns. For more details, view this.
2. The recalculation of the direct payment amount on your 2020 tax return based on your 2020 data could lead to significant differences between the 2020 calculation and the direct payment you actually received based on a 2018 or 2019 tax return. If the advance payment was less than what you are owed in 2020, i.e., you were phased out in 2019 but not 2020 or you had another child or different filing status, the excess will be treated as a credit that reduces your 2020 tax liability.
3. If the advance payment received is greater than what you're owed on your 2020 tax return, or you're completely phased out per your 2020 tax return, you should not have to repay or return the excess. The CARES Act does not explicitly require any income recognition on the excess advanced payment received, and it says that the credit cannot be reduced below zero by the advanced payments. This could create some planning opportunities if you have not yet filed your 2019 return.
4. The IRS has subsequently clarified that individuals receiving Supplemental Security Income or Veterans Affairs benefits would automatically receive Economic Impact Payments, but this would not include the per child of recipients who also had qualifying children without further action.
5. The nature of these payments, along with the expedited processing, could lead to an uptick in identity theft issues, scams, etc., that taxpayers, practitioners, and the IRS will have to deal with on the back-end. Low income taxpayers are likely to be impacted more severely.
6. As of April 29, 2020, the IRS reported the delivery of over 130 million Economic Impact Payments, totaling more than $207 billion.

Retirement Funds and Plans – Secs. 2202 and 2203

Generally, if you receive a distribution from a qualified retirement plan before the age of 59 ½, you pay income tax on the distribution and IRC § 72(t) imposes a 10% penalty (or additional tax) on the distribution unless an exception is applicable. The CARES Act adds a new exception by providing that the 10% penalty does not apply to any "coronavirus-related distribution" up to $100,000. A "coronavirus-related distribution" is a distribution made during 2020 to an individual:

- → Who is diagnosed with COVID-19 with a test approved by the Center for Disease Control (CDC);
- → Whose spouse or dependent (as defined by IRC § 152) is diagnosed with COVID-
- → Who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business because of COVID-19, or other factors determined by Treasury.

While a "coronavirus-related distribution" avoids the 10% penalty, it is still subject to income tax; however, the CARES Act allows you to spread the income tax burden over a three-year period starting with 2020. Income recognition can be avoided entirely by repaying the distribution to the retirement plan within three years of receipt. This repayment does not apply against contribution limitations. In addition, the loan amount an individual can borrow against his/her plan increases from $50,000 to $100,000 for the 180-day period starting after the CARES Act is enacted, while certain outstanding loans that were previously due on or before December 31, 2020, will be delayed for one year. Finally, for individuals 72 and older that are normally required to withdraw a "required minimum distribution" from the retirement plan, the CARES Act waives the minimum distribution rules for calendar year 2020.

Takeaways

1. While it's generally best to leave your retirement plan alone, the waiver of the 10% penalty and the spread of income recognition over three years will soften the impact of 2020 early withdrawals.
2. For more specifics on the employee/retirement related benefits read this.
3. The IRS has posted FAQs here.

Charitable Contributions – Secs. 2204 and 2205

The enactment of the TCJA in December of 2017 almost doubled the applicable standard deduction, but curtailed many itemized deductions, like the one for state and local taxes paid. This led to less than 10% of taxpayers itemizing their deductions in 2018. To account for this and provide some extra relief, the CARES Act provides a new "above the line" deduction of taxpayers who do not itemize their deductions.

For individual taxpayers that do itemize their deductions, the CARES Act temporarily raises the AGI limitations on charitable giving to public charities and donations from 60% to 100%. Excess contributions may be carried forward for five years. The limitation on corporation donors is increased from 10% of adjusted taxable income to 25%. In all cases the charitable contribution must be made in case to a public charity or foundation as defined in IRC § 170(b)(1)(A).

Takeaways

1. Taxpayers who itemized are not permitted to claim the line deduction allowed to taxpayers who do not itemize. Taxpayers who itemize must still report on charitable contributions on Schedule A, but the AGI limitations were increased to 100%.
2. There is no requirement that the contribution be used in COVID-19 relief efforts in order to take advantage of the above the line deduction or higher percentage limitations as applicable.
3. There is pending legislation to increase the above the line deduction to one third of the applicable standard deduction, but the urgency surrounding this bill is limited at this point.

Exclusion for Employer Payments of Student Loans – Sec. 2206

Generally, when someone, say an employer, pays a debt on your behalf, you have taxable income to the extent of the amount paid. However, the CARES Act provides an exclusion by permitting employers to pay up to $5,250 in 2020 of an employee's student loan obligations tax free. The $5,250 limitation is a combined limit that applies to both student loan payment and other educational assistance provided pursuant to an IRC § 127 plan.

For example, if an employer paid $3,500 of an employee's qualified educational expenses pursuit of a qualified degree program and another $5,000 of the same employee's student loan payments in 2020, only $5,250 of those combined payments will be tax free to the employee. In addition, the employee will not be able to deduct the applicable student loan interest.

Takeaway

1. Employers should update their education assistance plan documentation to make student loan payments part of the plan administration and recordkeeping.

Conclusion

While the CARES Act provides approximate $2 trillion in stimulus money to combat COVID-19 and help people and businesses absorb the impact of COVID-19, many think additional relief is needed. A fourth stimulus package is currently being debates on both sides of Congress. There was some initial skepticism that government agencies, like the IRS, would be able to implement some of these sweeping changes in an expedited manner while their own employees are impacted by COVID-19 just like everyone else. So far, the IRS has been remarkably agile and quick to issue pertinent guidance and notifications of policy changes during this global COVID-19 pandemic. One glimpse at the IRS's Coronavirus Tax Relief Page and Coronavirus Resources and Guidance Page gives you an idea of how much guidance and information the IRS has generated over the last two months. The IRS is creating new procedures and policies in real time to implement the CARES Act and account for the COVID-19 pandemic.

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