
Coronavirus Relief Legislation has Major Tax Implications for Businesses and Individuals

In response to the ongoing COVID-19 Coronavirus pandemic, Congress has passed several important pieces of legislation this month aimed at addressing the impact of the pandemic on the U.S. economy and mitigating its financial effect on Americans. In two of the most recent pieces of legislation, there are a number of tax-related relief measures for both businesses and individuals affected by the COVID-19 crisis. The Families First Coronavirus Response Act (“FFCRA”) passed by Congress and signed by President Trump on March 18, 2020 provides relief to employees and small and mid-size businesses by expanding paid leave for employees impacted by COVID-19 and providing for employer tax credits related to the paid leave provisions created by the FFCRA. In addition the Coronavirus Aid, Relief and Economic Security (“CARES”) Act passed by Congress and signed by the President today, March 27, 2020, is a massive stimulus package providing a number of relief measures including tax-related incentives and relief for individual taxpayers as well as businesses. The following is a high level summary of some of the key tax and tax-related relief measures in the FFCRA and CARES Act legislation.

FFCRA and Tax Credits

Payroll Tax Credits. The FFCRA provides certain employers with payroll tax related credits for complying with the Emergency Paid Sick Leave and Emergency Family and Medical Leave Expansion portions of the FFCRA. [See [Maynard's previous Client Alert here.](#)] Eligible employers are employers that employ fewer than 500 employees, but there are possible exemptions from the FFCRA for employers employing fewer than 50 employees. The payments that give rise to the credit will be employee payroll made between April 1, 2020 and December 31, 2020. Specifically, an eligible employer can claim credits against the payroll taxes that the employer is otherwise obligated to remit to the Internal Revenue Service. The credits can be claimed by the employer retaining amounts that the employer withholds from employee payroll for federal income taxes and the employee share of Social Security and Medicare taxes as well as the employer share of Social Security and Medicare taxes. An employer becomes eligible for the credits when the eligible employer is required to make payroll payments with respect to employees out of work for COVID-19 related illness or quarantine (“Payroll Sick Leave Credit”) or to care for a family member with COVID-19 related illness or children that are at home as a result of school or daycare closures or childcare unavailability (“Payroll Family Leave Credit”). In the event that the credits exceed the amount of tax that the employer is otherwise obligated to remit to the IRS, the employer may apply for a refund of such excess amount.

Limits and Denial of Double Benefit. The FFCRA does impose certain limitations on the amounts of the credits as to each impacted employee. Specifically, the Payroll Sick Leave Credit applies for payroll paid for up to two weeks at 100% of the employee’s pay with a cap of \$511/day and an overall cap of \$5,110/employee for the full two-week period. The Payroll Family Leave Credit applies for payroll paid for up to two weeks at two thirds of the employee’s pay with a cap of \$200/day and an overall cap of \$2,000/employee for the full two-week period. In addition to these limits, the FFCRA prevents any double benefit to employers (which could result from the employer claiming both a deduction for sick leave and/or family leave wages paid as well as claiming the

associated credits) by requiring the gross income of any employer claiming the credits to be increased by the amount of the credits taken.

Child-Care Tax Credit. The FFCRA also provides for an expanded paid family and medical leave refundable child-care tax credit for qualified employers resulting from employees that are out of work for extended periods for childcare purposes. This credit applies for payroll paid for up to ten weeks at two thirds of the employee's pay with a cap of \$200/day and an overall cap of \$10,000/employee for the full ten-week period.

Health Insurance Reimbursement. In addition to an employer's costs of providing the new mandatory paid leave to an employee, the above tax credits are also available to reimburse certain amounts that the employer pays to maintain health insurance coverage for eligible employees during the leave period.

Exemption from Social Security Tax. The FFCRA also provides a Social Security tax exemption for eligible employers making required sick leave payments or required family leave payments by excluding such amounts from the calculation of wages for purposes of the employer's portion of the Social Security payroll tax.

CARES Act and Tax-Related Relief for Businesses and Individuals

Employee Retention Credit. The CARES Act creates a refundable employee retention credit for employers that are forced to suspend or close operations due to the COVID-19 pandemic. Eligible employers are allowed a credit against employment taxes equal to 50% of qualified wages (up to \$10,000 in wages) for each employee. Eligible employers are employers who were carrying on a trade or business during 2020 and for which the operation of that business is fully or partially suspended due to a governmental order or which sustain a significant decline in gross receipts. An employer has a "significant decline in gross receipts" if its gross receipts are less than 50% of its gross receipts for the same quarter in the prior year, until its gross receipts exceed 80% of its gross receipts for the same calendar quarter in the prior year.

For businesses with 100 or fewer employees, all wages paid qualify for the credit. For businesses with more than 100 employees, only wages that the employer pays to employees who are not providing services due to the suspension of the business or a drop in gross receipts are eligible for the credit. The credit is applicable for wages paid after March 12, 2020 and before January 1, 2021 and must be reduced by any credits claimed under the FFCRA.

Payroll Tax Delay. Employers are allowed to defer payment of 50% of 2020 employer payroll taxes until Dec. 31, 2021; the other 50% will be due Dec. 31, 2022. The same deferral option is available for self-employment taxes.

Net Operating Loss Rules. Net operating losses arising in 2018, 2019 and 2020 may be carried back to the five previous tax years. Additionally, the 80% income limitation for net operating losses is temporarily repealed for years beginning before 2021.

Interest Limitation. For 2019 and 2020, Code Section 163(j)'s limitation on the deduction for net interest is amended to increase the adjusted taxable income threshold from 30% to 50%. In addition, businesses may use their adjusted taxable income from 2019 in their 2020 computation.

Excess Business Losses. The CARES Act temporarily repeals the excess loss limitation of Code Section 461(l) that limited certain losses attributable to trades or businesses for noncorporate taxpayers to \$250,000 (\$500,000 for joint filers). This repeal applies to 2020 and is retroactive to January 1, 2018.

Corporate AMT. Corporations are allowed to accelerate any remaining AMT credits they have not yet utilized into 2019. Taxpayers are also allowed to elect to take the entire remaining refundable credit amount in 2018.

Qualified Improvement Property. The CARES Act makes technical corrections regarding qualified improvement property under Code Section 168. Such property is now 15-year property under MACRS. This change will allow this property to be eligible for immediate expensing under the 2017 Tax Cuts and Jobs Act. Qualified

improvement property is any improvement to the interior of a nonresidential building that is placed in service after the building is first placed in service. Qualified improvement property does not include improvements that are attributable to the enlargement of the building, elevators or escalators, or the internal structural framework of the building. The change is retroactive to the date of enactment of the TCJA.

Aviation Excise Taxes. Federal excise taxes applicable to commercial aviation are temporarily repealed through the end of 2020.

Tax Treatment of Economic Stabilization Investments. The CARES Act authorizes the Treasury Department to make or guarantee debt or equity investments in businesses, states or municipalities impacted by COVID-19. The IRS is directed to issue guidance providing that the issue of warrants, stock options, common or preferred stock or other equity under the program does not result in an ownership change for purposes of Section 382 of the Internal Revenue Code. Any loans made or guaranteed by the Treasury under the program would be treated for tax purposes as debt issued at par, and stated interest on these loans would be treated as qualified stated interest. As a result, loans issued or guaranteed under the program would not be treated as issued with original issue discount for tax purposes, and cash basis taxpayers would not be permitted to deduct interest on the loans until that interest is paid.

Charitable Deductions. The income limitations on charitable contributions are increased for 2020. For individuals, the 50% of adjusted gross income limitation is increased to 100%, and for corporations, the 10% of taxable income limitation is increased to 25%. The limit for contributions of food inventory is increased from 15% to 25%. The CARES Act also creates an above-the-line charitable deduction for 2020 of up to \$300 for nonitemizers who make cash contributions in 2020.

Access to Retirement Funds. The 10% early withdrawal penalty is waived for distributions of up to \$100,000 from qualified retirement plans to cover certain expenses related to the coronavirus. Any income inclusion resulting from such early withdrawals can be spread out over three years. The CARES Act also waives the required minimum distribution rules for certain defined contribution plans and individual retirement accounts in 2020.

Recovery Rebate Payments. The CARES Act provides for direct payments to individuals in the form of “recovery rebates,” which are treated as advance refunds of a 2020 tax credit. Individuals will receive \$1,200 plus \$500 for each qualifying child. The recovery rebates are phased out for taxpayers with adjusted gross income over \$75,000 (\$150,000 for joint filers).

Please reach out to a member of [Maynard Cooper's Tax Practice](#) if you have any questions or need assistance with your tax and related COVID-19 concerns.

[Maynard Cooper's COVID-19 Coronavirus Task Force](#) is closely monitoring all updates to pending legislation related to the COVID-19 pandemic. We are dedicated to providing client-focused services, and it is the goal of the Task Force to continue this level of service to each and every client as they face challenges about planning for and responding to the threats posed by the virus. If you have any questions, please reach out to your relationship partner or any of the attorneys serving on the [Task Force](#).

This Client Alert is for information purposes only and should not be construed as legal advice.
The information in this Client Alert is not intended to create and does not create an attorney-client relationship.