



## INDIVIDUAL PROVISIONS

### 2020 Recovery Rebates for Individuals

The *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) provides payments to taxpayers (subject to income limits) in the way of a credit under §6428 of \$1,200 per individual (\$2,400 for married couples filing a joint return) plus \$500 per qualifying child who is under age 17 (as defined under §24(c)).

The payment is reduced by 5% of the taxpayer's adjusted gross income in excess of \$75,000 (\$112,500 for head of household; \$150,000 for joint filers). The payment will fully phase out when income reaches \$99,000 for single filers, \$146,500 for head of households with one child and \$198,000 for joint filers.

Eligible taxpayers include anyone except:

- Nonresident aliens
- Any taxpayer who does not have a Social Security number (SSN) or Adoption Taxpayer Identification number (ATIN)
- Taxpayers who qualify as a dependent of another taxpayer (§151)
- Estate or trust

Individuals who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as SSI benefits also qualify for the advance payment.

Joint filers are each treated as having received one-half of the advanced payment. The eligibility for the payment is based on the taxpayers 2019 tax return, or if the taxpayer has not filed a 2019 return, eligibility is based on the 2018 return. If no returns were filed in 2018 or 2019, information from 2019 Forms 1099-SSA and 1099-RRB will be used.

The payments are not subject to offset.

### Penalty-free Retirement Distributions

Certain taxpayers are permitted to withdraw up to \$100,000 from a retirement plan or IRA for "coronavirus-related distributions" without incurring the 10% premature distribution penalty under §72(t).

A coronavirus-related distribution includes a distribution:

- Made after Jan. 1, 2020 and before Dec. 31, 2020.
- To an individual who is diagnosed with virus SARS-CoV-2 or COVID-19 by a test approved by the Centers for Disease Control and Prevention.
- To a spouse or dependent of a person diagnosed with such virus by such a test.
- To persons who experience adverse financial consequences as a result of being quarantined, furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury.

If the taxpayer chooses, they may, at any time during the 3-year period beginning on the day after the date such distribution from a qualified retirement plan was received, make one or more contributions in an aggregate amount not to exceed the amount of the distribution to an eligible retirement plan and treat the contribution as a rollover contribution. Distributions from an IRA are treated similarly.

Coronavirus-related distributions are included in the taxpayer's income, beginning with the year of distribution, ratably over a three-year period unless the taxpayer elects not to do so.

## Loans from Qualified Plans

Loans from qualified plans made within 180 days beginning on the day of enactment, will not be treated as a distribution if the amount distributed does not exceed \$100,000.

Taxpayers who have a current outstanding plan loan with a payment requirement on the date of enactment and ending on Dec. 31, 2020 will be granted an automatic 1-year delay for making that repayment. Any subsequent repayments with respect to any such loan shall be appropriately adjusted to reflect the 1-year delay in the due date.

## Temporary Waiver of Required Minimum Distributions (RMDs)

RMDs required to be made or that begin in 2020 are waived. Calendar year 2020 is disregarded for distributions that are being made under the 5-year rule.

## Partial Above-the-Line Charitable Contribution Deduction

A charitable contribution not in excess of \$300 made in taxable years beginning in 2020 is allowed to taxpayers who do not itemize. The contribution must be made in cash to a qualified charitable organization or a new or existing donor advised fund.

## Temporary Suspension of Contribution Limitations

The 50% limitation (60% in years 2018-2025) under §170(b) and (d) is suspended for cash contributions made in 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%.

# BUSINESS PROVISIONS

## Exclusion for Certain Employer Payments of Student Loans

Excludable education assistance under §127 includes payments made by an employer, for the benefit of an employee, whether paid to the employee or to a lender, of principal or interest on any qualified education loan (as defined in §221(d)(1)) incurred by the employee for education of the employee.

## Employee Retention Credit

Employers are provided a refundable payroll tax credit for 50% of wages paid to employees during the COVID-19 crisis. The credit is available to employers whose:

- Operations were fully or partially suspended due to a COVID-19-related shutdown order, or
- Gross receipts declined by more than 50% when compared to the same quarter in the prior year.

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 described above. 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.

The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through Dec. 31, 2020.

## Delay of Payment of Employer Payroll Taxes

Employers and self-employed individuals can defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. Employers generally are responsible for paying a 6.2% Social Security tax on employee wages.

The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by Dec. 31, 2021 and the other half by Dec. 31, 2022. The Social Security Trust Funds will be held harmless under this provision.

## Modifications for Net Operating Losses (NOLs)

Temporary changes to the NOL carryback rules allow business to carryback certain losses. Under the TCJA, NOLs are subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year. The relaxed rules provide that an NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years. The provision also temporarily removes the 80% taxable income limitation to allow an NOL to fully offset income. These changes will allow companies to utilize losses and amend prior year returns.

## Modifications to Excess Business Loss Rules

Pass-through businesses and sole proprietorships can deduct excess business losses arising in 2018, 2019, and 2020. Previously, the deduction of excess business losses by noncorporate taxpayers for tax years beginning after Dec. 31, 2017 and ending before Jan. 1, 2026 were disallowed.

## Modification of Minimum Tax Credit for Corporations

The corporate alternative minimum tax (AMT) was repealed as part of the TCJA, but corporate AMT credits were made available as refundable credits over several years, ending in 2021. This modification accelerates the ability of companies to recover those AMT credits, permitting companies to claim a refund now. This Act allows corporations to claim 100% of AMT credits in 2019.

## Deductibility of Business Interest

The limitation on the deduction for business interest under §163(j) is temporarily and retroactively increased from 30% to 50% of taxable income (with adjustments) for 2019 and 2020.

Under a special rule for partnerships, the increase in the limitation will only apply in 2020. For partners that don't elect out, any excess business interest of the partnership for any tax year beginning in 2019 that is allocated to the partner will be treated as follows:

- 50% of the excess business interest will be treated as paid or accrued by the partner in the partner's first tax year beginning in 2020 and isn't subject to any limits in 2020.
- 50% of the excess business interest will be subject to the limitations §163(j)(4)(B)(ii) in the same manner as any other excess business interest that is allocated. Meaning it will remain suspended until the partnership allocates excess taxable income or excess interest income to the partner.

Taxpayers may elect out of the increase, for any tax year, in the time and manner IRS prescribes. Once made, the election can be revoked only with IRS consent. For partnerships, the election must be made by the partnership and can be made only for tax years beginning in 2020.

In addition, taxpayers can elect to calculate the interest limitation for their tax year beginning in 2020 using the adjusted taxable income for their last tax year beginning in 2019 as the relevant base. For partnerships, this election must be made by the partnership.

This provision applies to tax years beginning after Dec. 31, 2018.

## Bonus Depreciation for Qualified Improvement Property

Finally, a technical correction to the TCJA for qualified improvement property. Under the TCJA, the 100% bonus depreciation rules to applies to all MACRS property with a recovery period of 20 years or less. Before TCJA, qualified improvement property was depreciated as 39-year residential real property, unless it separately qualified as 15-year qualified leasehold improvement property, 15-year retail improvement property, or 15-year restaurant property. Congress eliminated the three separate categories of 15-year improvement properties with the intention of making all qualified improvement property 15-year property. However, it failed to do so, and as a result, qualified improvement property is depreciated as 39-year property and not qualified for bonus depreciation.

The CARES Act corrects this error by defining qualified improvement property as 15-year property, thus allowing 100% of improvements to be deducted in the year incurred. The change is made as if it was originally included in the TCJA and, thus, is effective for property acquired and placed in service after Sept. 27, 2017.

# OTHER PROVISIONS

## Expansion of Unemployment Benefits

The size and scope of unemployment benefits is expanded under this bill. It includes relief for workers who are self-employed, as well as independent contractors. These changes are temporary.

- Provides \$250 billion to expand unemployment benefits
- Makes sure self-employed and independent contractors, like Uber drivers and gig workers, can receive unemployment during the public health emergency. The bill also includes support to state and local governments and nonprofits so they can pay unemployment to their employees
- Makes benefits more generous by adding a \$600/week across-the-board payment increase through the end of July. In addition, for those who need it, the bill provides an additional 13 weeks of benefits beyond what states typically allow

Unemployment insurance eligibility is expanded to those who are not eligible for regular compensation or extended benefits under state or federal law, or previously passed pandemic emergency unemployment compensation.

To qualify, an individual must self-certify that s/he is otherwise able and available to work but cannot for one of the following reasons:

- Diagnosis of COVID-19 or is experiencing the symptoms and seeking a medical diagnosis
- Member of household has COVID-19
- Individual is providing care for a family member or member of household who has been diagnosed with COVID-19
- Child or other person in household for whom the individual is the primary caregiver is unable to attend school or other facility because of COVID-19 and such attendance is necessary for that individual to attend work
- Individual is unable to reach place of employment because of mandatory quarantine
- Individual has been advised by a medical professional to self-quarantine due to COVID-19 concerns
- Individual was scheduled to start a job and doesn't have a job or unable to reach job due to COVID-19
- Individual has become the primary source of income or major support for household due to head of household dying due to COVID-19
- Individual has quit job as a direct result of COVID-19
- Place of business is closed due to COVID-19
- Individual is self-employed, is seeking part-time employment, doesn't have sufficient work history, or otherwise doesn't qualify for regular unemployment or extended benefits
- This does not include individuals who can telework with pay or who are receiving paid sick leave or other leave benefits due to other provisions in COVID-19 relief.

This assistance is available beginning Jan. 27, 2020 and goes until Dec. 31, 2020 with a 39-week maximum for an individual receiving assistance.

The bill also allows for states to waive their one week waiting period for unemployment benefits and the federal government will reimburse them for that week, thus incentivizing states to provide an immediate benefit.

## Paid Leave for Rehired Employees

The CARES Act amends the expanded paid leave requirements for employers in the *Families First Coronavirus Response Act* to include employees who are laid off and then rehired by an employer.

Specifically, an employee who was laid off by their employer on March 1, 2020 or later, had worked for the employer for at least 30 of the previous 60 days before being laid off, and was then rehired by the employer will be eligible for the paid family and sick leave benefits.

## Small Business Loans

The SBA is providing low-interest working capital loans of up to \$2 million to small businesses and nonprofits affected by the coronavirus. These loans carry an interest rate of 3.75% for small businesses and 2.75% for nonprofits. Loan repayment terms vary by applicant, up to a maximum of 30 years.

As of March 23, businesses in every state plus American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands can apply. The loan can be used to cover accounts payable, debts, payroll and other bills.

These loans can be forgiven. Loan recipients can calculate the amount to be forgiven by calculating the sum total of the following “costs incurred, and payments made” during the 8-week period beginning on the date of the covered loan origination:

- Payroll costs (defined later)
- Interest on mortgage obligation (which shall not include any prepayment of or payment of principal)
- Rent
- Utility payments

The total amount for forgiveness must not exceed the original principal amount. The amount of loan forgiveness can be reduced if the recipient reduces the number of employees or reduces salaries during the 8 weeks following the origination date.

Payroll costs are defined as the sum of all payments for:

- Salaries, wages, commissions, or similar compensation (up to \$100,000 annual compensation as prorated for the covered period)
- Payment of cash tip or equivalent
- Vacation, parental, family medical, or sick leave
- Severance payment
- Health care benefits, including insurance premiums
- Retirement benefits
- State or local tax assessed on said compensation
- Payments of wages, commission, or similar compensation to any independent contractors that is \$100,000 or less per year (as prorated for the covered period).

Payroll costs would not include:

- Federal income tax and payroll tax contributions
- Compensation of any employee whose principal residence is outside the US
- Qualified sick and family leave wages covered by tax credits under the *Families First Coronavirus Response Act*

Eligible small business owners can apply online and select “Economic Injury” as the reason for seeking assistance. Call the SBA Disaster Assistance Customer Service Center at 800.659.2955 for assistance.