Federal Tax CARES Act Provisions

April 9, 2020

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). There are a number of tax provisions within the CARES Act that impact businesses.

The business tax provisions of the CARES Act include:

- The Employee Retention Credit for Employers Subject to Closure Due to COVID-19 (*Section 2301*)
  - This provision provides a refundable credit against applicable employment taxes on fifty percent (50%) of wages for each calendar quarter for eligible employers. The includible wages are limited to $10,000 per employee.
  - An eligible employer is one who was forced to fully or partially suspend operations due to an order from a governmental authority or that experienced a fifty percent (50%) decline (a "significant decline") in gross receipts for the calendar quarter on a year over year basis. For an employer suffering a significant decline, such employer will be eligible for this credit until the gross receipts have recovered by more than 80%.
  - This credit is unavailable to an employer that receives a Paycheck Protection Program loans provided in Section 1102 of the CARES Act.
- Delay of Payment of Employer Payroll Taxes (*Section 2302*)
  - This provision allows an employer or a self-employed individual to defer payment of the employer share of certain payroll taxes from the date of enactment of the act through the end of 2020.
  - The deferred taxes are paid over a two (2) year period, with half due by December 31, 2021 and the other half due by December 31, 2022.
  - There are no size or gross receipts limitations preventing an employer from taking advantage of this provision.
- Modification of Limitations on Charitable Contributions During 2020 (*Section 2205*)
  - This provision increases the charitable deduction limitation for businesses for cash contributions from sixty percent (10%) to one hundred percent (25%) of adjusted gross income (without regard to net operating loss carrybacks).
  - In addition, for contributions of food inventory covered under Section 170(e)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), the charitable deduction limitation is increased to twenty-five percent (25%) of the adjusted net income from fifteen percent (15%).

- Modification of Net Operating Losses (*Section 2303*)
  - Net operating losses (NOLs) were unable to be carried back to previous tax years based on limitations enacted by the Tax Credit and Jobs Act (the TCJA). This provision now allows NOLs to be carried back to as many as five (5) years.
  - Additionally, NOLs were limited to eighty percent (80%) of taxable income, but that limitation is now delayed until the 2021 taxable year, and until that time a taxpayer can offset one hundred percent (100%) of taxable income with available NOLs.
- Modification of Limitation on Losses for Taxpayers other than Corporations (*Section 2304*)
  - This provision delays implementation of rules added by the TCJA. The excess active business loss limitation rule and active farming loss rules are now applicable to tax years beginning after December 31, 2020, rather than December 31, 2017.
  - The provision further clarifies that excess business losses do not include any deduction under Sections 172 (relating to NOLs) or 199A (relating to Qualified Business Income) or any deductions related to performing services as an employee.
  - Additionally, the provision clarifies that, because capital losses cannot offset ordinary income under the NOL rules, capital loss deductions are not taken into account in computing the limitation under Section 461(l) of the Code, and that the amount of capital gain taken into account in calculating the Section 461(l) limitation cannot exceed the lesser of capital gain net income from a trade or business or capital gain net income.
- Modification of Credit for Prior Year Minimum Tax Liability of Corporations (*Section 2305*)
  - The TCJA repealed the alternative minimum tax (AMT) for corporations and allowed corporations to claim outstanding AMT credits subject to certain limits for tax years prior to 2021, at which time any remaining AMT credit may be claimed as fully-refundable. This provision accelerates the ability of corporations to claim the AMT credit as fully-refundable for the 2019 tax year, or even an election to the 2018 tax year.
- Modification of Limitation on Business Interest (*Section 2306*)
  - This provision raises the limitation on the interest expense deduction under Section 163(j) of the Code to fifty percent (50%) of adjusted taxable income from thirty percent (30%) for the 2019 and 2020 taxable years.
- Technical amendments regarding qualified improvement property (*Section 2307*)
  - This provision corrects the TCJA to allow the interior improvements of buildings to be (1) immediately expensed in the case of restaurant, retail, and most other property (classified as 15-year property), or (2) depreciated over 20 years in the case of a real property trade or business.
- Exception from Excise Tax for Alcohol Used to Produce Hand Sanitizer (*Section 2308*)
  - This provision waives the federal excise tax on any distilled spirits used for or contained in hand sanitizer that is "produced and distributed in a manner consistent with any guidance issued by the Food and Drug Administration." In addition, the provision waives certain labeling and bulk sales requirements during the temporary exception. This exception is effective for the calendar year 2020.

- Advance Refunding of Credits (*Section 3606*)
  - This provision authorizes the Department of the Treasury to provide advance payment of tax credits that are available to employers required to provide up to 12 weeks of coronavirus-related paid leave to their employees.
- Suspension of Aviation Excise Taxes (*Section 4007*)
  - A number of taxes related to aviation are suspended from collection until January 1, 2021. These taxes include the 7.5 percent ticket tax and domestic and international segment taxes paid by passengers, as well as the 6.25 percent tax on the transportation of air cargo and the per gallon aviation fuel excise taxes.
- Loan Forgiveness (*Section 1106*)
  - The tax portion of this provision provides that taxpayers that have a loan forgiven under this section of the CARES Act will not be subject to cancellation of indebtedness income which would be subject to taxation.

The CARES Act is wide ranging and the above are only those provisions having a direct federal tax impact on businesses. With many states conforming to the Code, whether through laws that make conformance automatic or through acts by legislatures enacted in response to the CARES Act, there will be impacts on state taxes, in particular from the retroactive applications of the provisions under Sections 2305 and 2306 discussed above. The impacts of the CARES Act at the state level will continue to develop over time and may not be known for some time. We will continue to monitor these developments and will issue additional alerts as warranted.

For more information, please contact Nick Anderson, John Mueller, Colin Halpin, Real Estate & Tax Credit Practice Group Chair Chris Pierce, or your regular Lathrop GPM contact.