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**COVID-19 Client Letter Toolkit**

The Client Letter Toolkit provides sample client letters designed to help you keep your clients informed on a variety of subjects, together with an invitation within each letter to contact you for further assistance. Covering hundreds of timely tax developments and concerns from new tax laws and IRS guidance, to issues and tax planning opportunities arising from changes in a client’s individual or business circumstances, the Client Letter Toolkit is designed to help you communicate technical tax concepts accurately but in a client-friendly manner. To help you pinpoint the right letter quickly, robust filter options are included. Subscribers are encouraged to use these letters in whole or in part, through postal mail or e-mail, as best suits your needs.

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# **Re: CARES Act:** **Depreciation of Qualified Improvement Property**

Dear Client:

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provides tax relief to individuals and businesses in an effort to support the economy. In addition to numerous other provisions that provide cashflow to businesses, the CARES Act includes a modification to the recovery period for qualified improvement property.

Under the CARES Act, a 15-year recovery period is retroactively assigned to qualified improvement property placed in service after December 31, 2017. Therefore, qualified improvement property may be depreciated over 15 years or, alternatively, qualifies for 100 percent bonus depreciation if all bonus requirements are met.

Qualified improvement property is broadly defined as an internal improvement to nonresidential real property but does not include improvements related to elevators and escalators, the internal structural framework, or an enlargement of the building. The improvement must be placed in service after the date the improved building is first placed in service. The improvement must be made by the taxpayer. Therefore, the 15-year recovery period and bonus depreciation does not apply to a taxpayer that purchases a building that includes qualified improvement property depreciated by the seller over 15 years.

**Opportunity to Amend**

As a result of the retroactive application of the reduced recovery period, if a taxpayer filed two or more returns using a 39-year recovery period for qualified improvement property placed in service after 2017 an incorrect accounting method was adopted and automatic consent to change to the correct method must be filed on Form 3115. Taxpayers who only filed one return using a 39-year recovery period (e.g., a calendar year taxpayer who has not filed a 2019 return) may file an amended return to correct the recovery period or may file Form 3115 with their current year return.

Generally, a taxpayer must elect out of bonus depreciation by the extended due date of the return for the tax year in which the property eligible for the bonus was placed in service. Some taxpayers may not want to claim 100 percent bonus depreciation on qualified improvement property that retroactively qualifies for the additional allowance. The IRS will presumably issue guidance allowing these taxpayers to make a late election out of bonus depreciation and to file an amended return or Form 3115, as applicable, based on a 15-year recovery period.

**Contact Us**

The reduced recovery period not only allows businesses to improve their cashflow by filing an amended return, but also encourages investment in further improvements to stimulate the economy. Please call our office with any questions on qualified improvement property or other provisions of the CARES Act. We are here to help you.

Sincerely,

This letter explains the retroactive modification to the recovery period for qualified improvement property under the CARES Act. (04/01/2020)

# **Re: CARES Act: Employee Retention Credit**

Dear Client:

After days of furious negotiations, Congress has passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The $2.2 trillion price tag for tax relief and incentives for individuals and businesses makes it the most expensive piece of legislation ever passed. It includes a provision for a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis.

The CARES Act grants eligible employers a credit against employment taxes equal to 50 percent of qualified wages paid to employees who are not working due to the employer’s full or partial suspension of business or a significant decline in gross receipts. The credit can be claimed on a quarterly basis, but the amount of wages, including health benefits, for which the credit can be claimed is limited to $10,000 in aggregate per employee for all quarters.

An eligible employer is defined as:

* An employer whose trade or business is fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the coronavirus disease (COVID-19); or

* An employer that experiences a 50% decline in gross receipts for the calendar quarter compared to the same quarter in the prior year.

*Qualified Wages.* The credit applies to qualified wages paid after March 12, 2020 and before January 1, 2021. If the employer has more than 100 full-time employees, qualified wages are wages paid to employees who cannot work during the COVID-19-related circumstances described above. If the employer has 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.

**Comment**

This is very similar to the paid leave credits granted to employers under the Families First Coronavirus Response Act signed into law on March 18, 2020, with some changes to the requirements. Most significantly, neither the employee nor the employer has to be directly impacted by the infection.

We are here to assist you during these difficult economic times. Please call our office if you have any questions related to the employee retention credit or any other provisions of the CARES Act.

Sincerely,

This letter explains the provision under the CARES Act for a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. (03/27/2020)

# **Re:** **CARES Act: Modifications for Net Operating Losses**

Dear Client:

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provides tax relief to individuals and businesses in an effort to support the economy. Included in the numerous provisions is a modification to the rules on the tax treatment of net operating losses.

Normally, NOLs arising in tax years beginning after 2017 may only reduce 80 percent of a taxpayer’s taxable income in carryback and carryforward years. The two-year carryback period and twenty-year carryforward period, as well as the longer carryback periods for special types of losses, were eliminated under the Tax Cuts and Jobs Act, effective for NOLs arising in tax years ending after 2017. NOLs arising in tax years ending after 2017 are carried forward indefinitely.

However, under the CARES Act, net operating losses (NOLs) arising in tax years beginning in 2018, 2019, and 2020 now have a five-year carryback period and an unlimited carryforward period. The general rule limiting an NOL deduction to 80 percent of taxable income does not apply to NOLs arising in these years.

*Extension of time to waive five-year carryback for 2018 and 2019 NOLs.* The five-year carryback period may be waived by making an election. For NOLs that arose in tax years beginning in 2018 or 2019, the time for making the waiver election is extended to the due date (including extensions) for filing the taxpayer’s return for the first tax year ending after March 27, 2020 (the date of enactment of the new law). Normally, the election is required by the due date (including extensions) of the return for the tax year in which the NOL arose. The regular election deadline continues to apply to NOLs arising in a tax year that begins in 2020.

The extended due date is necessary because the statutory deadline for making the waiver election has expired for some taxpayers. The CARE Act contains no specific relief that allows taxpayers with a 2018 or 2019 NOL to file a late tentative refund application. Since the due date for filing a tentative refund application is statutorily required to be filed within one year after the close of the NOL year the IRS is not able grant administrative relief. Consequently, taxpayers for whom the deadline has passed will need to file amended returns in order to claim refunds.

If you have any questions related to the NOL rules, please call our office. We can help you determine the best timing for claiming a net operating loss.

Sincerely,

This letter may be sent to clients interested in the modifications to the rules on the tax treatment of net operating losses under the CARES Act. (03/30/2020)

# **Re: CARES Act: Special Rules for Use of Retirement Funds**

Dear Client:

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provides relief designed to increase liquidity in the economy including modifications to the rules on the use and distribution of retirement funds.

**Withdrawals**

The CARES Act waives the 10-percent penalty on early withdrawals up to $100,000 from qualified retirement plans for coronavirus-related distributions. For purposes of the penalty waiver, a coronavirus-related distribution is one made during the 2020 calendar year, to an individual (or the spouse of an individual) diagnosed with COVID-19 with a CDC-approved test, or to an individual who experiences adverse financial consequences as a result of quarantine, business closure, layoff, or reduced hours due to the virus.

Any income attributable to an early withdrawal is subject to tax over a three-year period, and taxpayers may recontribute the withdrawn amounts to a qualified retirement plan without regard to annual caps on contributions if made within three years. This relief is commonly granted by Congress in the wake of major disaster declarations, such as those made after a major hurricane.

**Loans**

The maximum loan amount is increased from the lesser of $50,000 or 50% of vested balance to the lesser of $100,000 or 100% of vested balance. This increase applies to loans made between March 27, 2020 (the date of enactment of the CARES Act) and December 31, 2020.

In addition, if a qualified individual has a loan repayment due date after March 27, 2020 and before December 31, 2020, on an outstanding loan, the payment due date is delayed one year (or, if later, until the date which is 180 days after March 27, 2020). Any subsequent repayments with respect to the loan will be adjusted accordingly and the five-year period for repayment is disregarded.

Similar to the rules on withdrawals, a qualified individual is an individual (or the spouse of an individual) diagnosed with COVID-19 with a CDC-approved test, or to an individual who experiences adverse financial consequences as a result of quarantine, business closure, layoff, or reduced hours due to the virus.

**Required Minimum Distributions**

The CARES Act also waives required minimum distributions, regardless of whether the taxpayer has been impacted by the pandemic. The waiver applies for calendar year 2020 to defined contribution plans, certain annuity plans, and traditional or Roth IRAs. The waiver allows seniors to hold on to their plan assets when they might otherwise have to sell at market lows.

**Additional Modifications**

* *IRA Contribution Deadline.* The deadline to make an IRA contribution is extended to July 15, the extended due date for tax returns.

* Mandatory 20% Withholding. The mandatory 20% income tax withholding on rollovers is also suspended for 2020.

If you would like more information on modifications to the rules on the use and distribution of retirement funds, please call our office. We are here to help you.

Sincerely,

This letter explains modifications to the rules on the use and distribution of retirement funds under the CARES Act. (03/30/2020)

# **Re: CARES Act: Waiver of Required Minimum Distribution Rules**

Dear Client:

The Coronavirus Aid, Relief, and Economic Security (CARES) Act waives all required minimum distributions for 2020, regardless of whether the taxpayer has been impacted by the pandemic.

The required minimum distribution (RMD) rules prevent taxpayers from extending the tax benefit for retirement savings indefinitely. In general, a minimum required distribution must be made for the later of the year in which the participant turns 70 1/2 (or 72, if they have not reached 70 1/2 before 2020) or retires, and for every year thereafter. The required beginning date cannot be delayed until retirement if the participant is a five-percent owner of the employer, or if the account is an IRA. The distribution for the first year can be made as late as April 1 of the following year. For other years, the required distribution must be made during the calendar year.

The waiver under the CARES ACT applies for calendar year 2020 to defined contribution plans, certain annuity plans, and traditional or Roth IRAs. The waiver allows seniors to hold on to their plan assets when they might otherwise have to sell at market lows.

**Comment**

There may be an additional benefit of the waiver for taxpayers who turned 70 ½ in 2019 and did not take their first required distribution in 2019. For those individuals who chose to wait until April 1, 2020 and had not yet taken the distribution at the time legislation was passed, they can waive both the 2019 and 2020 RMDs.

Conversely, for all taxpayers who have already taken their distribution, it is uncertain if they can still benefit from the waiver. In general, distributions received each year, up to the amount of the individual's RMD, are not eligible rollover distributions. We must wait for guidance from the IRS to see if the generally applicable rule continues to apply for 2019 and 2020 RMDs that were taken prior to the CARES Act. For now, the distribution is included in income. However, if redepositing the RMD into another tax qualified account would otherwise qualify as a rollover, then taxpayers may be able to treat it as they would any other rollover (i.e. redeposit it somewhere within 60 days, convert to a Roth, etc.).

If you would like more information on the waiver of RMDs for 2020, please call our office. We are here to help you.

Sincerely,

This letter explains the waiver of the required minimum distribution rules for the 2020 tax year under the CARES Act. (03/30/2020)

# **Re: CARES Act: Business Interest Deduction Limitation**

Dear Client:

Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act in an effort to boost the economy and provide needed cashflow to taxpayers struggling with the impact of COVID-19. The CARES Act provides tax relief and tax incentives for individuals and businesses alike. Included in the numerous tax provisions is an increase in the business interest deduction limit under Code Sec. 163(j) for the 2019 and 2020 tax years.

The Tax Cuts and Jobs Act placed limits on the deduction for business interest for any type of business starting in 2018. Any interest not deductible generally may be carried forward indefinitely to succeeding tax years. For tax years beginning after Dec. 31, 2017, the deduction for business interest expense is generally limited to the sum of a taxpayer's business interest income, 30 percent of adjusted taxable income and floor plan financing interest.

Certain small businesses whose gross receipts are $25 million or less are not subject to the limits under this provision. Other exclusions from the limit are certain trades or businesses, including performing services as an employee, electing real property trades or businesses, electing farming businesses and certain regulated public utilities. Taxpayers must elect to exempt a real property trade or business or a farming business from this limit.

Under the CARES Act, the business interest deduction limit under Code Sec. 163(j) increases to 50 percent of the taxpayer’s adjusted taxable income (ATI) for the 2019 and 2020 tax years. In the case of a partnership the 50 percent limitation applies only for the 2020 tax year, but a special allocation rule may apply to excess business interest for the 2019 year. For the 2020 year only, a taxpayer may also elect to use its 2019 ATI in calculating the limitation.

**Election Out of Increased Limitation.** A taxpayer may elect not to have the increased limitation apply in 2019 or 2020. The time and manner for the election for the 2020 tax year will be determined by the IRS, but if the election is made it can only be revoked with the consent of the IRS. In the case of a partnership, the election not to the have the increased limitation apply is made by the partnership and not the partners.

**Election to Use 2019 ATI in 2020 Calculation.** In addition to the increased limitation, a taxpayer may elect for any tax year beginning in 2020 to use its ATI from the 2019 tax year to calculate the Code Sec. 163(j) limitation. In the case of a partnership, the election is made by the partnership and not the partners. The time and manner for the election for the 2020 tax year will be determined by the IRS. The 2019 ATI used for the calculation is pro-rated if the taxpayer’s 2020 tax year is a short tax year.

The option to use the 2019 ATI in calculating the limitation is meant to counteract the likelihood that incomes will not be higher in 2020 because of the economic environment during the Coronavirus (COVID-19) emergency, whereas 2019 may be a higher revenue year for most businesses.

**Contact Us**

Please contact our offices if you would like greater detail or information on how the rules may apply specifically to your situation and we can work with you to determine your best options.

Sincerely,

This letter explains the increase in the business interest deduction limit under the CARES Act for the 2019 and 2020 tax years. (04/01/2020)

# **Re: CARES Act: Refundable Minimum Tax Credit**

Dear Client:

Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, corporations can recover refundable alternative minimum tax (AMT) credits in tax years beginning in 2018 and 2019. The new law accelerates the ability of corporations to recover refundable AMT credits which allows corporations to claim a refund immediately and obtain additional cash flow during the COVID-19 emergency.

The corporate alternative minimum tax was repealed by the Tax Cuts and Jobs Act for tax years beginning after December 31, 2017, and corporate AMT credits were made available as refundable credits over several years, ending in 2021. However, under the CARES Act, corporations can recover refundable minimum tax credits in tax years beginning in 2018 and 2019.

The refundable credit amount is equal to 50 percent (100 percent for tax years beginning in 2019) of the excess of the minimum tax credit for the tax year, over the amount allowable for the year against regular tax liability. Corporations can elect to take the entire refundable credit amount in tax years beginning in 2018. In this case, the regular tax liability limitation does not apply.

Taxpayers that have filed returns for tax years beginning in 2018, may file an application for a tentative refund to take advantage of the benefit of the accelerated recovery of the AMT credits. The IRS is expected to provide additional guidance on the application for refunds.

Please call our office if you have any questions. We can help you to determine the best option for receiving your potential refund.

Sincerely,

This letter explains how corporations can recover refundable alternative minimum tax credits in tax years beginning in 2018 and 2019 under the CARES Act. (04/07/2020)

# **Re: CARES Act: Single-Employer Retirement Plans**

Dear Client:

Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, minimum required contributions otherwise due to single-employer retirement plans during calendar year 2020 are delayed. The due date for such contributions is extended to January 1, 2021.

In general, single-employer defined benefit plans are subject to minimum required contribution rules. The minimum required contribution for a plan year generally depends on a comparison of the value of plan assets (reduced by any credit balances) with the plan's funding target. If the value of plan assets is less than the funding target of the plan for the year, then the minimum required contribution for that plan year is the sum of:

1. the target normal cost for the plan year;

1. the shortfall amortization installments for the plan year; and

1. the waiver amortization installments for the plan year.

The minimum required contribution for a plan year must be paid within 8½ months after the close of the plan year.

The benefit limits on single-employer defined benefit plans are based on the plan's adjusted funding target attainment percentage. Generally, a plan's funding target attainment percentage is the ratio of the value of plan assets for the plan year (as reduced by any funding standard carryover balance and prefunding balance) to the funding target for the plan year (determined without regard to the plan's at-risk status).

Under the CARES Act, minimum required contributions to a single-employer retirement plan otherwise due in 2020 (including any quarterly contributions) during calendar year 2020 are delayed. The due date for such contributions is January 1, 2021. The amount of each such minimum required contribution is increased by interest accruing for the period between the original due date (without regard to this delay) for the contribution and the payment date. Interest is accrued at the effective rate for the plan year which includes such payment date.

In addition, a plan sponsor may elect to treat the plan’s adjusted funding target attainment percentage for the last plan year ending before January 1, 2020, as the adjusted funding target attainment percentage for plan years which include calendar year 2020.

Please call our office to discuss the impact on the delay for making the minimum required contribution to your plan.

Sincerely,

This letter explains the extension for minimum required contributions otherwise due to single-employer retirement plans during calendar year 2020 under the CARES Act. (04/07/2020)

# **Re: Coronavirus Response: Extension of Time to File and Pay**

Dear Client:

 On March 13, 2020, the President issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic (Emergency Declaration). The Emergency Declaration instructs the Secretary of the Treasury “to provide relief from tax deadlines to Americans who have been adversely affected by the COVID-19 emergency.

Any person with certain Federal tax payment obligations or a Federal tax return or other form filing obligations due (originally or pursuant to a valid extension) on or after April 1, 2020, and before July 15, 2020, is affected by the COVID-19 emergency for purposes of the relief. The due date for affected taxpayers is automatically extended to July 15, 2020, without penalties and interest regardless of the amount owed.

Specifically, the payment and filing obligations that may benefit from the extension relief are as follows:

* Individual income tax payments and return filings;

* Calendar year or fiscal year corporate income tax payments and return filings;

* Calendar year or fiscal year partnership return filings;

* Estate and trust income tax payments and return;

* Estate and generation-skipping transfer tax payments and return filings;

* Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, filed pursuant to Revenue Procedure 2017-34, related to the simplified method for certain taxpayers to obtain an extension of time to make a “portability” election;

* Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent and any supplemental Form 8971, including all requirements for information with respect to property acquired from a decedent;

* Gift and generation-skipping transfer tax payments and return filings on Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return that are due on the date an estate is required to file Form 706 or Form 706-NA;

* Estate tax payments of principal or interest due as a result of an election made under Code Secs. 6166, 6161, or 6163 and annual recertification requirements under Code Sec. 6166;

* Exempt organization business income tax and other payments and return filings on Form 990-T, Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e) of the Code);

* Excise tax payments on investment income and return filings on Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation, and excise tax payments and return filings on Form 4720, Return of Certain Excise Taxes; and

* Quarterly estimated income tax payments calculated on or submitted with Form 990-W, 1040-ES, 1040-ES (NR), 1040-ES (PR), 1041-ES, and 1120-W, Estimated Tax for Corporations.

In addition, elections that are made or required to be made on a timely filed form shall be considered timely made if filed on such form or attachment, as appropriate, on or before July 15, 2020.

Taxpayers do not have to be sick, or quarantined, or have any other impact from COVID-19 to qualify for relief. Also, taxpayers do not need to file any additional forms or call the IRS to qualify for this automatic federal tax filing and payment relief.

Individuals and business taxpayers that need additional time to file beyond the July 15 deadline, can request a filing extension. However, the extension date may not go beyond the original statutory or regulatory extension date. The IRS also urges taxpayers who are due a refund to file as soon as possible. Most tax refunds are still being issued within 21 days.

For those taxpayers who have filed, the payment due date continues to be extended to July 15, 2020. In addition, because the due date for filing Federal income tax returns has been postponed to July 15, the deadline for making contributions to IRAs for 2019 is also extended to July 15, 2020.

We will continue to monitor for additional IRS guidance and share this information with you as we receive it. Please call our office if you have any questions.

Sincerely,

This letter may be used to inform clients that their Federal tax payment obligations or Federal tax return or other form filing obligations due (originally or pursuant to a valid extension) on or after April 1, 2020, and before July 15, 2020, are extended to July 15, 2020 without penalty or interest. (04/23/2020)

# **Re: Deferred Tax Payments Allowed Due to COVID-19 Outbreak**

Dear Client:

Following President Trump’s emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act due to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic, the U.S. Treasury Department and Internal Revenue Service (IRS) have issued federal income tax payment guidance for individuals, other non-corporate and corporate tax filers.

The guidance allows all individual and other non-corporate tax filers to defer up to $1 million of federal income tax (including self-employment tax) payments due on April 15, 2020, until July 15, 2020, without penalties or interest. The guidance also allows corporate taxpayers a similar deferment of up to $10 million of federal income tax payments that would be due on April 15, 2020, until July 15, 2020, without penalties or interest.

*This guidance does not change the April 15 filing deadline.* Taxpayers should continue to file their tax returns due by the filing deadline of April 15, the deferment allows taxpayers who owe a payment to the IRS to defer the payment until July 15 without interest or penalties.

**Contact Us**

Please call our office we can assist you with filing your federal income tax payments and returns.

Sincerely,

This letter may be sent to individuals and corporate taxpayers that owe federal income tax payments due April 15, 2020. (03/19/2020)

# **Re: Employee Retention Credit Available for Businesses Impacted by COVID-19**

Dear Client:

The Treasury Department and the Internal Revenue Service have launched the Employee Retention Credit, designed to encourage businesses to keep employees on their payroll. The refundable tax credit is 50% of up to $10,000 in wages paid by an eligible employer whose business has been financially impacted by COVID-19.

**Does my business qualify to receive the Employee Retention Credit?**

The credit is available to all employers regardless of size, including tax-exempt organizations. There are only two exceptions: State and local governments and their instrumentalities and small businesses who take small business loans.

Qualifying employers must fall into one of two categories:

1. The employer’s business is fully or partially suspended by government order due to COVID-19 during the calendar quarter.

1. The employer’s gross receipts are below 50% of the comparable quarter in 2019. Once the employer’s gross receipts go above 80% of a comparable quarter in 2019, they no longer qualify after the end of that quarter.

These measures are calculated each calendar quarter.

**How is the credit calculated?**

The amount of the credit is 50% of qualifying wages paid up to $10,000 in total. Wages paid after March 12, 2020, and before Jan. 1, 2021, are eligible for the credit. Wages taken into account are not limited to cash payments, but also include a portion of the cost of employer provided health care.

**How do I know which wages qualify?**

Qualifying wages are based on the average number of a business’s employees in 2019.

*Employers with less than 100 employees*: If the employer had 100 or fewer employees on average in 2019, the credit is based on wages paid to all employees, regardless if they worked or not. If the employees worked full time and were paid for full time work, the employer still receives the credit.

*Employers with more than 100 employees*:  If the employer had more than 100 employees on average in 2019, then the credit is allowed only for wages paid to employees who did not work during the calendar quarter.

**I am an eligible employer. How do I receive my credit?**

Employers can be immediately reimbursed for the credit by reducing their required deposits of payroll taxes that have been withheld from employees’ wages by the amount of the credit.

Eligible employers will report their total qualified wages and the related health insurance costs for each quarter on their quarterly employment tax returns or Form 941 beginning with the second quarter. If the employer’s employment tax deposits are not enough to cover the credit, the employer may receive an advance payment from the IRS by submitting Form 7200, Advance Payment of Employer Credits Due to COVID-19.

**Contact Us**

Please call our office if you have any questions related to the employee retention credit and how you may qualify.

Sincerely,

This letter explains how businesses affected by COVID-19 can qualify for and calculate the employee retention credit. (04/01/2020)

# **Re: Families First Coronavirus Response Act: Employer Tax Credits**

Dear Client:

On March 18, 2020, the President signed the Families First Coronavirus Response Act (Coronavirus Response Act) which increases funding for various programs and addresses paid sick and family leave, including tax credits for employers and self-employed persons.

The Coronavirus Response Act requires employers with fewer than 500 employees to provide paid leave to employees who are forced to stay home due to quarantining or the care for a family member (qualified sick leave) or to care for a child if the school or place of care is closed (qualified family leave).

The tax credits for qualified sick leave wages and qualified family leave wages required to be paid by the Families First Coronavirus Response Act applies to wages paid for the period beginning on April 1, 2020 and ending on December 31, 2020.

**Credit for Qualified Sick Leave**

In the case of sick leave wages paid by an employer to an employee, the employer may receive a refundable credit against its share of either the OASDI or the RRTA portion (as applicable) of the payroll tax. The credit can be claimed on a quarterly basis, equal to 100 percent of the amount of sick leave wages paid.

The amount of the credit is limited to $200 per day per employee. However, the credit increases to $511 per day if the employee is on leave for the following reasons:

* Is subject to a federal, state or local quarantine or isolation order related to COVID-19;

* Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or

* Is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

The total payroll tax credit is limited to 10 days of wages per employee.

**Credit for Qualified Family Leave**

A separate refundable payroll tax credit applies for family leave wages paid by an employer under the Coronavirus Response Act. The credit is 100 percent of the amount of qualified family leave wages limited to $200 per day per employee, up to an aggregate of $10,000.

Wages, for purposes of both credits, include a portion of health plan expenses properly allocable to the qualified sick and family leave wages. The paid sick and family leave requirements and the related employer tax credits are temporary. They expire on December 31, 2020.

The IRS is expected to provide additional guidance on these credits soon. Please call our office to discuss how your business may benefit.

Sincerely,

This letter explains the paid sick and family leave tax credits for employers under the Families First Coronavirus Response Act. (04/02/2020)

# **Re: Families First Coronavirus Response Act: Credits for the Self-Employed**

Dear Client:

On March 18, 2020, the President signed the Families First Coronavirus Response Act (Coronavirus Response Act) which increases funding for various programs and addresses paid sick and family leave, including tax credits for employers and self-employed persons.

The Coronavirus Response Act requires employers with fewer than 500 employees to provide paid leave to employees who are forced to stay home due to quarantining or the care for a family member (qualified sick leave) or to care for a child if the school or place of care is closed (qualified family leave).

In the case of sick leave wages paid by an employer to an employee, the employer may receive a refundable credit against its share of either the OASDI or the RRTA portion (as applicable) of the payroll tax. A separate refundable payroll tax credit applies for family leave wages paid by an employer under the Coronavirus Response Act.

Self-employed persons may also benefit from the sick and family leave credits as if they were an employee of an employer (other than himself or herself). For self-employed persons, the credits are allowed against regular taxes. The self-employment tax credit is determined based on days occurring during the period beginning on April 1, 2020 and ending on December 31, 2020.

**Credit for Qualified Sick Leave**

The limit on sick leave wages is determined by multiplying the number of days the self-employed person is unable to perform services in their trade or business by the lesser of 67% of the taxpayer’s average daily self-employment income, or $200. The number of days is limited to 10 for the tax year.

The limits are increased to 100% and $511, respectively if the self-employed person is unable to perform services for the following reasons:

* Is subject to a federal, state or local quarantine or isolation order related to COVID-19;

* Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or

* Is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

The amount of the sick leave credit is reduced by any sick leave wages the taxpayer might receive as an employee which exceed $2,000 ($5,110 in the case of any day covered for the three reasons described above).

**Credit for Qualified Family Leave**

The same calculation is made for family leave wages, with days unable to perform services multiplied by the lesser of 67% of the taxpayer’s average daily self-employment income, or $200. The number of days is limited to 50 for the tax year.

The amount of the family leave credit is reduced by any family leave wages in excess of $10,000 that the taxpayer might receive as an employee.

**Average Daily Self-Employment Income.**

The taxpayer’s average daily self-employment income is defined as the amount of net earnings from self-employment for the tax year divided by 260.

These credits expire on December 31, 2020. The IRS is expected to provide additional guidance soon. Please call our office to discuss the details of how these tax benefits may help you through a difficult time.

Sincerely,

This letter explains how self-employed persons may benefit from sick and family leave tax credits as if they were an employee of an employer (other than himself or herself). (04/03/2020)

# **Re: Guidance Under the CARES Act for Taxpayers with Net Operating Losses**

Dear Client:

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provides tax relief to individuals and businesses in an effort to support the economy. The IRS has issued guidance providing administrative relief under the CARES Act for taxpayers with net operating losses.

In general, the CARES Act provides a five-year carryback for NOLs arising in tax years beginning in 2018, 2019, and 2020. The Tax Cut and Jobs Act had eliminated carryback periods effective for tax years ending after 2017. Some taxpayers have filed 2018 and 2019 returns without using five-year carryback period.

The relief:

* provides procedures for waiving the carryback period in the case of a net operating loss arising in a tax year beginning after December. 31, 2017, and before January. 1, 2020; and

* describes how taxpayers with NOLs arising in tax years 2018, 2019, or 2020 can elect to either waive the carryback period for those losses entirely or to exclude from the carryback period for those losses any years in which the taxpayer has an inclusion in income as a result of the Code Sec. 965(a) transition tax.

**Six Month Extension for Filing Refund Claims**

Taxpayers are granted an extension of time to file refund applications on Form 1045 (individuals, estates, and trusts) or Form 1139 (corporations) with respect to the carryback of a net operating loss that arose in any tax year that began during calendar year 2018 and that ended on or before June 30, 2019.

**2017/2018 Fiscal-Year Taxpayers**

Relief is also provided for 2017/2018 fiscal year taxpayers who failed to claim an NOL carryback due to a drafting error in the Tax Cuts Act that provided the termination of two-year NOL carryback period applied to NOLs arising in tax years ending after 2017. The CARES Act corrects the effective date error by providing that the termination applies to tax years beginning after 2017. This makes these taxpayers eligible to claim an NOL carryback. The CARES Act allows these taxpayers to file a late application for a tentative refund. An application for a tentative refund is considered timely if filed by July 25, 2020.

The guidance also explains how 2017/2018 fiscal year taxpayer may waive the carryback period, reduce the carryback period (if it is longer than the standard two-year carryback), or revoke an election to waive a carryback period for a tax year that began before January. 1, 2018, and ended after December. 31, 2017.

If you have any questions related to the NOL rules, please call our office. We can help you determine the best timing for claiming a net operating loss.

Sincerely,

This letter may be sent to clients interested in the guidance on the tax treatment of net operating losses under the CARES Act. (04/14/2020)

# **Re: Guidance for Making 163(j) Elections Under the CARES Act**

Dear Client:

The IRS has released guidance for making elections for the business interest deduction and limitations under the enactment of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Certain taxpayers can elect:

* out of the 50 percent adjusted taxable income (ATI) limitation for taxable years beginning in 2019 and 2020

* to use the taxpayer's ATI for the last taxable year beginning in 2019 to calculate the taxpayer's Code Sec. 163(j) limitation for taxable year 2020

* out of deducting 50 percent of excess business interest expense (EBIE) for taxable years beginning in 2020 without limitation.

Additionally, the guidance provides transition relief to taxpayers making or revoking the election to be an electing real property trade or business or an electing farming trade or business.

The Tax Cuts and Jobs Act placed limits on the deduction for business interest for any type of business starting in 2018. Any interest not deductible generally may be carried forward indefinitely to succeeding tax years. For tax years beginning after Dec. 31, 2017, the deduction for business interest expense is generally limited to the sum of a taxpayer's business interest income, 30 percent of ATI and floor plan financing interest.

Under the CARES Act, the business interest deduction limit under Code Sec. 163(j) increases to 50 percent of the taxpayer’s ATI for the 2019 and 2020 tax years. In the case of a partnership the 50 percent limitation applies only for the 2020 tax year, but a special allocation rule may apply to EBIE for the 2019 year. For the 2020 year only, a taxpayer may also elect to use its 2019 ATI in calculating the limitation.

**Election Out of the Increased Limitation.** A taxpayer may elect not to have the increased limitation apply in 2019 or 2020. The election is made by filing a federal income tax return by the due date for the return, including extensions, and using the 30 percent ATI limitation. The election may also be made on an amended return or an administrative adjustment request (AAR). In the case of a partnership, the election not to the have the increased limitation apply is made by the partnership and not the partners. The taxpayer is granted consent from the IRS to revoke the election by merely filing an amended return and using the 50 percent limit.

**Election to Use 2019 ATI in 2020 Calculation.** A taxpayer may elect for any tax year beginning in 2020 to use its ATI from the 2019 tax year to calculate the Code Sec. 163(j) limitation. The election is made simply filing a federal income tax return by the due date for the return for the 2020 tax year, including extensions, using the taxpayer’s 2019 ATI. The 2019 ATI used for the calculation is pro-rated if the taxpayer’s 2020 tax year is a short tax year. The election may also be made on an amended return or AAR. In the case of a partnership, the election is made by the partnership and not the partners.

The option to use the 2019 ATI in calculating the limitation is meant to counteract the likelihood that incomes will not be higher in 2020 because of the economic environment during the Coronavirus (COVID-19) emergency, whereas 2019 may be a higher revenue year for most businesses.

**Election out of deducting excess business interest expense (EBIE).** A taxpayer may elect out of deducting 50 percent of EBIE for the 2020 year without limitation. A partner makes the election by filing its federal income tax return by the due date for the return for the 2020 tax year, including extensions, by not applying the 50 percent EBIE rule in determining the Code Sec. 163(j) limitation. The election may also be made on an amended return or AAR. The partner is granted consent from the IRS to revoke the election by merely filing an amended return, amended partnership return or amended AAR applying the 50 percent EBIE rule.

**Electing real property and farming business.**The Code Sec. 163(j) limit applies to all taxpayers with business interest except small businesses with meet an average annual gross receipts test (gross receipts are $25 million or less) and certain trades or businesses, including electing real property trades or businesses and electing farming businesses. Taxpayers must make an election to be a real property trade or business or a farming business and become exempt from the interest deduction limit.

The guidance provides an automatic extension of time for certain taxpayers to file an election to be an electing real property trade or business or to be an electing farming business for taxable years 2018, 2019, or 2020. A taxpayer may make the election or revoke an election by filing an amended federal income tax return, amended partnership return or AAR. The return must include an election statement or withdrawal statement, and any collateral adjustments to taxable income.

**Contact Us**

Please contact our offices if you would like greater detail or information on how the interest limitation rules may apply specifically to your situation and we can work with you to determine your best options.

Sincerely,

This letter explains the elections related to the business interest deduction limit under the CARES Act for the 2019 and 2020 tax years. (04/15/2020)

# **Re: Guidance on Retroactive Post-2017 Depreciation Elections**

Dear Client:

The IRS issued guidance on the retroactive 15-year recovery period to qualified improvement property (QIP) placed in service after December 31, 2017 under the CARES Act. The guidance also allows taxpayers to make or revoke various elections whether directly related to QIP, such as electing in or out of bonus depreciation. The retroactive depreciation benefits apply to tax years 2018, 2019 and 2020. Taxpayers can obtain these depreciation benefits by either filing an automatic change in accounting method or an amended return.

Qualified improvement property is broadly defined as an internal improvement to nonresidential real property but does not include improvements related to elevators and escalators, the internal structural framework, or an enlargement of the building. The improvement must be placed in service after the date the improved building is first placed in service. The improvement must be made by the taxpayer. Therefore, the 15-year recovery period and bonus depreciation does not apply to a taxpayer that purchases a building that includes qualified improvement property depreciated by the seller over 15 years.

Generally, a taxpayer must elect out of bonus depreciation by the extended due date of the return for the tax year in which the property eligible for the bonus was placed in service. Some taxpayers may not want to claim 100 percent bonus depreciation on qualified improvement property that retroactively qualifies for the additional allowance.

**Amended Return or An Automatic Accounting Method Change for the 15-Year QIP Recovery Period**

As a result of the retroactive application of the reduced recovery period, if a taxpayer filed two or more returns using a 39-year recovery period for qualified improvement property placed in service after 2017 an incorrect accounting method was adopted and automatic consent to change to the correct method must be filed on Form 3115. Taxpayers who only filed one return using a 39-year recovery period (e.g., a calendar year taxpayer who has not filed a 2019 return) may file an amended return to correct the recovery period or may file Form 3115 with their current year return.

The amended return and change in accounting method to make or revoke these elections is due on or before either of October 15, 2021 or no later than the statute of limitations applies. Certain partnerships subject to the centralized audit regime may file an administrative adjustment request by October 15, 2021.

**Late Elections, Revocations and Filing Due Dates**

The late elections and revocations allowed for tax years 2018, 2019 and 2020 include:

* elect to use the MACRS ADS system,

* elect to claim bonus depreciation,

* electing out of bonus depreciation, and

* elect the lower 50 percent bonus depreciation rate instead of the 100 percent bonus rate.

The amended return and change in accounting method to make or revoke these elections is due on or before either of October 15, 2021 or no later than the statute of limitations applies. Certain partnerships subject to the centralized audit regime may file an administrative adjustment request by October 15, 2021. For taxpayer choosing not to file an amended return, a Form 3115 to make or revoke these election must be filed with a timely filed original income tax return for the first or second tax year after the tax year in which the property was placed in service, or with a timely filed original income return filed on or after April 17, 2020 and on or before October 15, 2021.

**Contact Us**

The reduced recovery period and adjustments for depreciation allows businesses to improve their cash flow and encourages investment in further improvements to stimulate the economy. Please call our office with any questions on the amendments and adjustments for qualified improvement property and depreciation elections and revocations. We are here to help you.

Sincerely,

This letter explains the procedures to apply the retroactive modification to the recovery period for qualified improvement property and depreciation elections after December 31, 2017. (04/22/2020)

# **Re: Plans to Implement Coronavirus Paid Leave and Tax Credits**

Dear Client:

The U.S. Treasury Department, Internal Revenue Service (IRS), and the U.S. Department of Labor (Labor) announced that small and midsize employers can begin taking advantage of two new refundable payroll tax credits, designed to immediately and fully reimburse them, dollar-for-dollar, for the cost of providing Coronavirus-related leave to their employees. This relief to employees and small and midsize businesses is provided under the Families First Coronavirus Response Act (Coronavirus Response Act), signed by President Trump on March 18, 2020.

The Coronavirus Response Act provides paid sick leave and expands family and medical leave for COVID-19 related reasons and creates the refundable paid sick leave credit and the paid childcare leave credit for eligible employers. Eligible employers are businesses and tax-exempt organizations with fewer than 500 employees that are required to provide emergency paid sick leave and emergency paid family and medical leave under the Act. Eligible employers will be able to claim these credits based on qualifying leave they provide between April 1, 2020 and Dec. 31, 2020. Equivalent credits are available to self-employed individuals based on similar circumstances.

The Coronavirus Response Act will help the United States combat and defeat COVID-19 by giving all American businesses with fewer than 500 employees the funds to provide employees with paid leave, either for the employee’s own health needs or to care for family members. The new law enables employers to keep their workers on their payrolls, while at the same time ensuring that workers are not forced to choose between their paychecks and the public health measures needed to combat the virus.

**Key Takeaways**

Paid Sick Leave for Workers

* For COVID-19 related reasons, employees receive up to 80 hours of paid sick leave and expanded paid childcare leave when employees’ children’s schools are closed, or childcare providers are unavailable.

Complete Coverage

* Health insurance costs are also included in the credit.

* Employers face no payroll tax liability.

* Self-employed individuals receive an equivalent credit.

Employers receive 100% reimbursement for paid leave pursuant to the Act.

* An immediate dollar-for-dollar tax offset against payroll taxes is provided

* Reimbursement will be quick and easy to obtain.

Small Business Protection

* Employers with fewer than 50 employees are eligible for an exemption from the requirements to provide leave to care for a child whose school is closed, or childcare is unavailable in cases where the viability of the business is threatened.

Easing Compliance

* Requirements subject to 30-day non-enforcement period for good faith compliance efforts.

To take immediate advantage of the paid leave credits, businesses can retain and access funds that they would otherwise pay to the IRS in payroll taxes. If those amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form.

**Contact Us**

Please call our office for more information about these credits and other relief. We are here to help you navigate these difficult times.

Sincerely,

This letter may be sent to small and midsize employers that may take advantage of two new refundable payroll tax credits under the Family First Coronavirus Response Act. (04/03/2020)

# **Re: Paid Sick and Family Leave under the Families First Coronavirus Response Act**

Dear Client:

The Families First Coronavirus Response Act (Act) provides paid sick leave and expands family and medical leave for COVID-19 related reasons and creates the refundable paid sick leave credit and the paid childcare leave credit for eligible employers.

Eligible employers are businesses and tax-exempt organizations with fewer than 500 employees that are required to provide emergency paid sick leave and emergency paid family and medical leave under the Act. Eligible employers will be able to claim these credits based on the qualifying leave they provide between April 1, 2020 and Dec. 31, 2020. Equivalent credits are available to self-employed individuals based on similar circumstances.

**Paid Leave**

The Act provides that employees of eligible employers can receive two weeks (up to 80 hours) of paid sick leave at 100% of the employee’s pay where the employee is unable to work because the employee is quarantined, and/or experiencing COVID-19 symptoms, and seeking a medical diagnosis. An employee who is unable to work because of a need to care for an individual subject to quarantine, to care for a child whose school is closed or child care provider is unavailable for reasons related to COVID-19, and/or the employee is experiencing substantially similar conditions as specified by the U.S. Department of Health and Human Services can receive two weeks (up to 80 hours) of paid sick leave at 2/3 the employee’s pay. An employee who is unable to work due to a need to care for a child whose school is closed, or child care provider is unavailable for reasons related to COVID-19, may in some instances receive up to an additional 10 weeks of expanded paid family and medical leave at 2/3 the employee’s pay.

**Paid Sick Leave Credit**

For an employee who is unable to work because of Coronavirus quarantine or self-quarantine or has Coronavirus symptoms and is seeking a medical diagnosis, eligible employers may receive a refundable sick leave credit for sick leave at the employee’s regular rate of pay, up to $511 per day and $5,110 in the aggregate, for a total of 10 days.

For an employee who is caring for someone with Coronavirus, or is caring for a child because the child’s school or child care facility is closed, or the child care provider is unavailable due to the Coronavirus, eligible employers may claim a credit for two-thirds of the employee’s regular rate of pay, up to $200 per day and $2,000 in the aggregate, for up to 10 days. Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period.

**Child Care Leave Credit**

In addition to the sick leave credit, for an employee who is unable to work because of a need to care for a child whose school or childcare facility is closed or whose childcare provider is unavailable due to the Coronavirus, eligible employers may receive a refundable childcare leave credit. This credit is equal to two-thirds of the employee’s regular pay, capped at $200 per day or $10,000 in the aggregate. Up to 10 weeks of qualifying leave can be counted towards the childcare leave credit. Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period.

**Prompt Payment for the Cost of Providing Leave**

When employers pay their employees, they are required to withhold from their employees’ paychecks federal income taxes and the employees' share of Social Security and Medicare taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns (Form 941 series) with the IRS.

Under IRS guidance, eligible employers who pay qualifying sick or childcare leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and childcare leave that they paid, rather than deposit them with the IRS.

The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

If there are not sufficient payroll taxes to cover the cost of qualified sick and childcare leave paid, employers will be able file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less.

**Examples**

If an eligible employer paid $5,000 in sick leave and is otherwise required to deposit $8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to $5,000 of the $8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining $3,000 on its next regular deposit date.

If an eligible employer paid $10,000 in sick leave and was required to deposit $8,000 in taxes, the employer could use the entire $8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining $2,000.

Equivalent childcare leave and sick leave credit amounts are available to self-employed individuals under similar circumstances. These credits will be claimed on their income tax return and will reduce estimated tax payments.

**Small Business Exemption**

Small businesses with fewer than 50 employees will be eligible for an exemption from the leave requirements relating to school closings or childcare unavailability where the requirements would jeopardize the ability of the business to continue. The exemption will be available on the basis of simple and clear criteria that make it available in circumstances involving jeopardy to the viability of an employer’s business as a going concern. The U.S. Department of Labor (Labor) will provide emergency guidance and rulemaking to clearly articulate this standard.

**Non-Enforcement Period**

The U.S. Department of Labor will also be issuing a temporary non-enforcement policy that provides a period of time for employers to come into compliance with the Act. Under this policy, Labor will not bring an enforcement action against any employer for violations of the Act so long as the employer has acted reasonably and in good faith to comply with the Act. Labor will instead focus on compliance assistance during the 30-day period.

Please call our office for more information about these credits and other relief. We are here to help you navigate these difficult times.

Sincerely,

This letter explains sick leave and expanded family and medical leave for COVID-19 related reasons and the related refundable paid sick leave credit and the paid childcare leave credit for eligible employers under the Family First Coronavirus Response Act. (04/03/2020)