

Coronavirus: CARES Act Vote Fails in Senate; Summary of the Tax Provisions of the Bill

Tax Talks Blog on **March 23, 2020**

Today, March 23, 2020, for the second time the Senate defeated a procedural motion on a third stimulus bill, the Coronavirus Act, Relief, and Economic Security Act ("CARES Act") (H.R. 748). The vote was 49 in favor and 46 opposed (yesterday, the vote was 47 to 47). Sixty votes were required to advance the legislation. This blog summarizes certain of the tax provisions of the bill and compares them to the earlier draft that was released on March 16.

1. **Recovery Checks.** The CARES Act would provide a refundable tax credit for 2020 of \$1,200 to individual filers with adjusted gross incomes of \$75,000 or less (or \$112,500 or less for a head of household), and \$2,400 to married couples filing jointly with adjusted gross incomes of \$150,000 or less, which would be paid in cash checks. In addition, for individuals and married couples with adjusted gross income of \$75,000/\$112,500/\$150,000 or less, there is an additional \$500 refundable credit for each of their "qualifying children". Although the credit is for 2020, the bill treats the taxpayer as if he or she had overpaid an amount equal to the credit in 2019 (or if the taxpayer has not yet filed 2019 tax return, 2018) so that the taxpayer is eligible to receive a refund check immediately. No minimum income is necessary to receive the credit. For taxpayers over the \$75,000/\$112,500/\$150,000 threshold, the credit is reduced by 5% of the taxpayer's adjusted gross income over \$75,000/\$150,000. This results in a complete phase out for single taxpayers who made more than \$99,000 in 2019 (\$198,000 for joint filers). The earlier version of the bill had limited the \$1,200/\$2,400 credit to taxpayers who had sufficient tax liability, but provided for a minimum of \$600/\$1,200 credit for taxpayers with earned income, social security benefits, and certain pension income of at least \$2,500 in the aggregate or with insufficient tax liability. Under the CARES Act, there is no minimum tax liability or income to receive the full \$1,200/\$2,400. Also, in the prior version, the taxpayer was treated as if he or she had overpaid an amount equal to the credit in 2018 (as opposed to 2019 in the CARES Act) or, if the taxpayer had not yet filed his or her 2018 tax return, 2019.

2. **The CARES Act Does Not Repeal Downward Attribution.** The CARES Act **does not** contain the provision in the earlier version that would restore section 958(b)(4). (Before its removal as part of the 2017 Tax Cuts and Jobs Act ("TCJA"), section 958(b)(4) prevented a United States person from being treated as owning the stock owned by its foreign owner.)
3. **NOLs; Excess Business Losses.** The CARES Act would allow a corporation's losses from 2018, 2019, and 2020 to be carried back for five years, and would allow a corporate NOL to fully reduce taxable income (rather than only 80% of taxable income under current law). These provisions would temporarily reverse certain changes made by the TCJA. However, in a change from the prior version, the CARES Act effectively excludes income includible under section 965 (the deemed repatriation provision enacted in the TCJA) from income that may be offset by NOLs that are carried back. The bill would also retroactively suspend the excess business loss provision of section 461(l)(1) (which disallows business losses in excess of \$200,000 for a single taxpayer and \$500,000 for a married couple filing jointly) for 2018 to 2020, as if it had never been enacted.
4. **Increase the Section 163(j) Limitation on Business Interest Expense Deduction From 30% to 50%.** The CARES Act would retroactively increase the section 163(j) limitation on business interest expense deductions from 30% to 50% for 2019 and 2020. In a change from the prior version, taxpayers may elect out of the increase (for example, to defer the deduction and avoid generating or increasing a net operating loss which, under the CARES Act, starting in 2021 will again be usable only to the extent of 80% of taxable income). In addition, in a change from the prior version, the CARES Act provides that the increase in the limitation applies to partners in partnerships only in 2020 (and not 2019) but, for partners that do not elect out of the provision, 50% of the business interest of a partner that is accrued in 2019 is deemed to accrue in 2020, and then is not subject to any limitation in 2020.
5. **Filing and Payment Extensions.** The CARES Act would extend the individual April 15 filing date to July 15. (The Treasury Department and the IRS independently did this in guidance issued March 18.) The bill would also permit employers and self-employed individuals to delay payment of the employer share of the Social Security tax. The tax would be payable over the following two years with half paid by December 31, 2021 and the other half by December 31, 2022. These provisions would be available to everyone, regardless of income. The CARE Act **does not** contain the provision in the prior version providing that estimated tax payments by individuals and corporations would be extended to October 15, 2020. On March 20, Treasury and the IRS extended the date for paying estimated tax payments to July 15, 2020.

6. **Waiver of 10% Early Withdrawal Penalty for Distributions of Up to \$100,000 From Retirement Funds for Affected Individuals.** The CARES Act provides that any individual (1) who is diagnosed with COVID-19, (2) whose spouse or dependent is diagnosed with COVID-19, or (3) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19 or other factors as determined by the IRS may withdraw up to \$100,000 from a qualified retirement account without incurring the 10% penalty for early withdrawals. Income attributable to the withdrawal will be taxable over three years and the taxpayer may recontribute the amount within three years without regard to the cap on contributions. The bill also increases the maximum amount that an individual may borrow from a qualified plan from \$50,000 to \$100,000, allows an individual to borrow up to the present value of the employee's nonforfeitable accrued benefit (rather than merely one-half of that amount, as under current law), and if the loan would mature between the date of enactment and December 31, 2020, allows up to an additional year to repay the loan. In a change from the prior version, the CARES Act provides for withdrawal from a qualified retirement account beginning on January 1, 2020 (as opposed to the date of enactment) and requires that the taxpayer certify on satisfying the conditions for coronavirus-related distribution.
7. **\$300 Above the Line Charitable Contribution Deduction; Relaxation of the Charitable Contribution Limitation.** The CARES Act would allow an "above the line" charitable deduction for up to \$300 of cash contributions to section 501(c)(3) organizations in 2020, even if the individual takes the standard deduction. The bill would also suspend the 50% adjusted gross income limitation for charitable contributions by individuals in 2020 (so that individuals could receive a charitable contribution deduction for up to 100% of their 2020 adjusted gross income), and would increase the 10% taxable income limitation on charitable contribution deductions for corporations to 25%. Finally, the bill would increase the cap on deductions for charitable contributions of food inventory from 15% to 25% of taxable income (in the case of a C corporation) or aggregate net income for all relevant trades or businesses (in the case of an individual). The provision is identical to the provision in the prior version.
8. **Allow Immediate Expensing of Costs Associated With Improving Qualified Improvement Property.** The CARES Act would correct an error in the TCJA that prevented businesses from expensing certain costs for improvements to qualified improvement property, and required the costs to be depreciated over the 39-year life of the building. The change is retroactive to the date of enactment of the TCJA. The provision is identical to the provision in the prior version. However,

news reports indicate that Senate Democrats have not agreed to this provision.

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