THE CARES ACT

(THE CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY ACT)

The Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”) offers direct health care aid and economic relief in response to the COVID-19 pandemic, providing over $2 trillion of relief in the form of public health aid, tax relief for individuals and businesses, and direct appropriations for many affected industries.

Below is a high-level summary of a few of the key provisions affecting individuals and certain businesses. As the bill is still new, it is important to note that more details will emerge on a daily basis.

FOR INDIVIDUALS

STIMULUS CHECKS

- The Act provides for a single “recovery rebate” payment of $1,200 to individuals with 2019 adjusted gross incomes below $75,000 and $2,400 to couples who are married and file jointly with 2019 adjusted gross incomes below $150,000. An additional $500 rebate for each child will be provided, as well. The rebates will be phased out for individuals with 2019 adjusted gross incomes between $75,000 and $99,000 (and between $150,000 and $198,000 for married couples filing jointly). For those without 2019 incomes, the Treasury will look to an individual’s 2019 Form SSA-1099, Social Security Benefit Statement.
- Since the payments are in the form of rebates, they will be not be includible in 2020 gross income.
- Taxpayers may look to line 8(b) of their Forms 1040 from 2019 (or their 2018 Forms 1040 if they have not yet prepared their 2019 returns) to determine their adjusted gross income. No minimum income is necessary to receive the rebates.

RETIREMENT ACCOUNTS

- The Act allows for "coronavirus-related" distributions from defined contribution retirement plans, such as 401(k), IRAs, and 403(b) plans, of up to $100,000, with the early 10% withdrawal penalty suspended. Income associated with these distributions would be subject to tax over a three-year period rather than in the current year. Taxpayers would be able to choose to repay their retirement plans after receiving these distributions if they wish.
- Coronavirus-related distributions include those made to individuals who have been diagnosed with COVID-19, a spouse or dependent of such individual, or those who experience adverse financial consequences as a result of the pandemic.
- The amount that an individual may borrow from a qualified plan is temporarily increased from $50,000 to $100,000.
- The Act suspends required minimum distributions (RMDs) in the year 2020 for various retirement plans, including IRAs, 403(a) and 403(b) plans, and 457(b) plans. Therefore, the 50% penalty associated with not taking an RMD is suspended in 2020.
- The RMD suspension covers first RMDs from 2019, which individuals may have deferred until April 1 of this year. Similarly, RMDs are waived for plan participants who turned 70 ½ in 2019 (prior to the enactment of the SECURE Act) and are required to take an RMD prior to April 1 of this year. Though we are waiting on official guidance from the IRS, we expect that if an RMD has already been taken in 2020, the plan participant has up to 60 days to deposit it back into a qualified retirement account. We expect further guidance on a number of questions raised by the Act, including the treatment of 2019 RMDs taken in 2020.

CHARITABLE CONTRIBUTIONS

- The Act allows an above-the-line charitable contribution deduction of up to $300 for taxpayers who do not itemize deductions on their 2020 tax returns.
- For individuals who do itemize, cash contributions to public charities may be fully deducted (up to 100% of adjusted gross income) without regard to the usual percentage limitation. Contributions in excess of the taxpayer's adjusted gross income may be carried forward for five years.
- The limitation for deductions of food inventory is increased from 15% to 25% for 2020.

STUDENT LOANS

- The Act allows employers to pay employees up to $5,250 for student loan payments and excludes such payments from the employee's gross income for 2020.
- Payments due on federally held student loans are suspended without interest until September 30, 2020, and involuntary collections, including wage garnishments, are similarly suspended.

UNEMPLOYMENT BENEFITS

- The Act creates a temporary pandemic unemployment assistance program to provide payments to certain individuals who are unemployed, experience reduced work hours, or are unable to work as a result of COVID-19.
- The program increases the amount of unemployment insurance compensation benefits an individual may receive by an additional $600 per week through the end of July 2020.
- Unemployment compensation benefits provided under state law are extended by an additional 13 weeks.
- The unemployment benefits cover those not typically covered by such benefits, including self-employed individuals, independent contractors, and those who have otherwise exhausted their benefits.

FOR BUSINESSES

SMALL BUSINESS LOANS

- The Act expands the eligibility for businesses with fewer than 500 employees, including certain self-employed individuals, sole proprietors, and independent contractors, to borrow up to 2.5 times their average monthly payroll costs for the trailing twelve months, capped at $10 million, without the need for collateral or personal guarantees.
- Loans may be used for payroll, medical or sick leave, family leave, group health care benefits, mortgage payments, rent, utilities, and other debts.
- Payroll costs exclude compensation for employees whose annual salary exceeds $100,000.
- Certain covered loans may be eligible for forgiveness for proceeds used to meet payroll, with forgiveness amounts reduced if there is a reduction in either the number of employees or compensation for certain lower-paid employees during the covered period. Forgiveness of loans will not give rise to cancellation of indebtedness income.

EMPLOYEE RETENTION CREDIT

- Eligible employers are provided a refundable payroll tax credit against applicable employment taxes of up to $5,000.
- Eligible employers are those forced to at least partially suspend operations or those who experience a significant decline in gross receipts as a result of COVID-19.

DEFERRAL OF SOCIAL SECURITY TAXES

- Employers may defer their portion of the 6.2% employer share of Social Security taxes through 2020, with the deferred amount payable over the following two years.
- The employer share of the Medicare tax may not be similarly deferred.

MISCELLANEOUS PROVISIONS

- Net operating losses (NOLs) arising in tax years 2018, 2019, or 2020 may be carried back to each of the five years preceding the taxable year of the loss. Corporate NOLs could be used to fully reduce taxable income, thus eliminating the current 80% limitation under current law.
- REITs are excepted and not allowed to carry back the losses.
- The Act retroactively suspends the limitations on excess business losses in excess of $250,000 for single filers and $500,000 for married couples filing jointly.
- The limitation on business interest expense deductions is increased from 30% to 50% for tax years 2019 and 2020, though taxpayers may elect out of the increase.
- Corporations may claim their outstanding AMT credits immediately rather than over a period of years.
- Corporations will be allowed to deduct up to 25% (rather than the usual 10%) of their charitable contributions for tax year 2020.