ARONBERG GOLDGEHN

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Business Law Alert

The Business Tax Provisions of The Coronavirus Aid, Relief and Economic Security Act

On March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed into law. The CARES Act provides several relief programs for businesses and individuals, including payments to individuals and families based on income, expanded unemployment benefits, and several employment, tax and other provisions impacting businesses.

This Alert focuses on key provisions that impact business related taxes and is not intended to be an exhaustive summary of the CARES Act.

Small Business Loans

The CARES Act created a small business loan program known as the "Paycheck Protection Program." Generally, employers with less than 500 employees can apply for government-backed loans to help pay for operational costs like payroll, rent, health benefits, insurance premiums, utilities, etc. A borrower under this program can apply to have a portion of its Paycheck Protection Loan forgiven if the employer does not reduce its workforce or the wages of its employees, beyond certain limits, during the eight-week period following the date of the loan. Paycheck Protection Loans are discussed in greater detail in Aronberg Goldgehn's "The Paycheck Protection Program Under the Historic CARES Act Alert."

Refundable Credit Against Payroll Taxes

The CARES Act allows certain employers to receive a refundable tax credit against employment taxes for 50 percent of the "qualified wages" (up to $10,000 in wages) paid to employees during each calendar quarter if they continue to pay their employees while they have been forced to suspend,

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partially or fully, or close their operations during any calendar quarter due to orders from an appropriate government authority because of COVID-19. The refundable payroll tax credit is not available if an employer takes a loan under the Payroll Protection Program (as detailed in our separate Alert). While regulations under the CARES Act have not yet been published, it is possible that most Illinois businesses will qualify for this since the state of Illinois has issued orders to stay at home. This may qualify as a partial suspension of all Illinois businesses.

Employer Payroll Tax Deferral

Employers and self-employed individuals may defer payment of the employer share of the Social Security tax that would otherwise be due to the IRS from March 27, 2020, through Dec. 31, 2020. The deferred payroll taxes must be paid in two equal installments on Dec. 31, 2021 (50 percent) and Dec. 31, 2022 (50 percent).

Tax Credits for Paid FMLA and Emergency Paid Sick Leave May Now Be Claimed in Advance

Employers may claim a tax credit for wages paid pursuant to the paid leave provisions of the Families First Coronavirus Response Act (FFCRA) in advance by not depositing payroll taxes in anticipation of the credit. If the amount of the expected tax credit exceeds an employer's payroll tax liability for a quarter, then the employer will receive a refund for the excess in that quarter. The Treasury Departments has announced that it expects accelerated refunds to be made to qualifying employers within two weeks after filing for the refund.

Additional Business Tax Changes

The Cares Act also includes a number of other tax provisions applicable to businesses, including enhanced ability for taxpayers to utilize Net Operating Losses ("NOLs") to offset taxable income, temporary enhancing of the business interest deduction, temporary repeal of excess business loss limitations for non-corporate taxpayers, a long awaited fix to the cost-recovery period for "qualified improvement property," and temporary modified AMT rules for corporations.

Although the CARES Act includes other tax provisions (including non-business tax provisions for individuals), this Alert highlights the business tax provisions noted above.

Modifications to Net Operating Loss Rules

The CARES Act modifies certain limitations on a taxpayer's ability to utilize NOLs that were enacted as a part of the 2017 Tax Act. The 2017 Tax Act eliminated the ability for taxpayers to carry back NOLs generated in taxable years beginning after Dec. 31, 2017. In addition, the 2017 Tax Act limited the amount of NOLs arising in taxable years beginning after Dec. 31, 2017, that could be used to offset taxable income in future years to 80 percent of taxable income. The CARES Act temporarily suspends those two limitations for most taxpayers.

Under the CARES Act, NOLs that are generated in taxable years beginning after Dec. 31, 2017, and before Jan. 1, 2021, may be carried back up to five taxable years. For taxable years beginning before Jan. 1, 2021, taxpayers will be allowed to use their NOL carryforwards to offset 100 percent of their taxable income, without regard to the 80 percent limitation that previously applied to NOLs arising in taxable years beginning after Dec. 31, 2017, and before Jan. 1, 2021.

The ability to carry back NOLs for up to five taxable years may be valuable for taxpayers that can carry such losses back to pre-2017 Tax Act tax years (i.e., calendar year 2017 and earlier). For C Corporations, this may allow the NOL to be used against income that was previously taxed at 35 percent vs. the current, lower rate of 21 percent. For owners of pass through businesses (S Corporations, partnerships, LLCs and sole proprietorships) this can allow the NOL to be used against 39.6 percent taxed income rather than today's top rate of 37 percent. And unfortunately, no one knows when future profits will be generated to absorb losses generated from 2018 to 2020.

Modification to Business Interest Deduction Limitation

For taxable years beginning in 2019 and 2020, the limitation on interest expense deductions to 30 percent of adjusted taxable income under Section 163(j) of the Internal Revenue Code is temporarily increased to 50 percent of adjusted taxable income. For 2020, the taxpayer can compute this limitation using the higher of 2019 or 2020 adjusted taxable income.

Repeal of Excess Loss Limitations

The Act temporarily repeals the "Excess Business Loss Limitation" that was included in the 2017 Tax Act. The "Excess Business Loss Limitation disallows excess business losses for non-corporate taxpayers if the amount of the loss exceeded $250,000 ($500,000 for married taxpayers filing jointly). This relief is retroactive back to Dec. 31, 2017. As such, taxpayers that were impacted by the Excess Business Loss Limitation may amend their 2018 and 2019 tax returns (if already filed) to obtain the benefit of this provision of this relief.

Accelerated Cost Recovery of Qualified Improvement Property

The CARES Act fixes a mistake in the 2017 Tax Act, which is widely referred to as the "retail glitch," by allowing for an accelerate write-off for qualified improvement property. Qualified improvement property means any improvement to an interior portion of a building that is nonresidential real property if such improvement is placed in service after the date such building was first placed in service (other than improvements attributable to elevators, escalators, building enlargements or the building's internal structural framework). Under the CARES Act, the cost of qualified improvement property is now eligible for an immediate write-off utilizing the 100 percent first-year bonus depreciation benefit that was added by the 2017 Tax Act. This is retroactive to the effective date of the 2017 Tax Act. Affected taxpayers may amend their 2018 and 2019 tax returns (if already filed) to take advantage of the immediate expensing allowance for qualified improvement property.

Acceleration of Refundable AMT Credits for Corporations

The 2017 Act repealed the corporate alternative minimum tax. As a result, refundable AMT credits were made available to be paid over several years, ending in 2021. The CARES Act permits companies to recover those AMT credits now as a way to obtain immediate cash flow.

If you have any questions about this Alert, or if you would like legal assistance in light of the COVID-19 pandemic, please contact one of the attorneys listed on Page One of this Alert or the Aronberg Goldgehn attorney with whom you work.