COVID-19 Legal Digest: Archer Establishes Disaster Relief Advisory Team; the CARES Act Tax Provisions for Businesses and Individuals

Client Advisories

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Archer Establishes Disaster Relief Advisory Team

Archer has established a Disaster Relief Advisory Team to help small businesses navigate the new federal and state relief programs in New Jersey, New York, Pennsylvania and Delaware. The team consists of experts from the firm's Government Affairs, Business Counseling, and Tax Practice Groups, including a former New Jersey Department of Community Affairs official who helped guide small businesses through New Jersey's complicated Superstorm Sandy relief programs. Team members are available to respond to your questions regarding these programs and to assist small businesses in securing relief funds to ensure operational continuity.

For assistance, feel free to reach out directly to any member of the Disaster Relief Advisory Team, or you may contact any Archer attorney with whom you regularly work:

Governmental Affairs, Tim Cunningham, tcunningham@archerlaw.com or 732-268-8021

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The CARES Act Tax Provisions for Businesses and Individuals

The CARES Act contains several substantive tax provisions, most of which are aimed at creating tax refunds, tax credits and "tax holidays" in order to keep or put money in the hands of taxpayers--both businesses and individuals. Below, we take a look at provisions for both groups.

Business Tax Provisions

Refundable Payroll Tax Credits. For wages paid after March 21 and on, or before, December 31, 2020, eligible employers are entitled to a refundable tax credit equal to 50% of wages paid to certain employees. The credit is "refundable" in the sense that it is intended to result in either an immediate refund check from the IRS or, probably what's more likely to happen, employers scaling back their payroll tax deposits in anticipation of receiving the credit (thereby leaving employers with more cash available to pay other expenses).Eligible employers are those (1) whose businesses have been fully or partially suspended as a result of a government order limiting commerce, travel or group meetings, or (2) who have experienced a greater than 50% reduction in quarterly receipts when compared to the corresponding quarter in 2019. However, employers who receive one of the Act's small business interruption loans are not eligible for the credit - - in other words, an employer cannot receive one of the new, low interest, forgivable loans and a refundable tax credit.

For employers who, during 2019, had an average number of full-time employees of 100 or fewer, all employee wages are eligible, even if employees were furloughed (compare with next sentence). For those employers who had a larger average number of full-time employees in 2019, only the wages of employees who are furloughed or face reduced hours as a result of the employer's closure or reduced gross receipts are eligible. In neither case, however, is a credit available with respect to an employee for whom, in any given period, the employer is allowed a Work Opportunity Credit.

Be careful. The term "wages" for this purpose is limited: it includes health care benefits and is capped at the first $10,000 of wages paid by the employer to the eligible employee.

Delay in Payment of Payroll Taxes. Employers may defer paying their 6.2% share of Social Security Taxes (as well as RRTA Taxes) for the balance of 2020. This amounts to a no-interest loan, which is intended to allow employers to retain cash to pay other current expenses. One-half of the deferred taxes is due on December 31, 2021, while the other half is due a year later.

There are no rules limiting this ability-to-delay-payment to employers of any certain size. However, once again, this deferral is not available for any taxpayer who has had debt forgiven under the new SBA forgivable loan provisions.

Net Operating Losses - - No. 1. In recent years, the amount of a given year's NOL deduction has been limited to the lesser of (1) the aggregate amount of NOL carryovers and carrybacks to that year, or (2) 80% of the taxpayer's taxable income computed without regard to the deduction for NOLs. In effect, NOLs have been subject to a taxable income limitation and have not been able to fully offset income.

In an effort to allow taxpayers to utilize their NOLs in full (thereby reducing taxable income further and, correspondingly, reducing one's taxes), the new Act eliminates that income limitation. In other words, for years beginning after December 31, 2017, as well as for years beginning on, or before, December 31, 2017 to which NOLs arising in years beginning after December 31, 2017 are carried, NOLS are now deductible in full - - with no income limitation.

Net Operating Losses - - No. 2. Prior to the CARES Act, limited exceptions notwithstanding, NOLs could not be carried back to reduce a prior year's income. That was a significant disadvantage to loss companies because they were not able to gain an immediate tax benefit from their NOL deduction (i.e., a refund of prior year's taxes) at a time when they most-needed cash.

Under the new law, NOLs arising in years beginning after December 31, 2018 and before January 1, 2021 may be carried back to each of the five years preceding the year of the loss. This will allow taxpayers to immediately file refund claims for those prior years and obtain cash to which they would not be entitled under prior law.

Limitation on Certain Losses. "Excess business losses" sustained by non-corporate taxpayers in years beginning after December 31, 2017 and ending before January 1, 2026, were not deductible before the CARES Act. An excess business loss is defined as the excess of (1) the taxpayer's aggregate trade or business deductions for the year, over (2) the sum of its aggregate trade or business gross income/gain and $250,000.

The Act modifies this limitation so that non-corporate taxpayers may, in fact, deduct their excess business losses arising in 2018, 2019 and 2020. For those previously-not-allowed-losses which arose in 2018 and 2019, taxpayers should consider filing amended tax returns to obtain a refund of taxes (yet another form of CARES Act-intended cash infusion).

Corporate Minimum Tax Credit. This one could be a long discussion for a limited audience. In short, the Act allows corporations to claim 100% of alternative minimum tax credits in 2019 or claim a refundable credit in 2018 (another form of relatively-instant cash for businesses).

Interest Expense. The 2017 Tax Act generally limited the amount of business interest, which was allowed as a deduction to 30% of adjusted taxable income. The CARES Act increased the limitation from 30% to 50% for years beginning in 2019 and 2020, thereby increasing the deduction, reducing taxes and leaving more cash available to the business. And since the increased deduction is now available for 2019, taxpayers should consider filing a refund claim for that year.

Finally, a Technical Correction. An oversight was made when the 2017 Tax Act was written. While that Act intended to allow bonus depreciation for the cost of "qualified improvement property," there was a drafting error that no one picked up on at the time, and taxpayers who were expecting to receive a substantial immediate deduction (and, therefore, immediate tax savings) for the cost of QIP were not allowed to deduct the cost. Instead, they had to write the cost off over 39 years. That came as a surprise to many!

The CARES Act corrected this unintended result, and the cost of QIP is now currently deductible for property placed in service after December 31, 2017. Affected taxpayers should consider filing amended returns to claim a refund of the taxes associated with those costs (again, another cash infusion, though this one has as much to do with fixing an oversight as it does with injecting cash into the economy).

Tax Provisions Relating to Individuals

The CARES Act contains several substantive tax law changes specifically directed to individuals. Their goal is to keep money in the economy (as opposed to the tax coffers) or get money into the hands of charitable organizations, which can certainly use a shot in the arm.

The $1,200 Checks. By now, we've all heard about the upcoming $1,200 checks. So, we'll just fill in some of the details surrounding them.

The checks technically are not outright grants, though on the surface, that's what they appear to be. Instead, the new law technically creates a tax credit for eligible individuals in 2020 equal to the sum of (1) $1,200 ($2,400 for couples filing joint returns), and (2) $500 for each qualifying child. While it is a credit that would otherwise reduce one's 2020 taxes, the Government is going to "advance refund" the credit now (i.e., issue the checks as soon as it can) so that people will receive cash today instead of having to wait to claim the credit when they prepare their 2020 tax returns a year from now - - and therein lies the economic stimulus. (For the sake of completing the "tax theory" behind this, the credit to which a person will be entitled when preparing their 2020 return will be reduced by the amount of the check they receive.)

An eligible individual is "any individual" other than a nonresident alien or a person for whom a dependency deduction is allowed to another taxpayer (e.g., a child who may be claimed as a dependent on the parents' return - - that dependent child is not entitled to a check). Estates and trusts are not eligible individuals.

In addition, to be an eligible individual, the person must have a "valid identification number," which means a Social Security Number issued by the Social Security Administration to a U.S. citizen or to an alien who is eligible to be employed in the U.S. If a qualifying child is taken into account in calculating the amount of the credit (i.e., the additional $500), the child's valid identification number must have been included on the return which the IRS reviews (see below). In the case of a qualifying child who is adopted or placed for adoption, the child's adoption taxpayer identification number will suffice.

There are income limits - - if one's income is too high, there will be no check. If a joint return shows adjusted gross income of $150,000 or less ($75,000 for singles), the check will be in the full amounts described above. Once joint adjusted gross income reaches $198,000 ($99,000 for singles), the credit is phased out altogether - - meaning: no check. The checks will be reduced per a formula when income is between those amounts.

The IRS will determine an individual's income for purposes of applying these limits. It is to do so, first, based on 2019 income tax returns. If a person's 2019 return has not been filed as of the day the Service conducts its review, the IRS is to look to their 2018 return. If neither of those returns has been filed, the IRS is to use information from the individual's 2019 Form SSA-1099 (Social Security Benefit Statement) or Form RRB-1099 (Social Security Equivalent Benefit Statement).

The "checks" are to be rebated electronically to any account to which the payee authorized, on or after January 1, 2018, the delivery of a refund of federal taxes or another federal payment. Otherwise, the checks will be mailed.

No 10% Tax for Certain Early Retirement Plan Withdrawals. Early withdrawals generally carry a 10% penalty tax in addition to the standard income taxes that attach to the receipt. The 10% tax will not, however, apply to early distributions if they are "coronavirus-related."

Broadly put, a coronavirus-related distribution is any distribution made in 2020 from an eligible retirement plan to a qualified individual.

A qualified individual is someone (1) who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention, (2) whose spouse or dependent is diagnosed with that virus or disease by such a test, or (3) who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to the virus or disease, being unable to work due to lack of child care due to the virus or disease, closing or reducing hours of a business owned or operated by the individual due to the virus or disease, or other factors to be determined by the Secretary of the Treasury.

There is a dollar limit: the total amount of distributions received by an individual which may be treated as coronavirus-related distributions may not exceed $100,000.

While the 10% tax will not apply in these situations, the distribution will nevertheless be taxable (as any other distribution would). However, coronavirus-related distributions may be taken into income ratably over a three-year period (beginning with 2020) in order to lessen the immediate tax burden.

Required Minimum Distribution Requirement Waived for 2020. Historically, retirement plan beneficiaries and IRA owners have been required to take RMDs annually once they reach age 72.

While the CARES Act contains a number of detailed rules which are beyond the scope of this writing, the important take-away is that the RMD requirements will not apply in 2020 with respect to most retirement plans and IRAs.

$300 Above-the-Line Charitable Deduction. The 2017 Tax Act allowed for an increased standard deduction, and as a result, many people have lost the tax advantage of making charitable contributions. In effect, the increased standard deduction has supplanted the need for many people to itemize deductions, and because charitable contributions fall into the category of itemized deductions, there has been a drop off in charitable giving. That, of course, has had a negative impact on the charitable community.

In an effort to encourage giving in these difficult times, the new law allows for the deduction of up to $300 in charitable contributions for those who do not itemize deductions. This is known as "an above- the-line deduction," meaning people may now deduct up to $300 in arriving at adjusted gross income. It applies to tax years beginning after 2019.

Change in the Limit on Certain Cash Contributions. The deduction for cash contributions to the more-commonly thought of charities (e.g., churches, educational organizations and hospitals) is limited to 60% of one's adjusted gross income ("AGI"). Contributions in excess of that amount may be carried forward and used over the next five years.

In another effort to spur charitable giving, for years beginning after 2019, the CARES Act provides that "qualified contributions" are not subject to the 60% limit - - they may be deducted without regard to the amount of one's AGI.

A qualified contribution is a charitable contribution (1) which is paid in cash during 2020 to a Section 501(c)(3) or certain other charitable organizations, and (2) for which the taxpayer has made an affirmative election to apply this new rule with respect to the contribution. Contributions to a Section 509(a)(3) supporting organization or a donor advised fund are not qualified contributions.

Similar Change for Corporate Cash Contributions. Generally, a corporation's charitable contribution deduction may not exceed 10% of its taxable income. Contributions in excess of that limit may be carried forward and used over the next five years.

Similar to the new rule above for individuals, the CARES Act provides that qualified contributions (as defined above) are disregarded in applying the 10% limit. Instead, qualified contributions are deductible to the extent they do not, in the aggregate, exceed the excess of 25% of the corporation's income over the amount of all other charitable contributions allowed for the year. The excess, if any, may be carried forward. This new rule applies to tax years beginning after 2019.

Contributions of Food Inventory. Old law: a donation of food inventory to a charitable organization that will use it for the care of the ill, the needy or infants is deductible in an amount up to the taxpayer's tax basis in the inventory plus one-half of the gain that would be realized if the food were sold. For a C corporation, the deduction may not exceed 15% of its income. For all other taxpayers, the deduction is limited to 15% of the taxpayer's aggregate net income for the year from all trades or businesses from which the contributions were made.

Under the new law, for tax years beginning after 2019, the 15% limit is increased to 25% for contributions of food made during 2020.

Student Loan Repayments. Employees are traditionally not taxed on the first $5,250 (per year) of payments made by an employer under an educational assistance program for the employee's education.

The CARES Act adds a new type of education-related payment which is not taxable to employees. "Eligible student loan repayments" made by an employer before January 1, 2021 are now excludable from income, though they are subject to the overall $5,250 limit.

Eligible student loan repayments are payments which are made by the employer, after March 27, 2020, of principal or interest on any qualified higher education loan used to fund the education of the employee (but not of a spouse or dependent). They include both payments to the employee for the purpose of reducing student debt and payments directly to the lender.

To avoid a double benefit, if this exclusion is allowable, the employee may not deduct the interest which is paid.

If you have questions, please contact **Gordon Moore**, who heads up Archer's **Tax Group**, at 856- 354-3087 or **gmoore@archerlaw.com**, or any of your contacts here at Archer.

Contact Us

Please reach out to your Archer contact or any member of **Archer's COVID-19 Task Force** with any questions you may have.

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