

The CARES Act

Summary of Provisions Relevant to WG Members

Revised March 31, 2020

The intent of this summary document is to help you understand the changes to law as written by legislative text. For tax-related questions as it pertains to your business, please consult your tax professional.

SUMMARY OF AGRICULTURAL PROVISIONS

Resources for Farmers

- **\$9.5 BILLION** dedicated disaster fund to help farmers who are experiencing COVID-related financial losses including targeted support for specialty crop growers, as well as dairy and livestock farmers and local food producers (e.g. farmers markets).
- **\$14 BILLION** to partially replenish the Commodity Credit Corporation (CCC). Federally capped at \$30 billion in spending authority, CCC currently has roughly \$8 billion left following the latest round of trade mitigation. CCC money has been used over the last few years at the discretion of USDA to assist farmers, including fruit and tree nut producers, impacted by the China trade war.

Additional Funding for USDA Operations

- **\$55 MILLION** for necessary expenses related to USDA's Agriculture Quarantine and Inspection Program's work at the borders to protect against invasive pests and disease.
- **\$45 MILLION** for necessary expenses related to USDA's Agricultural Marketing Service (AMS) and its commodity grading, inspection, and audit activities.
- **\$4 MILLION** for necessary expenses related to USDA's Foreign Agricultural Service (FAS) and its actions to relocate employees and their dependents back from overseas posts.
- **\$1.5 MILLION** to expedite Environmental Protection Agency (EPA) research and approvals of disinfectants needed to control the spread of coronavirus.

SUMMARY OF BUSINESS LOAN PROVISIONS

Small Businesses

Creates a new **\$350 BILLION** business loan program administered by the Small Business Administration. This program provides 100% federally-backed loans to eligible businesses which will act as bridge loans to businesses during this crisis. The loans are subject to certain conditions and loan amounts are forgivable.

Which businesses are eligible?

Eligible businesses include any business concern, nonprofit organization, veterans' organization, or Tribal business if it employs not more than the greater of:



- 500 employees (includes full-time, part-time, and those employed on other bases); or
- If applicable, the size standard in number of employees established by the Administration for the industry in which the entity operates (allows SBA to include some other employers)
- Some additional special provisions for businesses in the restaurant or hospitality sector which would allow franchises to get loans separately

Loans are eligible for business activity for the period from February 15, 2020, to June 30, 2020.

What are the loan terms?

The SBA allows the Administrator to provide loans directly or in cooperation with the private sector through agreements to participate on an immediate or deferred (guaranteed) basis.

There are very few borrower requirements to obtain a loan under the new program. Those requirements include a good-faith certification that:

- The loan is needed to continue operations during the COVID-19 emergency;
- Funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments;
- The applicant does not have any other application pending under this program for the same purpose; and
- From February 15, 2020, until December 31, 2020, the applicant has not received duplicative amounts under this program.

What can loans be used to pay for?

- Payroll costs:
 - Includes: compensation to employees, such as salary, wage, commissions, cash, etc.; paid leave; severance payments; payment for group health benefits, including insurance premiums; retirement benefits; state and local payroll taxes; and compensation to sole proprietors or independent contractors (including commission-based compensation) up to \$100,000 in 1 year, prorated for the covered period
 - Excludes: individual employee compensation above \$100,000 per year, prorated for the covered period; certain federal taxes; compensation to employees whose principal place of residence is outside of the U.S.; and sick and family leave wages for which credit is allowed under the Families First Act
- Group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- Salaries, commissions, or similar compensations;
- Payments of interest on mortgage obligations;
- Rent/lease agreement payments;



- Utilities; and
- Interest on any other debt obligations incurred before the covered period.

What are conditions for loans to be forgiven?

Deferment Required

- Businesses that were operating on February 15, 2020, and that have a pending or approved loan application under this program are presumed to qualify for complete payment deferment relief (for principal, interest, and fees) for six months to one year.
- Lenders are required to provide such relief during the covered period (if secondary market investors decline to approve a lender's deferral request, the Administration must purchase the loan).

Loan Forgiveness

- Total amount of program loan qualifies for broader loan forgiveness provisions under certain circumstances.
- Specifically, indebtedness is forgiven (and excluded from gross income) in an amount (not to exceed the principal amount of the loan) equal to the following costs incurred and payments made during the covered period:
 - Payroll costs;
 - Interest payments on mortgages;
 - Rent; and
 - Utility payments

Forgiveness amounts will be reduced for any employee cuts or reductions in wages. Borrowers seeking forgiveness of amounts must submit to their lender:

- Documentation verifying FTEE on payroll and their pay rates;
- Documentation on covered costs/payments (e.g., documents verifying mortgage, rent, and utility payments);
- Certification from a business representative that the documentation is true and correct and that forgiveness amounts requested were used to retain employees and make other forgiveness-eligible payments; and
- Any other documentation the Administrator may require.

Larger Businesses

Contains relief for U.S.-based businesses with between 500 and 10,000 employees. The Act directs the U.S. Treasury Department to provide financing to banks and other lenders so that they can make loans at a maximum interest rate of 2% and with no principal or interest payable for the first 6 months.



Loan applicants must certify that:

1. The uncertainty of economic conditions necessitates financing to support their operations;
2. Funds received will be used to retain 90 percent of the workforce at full compensation and benefit levels through September 30, 2020; and
3. Applicants intend to restore not less than 90 percent of their workforce as it existed on February 1, 2020 and to restore all compensation and benefits to employees no later than four months after the end of the COVID-19 public health emergency.

There are additional strings attached to these funds as applicants must also certify that they:

- Will not outsource or offshore jobs for the term of the loan and two years following repayment
- Will not engage in stock buybacks or pay dividends during the term of the loan
- Will not abrogate collective bargaining rights for the term of the loan and two years following repayment
- Will remain neutral in a union organizing effort for the term of the loan.

Unlike the loan program above for smaller businesses, loans under this program may not be forgiven. There are not as many details about this program and the Treasury Department will need to add guidance.

SUMMARY OF BUSINESS TAX PROVISIONS

Section 2103. The Employee Retention Credit

The CARES Act provides for a one-year credit against the employer's 6.2% portion of Social Security payroll taxes for any business that is forced to suspend or close operations due to the Coronavirus but that also continues to pay its employees during the shut-down. A business is eligible for the credit in one of two ways:

1. The operation of the business was fully or partially suspended during any calendar quarter during 2020 due to orders from a government authority resulting from the Coronavirus; or
2. The business remained open, but during any quarter in 2020 receipts for that quarter were less than 50% of what they were for the same quarter in 2019. The business will then be entitled to a credit for each quarter until the business has a quarter where it's recovered enough that its receipts exceed 80% of what they were for the same quarter in the previous year.

For each eligible quarter, the business will receive a credit against its 6.2% share of Social Security payroll taxes equal to 50% of the qualified wages paid to each employee for that quarter, ending on December 31, 2020.



The business's qualified wages depend on its size. If there were more than 100 employees during 2019, the qualified wages are limited only to those wages that were paid by the employer during the quarter for the period the business was shut down.

If there were less than 100 employees for 2019, however, qualified wages include not only those paid to employees during a shut-down, but also wages paid for each quarter that the business has suffered a decline compared to the previous year, as described in #2 above.

In both cases, qualified wages include any qualified health plan expenses allocable to the wages, such as amounts paid to maintain a group health plan. In either case, however, the amount of qualified wages for each employee for all quarters may not exceed \$10,000.

Any wages accounted for in determining the new payroll tax credit for family medical leave or sick leave as part of the Coronavirus Relief Act may not be used in determining qualified wages for the employee retention credit. The credit is refundable if it exceeds the business's liability for payroll taxes, which is likely given the two new payroll tax credits that were created as part of the Coronavirus Relief Act. If an employer uses the Small Business Act Section 7(a) payroll protection loan, no employee retention credit will be available.

Section 2302. Delay of Payment of Employer Payroll Taxes

The intent of this section is to alleviate the burden on employers struggling to make payroll by allowing the employer's share of the 6.2% Social Security tax that would otherwise be due from the date of enactment through December 31, 2020, to be paid on December 31, 2021 (50%) and December 31, 2022 (50%).

Similarly, a self-employed taxpayer can defer paying 50% of his or her self-employment tax that would be due from the date of enactment through the end of 2020 until the end of 2021 (25%) and 2022 (25%).

This means an employer that incurs its 6.2% share of Social Security tax in 2020 may 1) defer payment of that tax until 2021 and 2022, but 2) receive an immediate credit against those yet-to-be paid payroll taxes via the sum of the emergency medical leave credit, sick leave credit, and new employee retention credit. This deferral is not available to any business that has a payroll protection loan forgiven.

Section 2303. Changes to Net Operating Loss

Prior to 2018, net operating losses of a business or individual could be carried back two years and forward 20 years. When carried forward, they could offset 100% of taxable income. The Tax Cuts and Jobs Act of 2017 ("TCJA") altered these rules, disallowing all carrybacks related to post-2017 losses, providing for an indefinite carryforward period, and limiting the use of post-2017 losses when carried forward to 80% of taxable income.



Since many businesses will likely run at a loss in 2020, the CARES Act temporarily reversed the TCJA changes. Losses from 2018, 2019 and 2020 will be permitted to be carried back for up to five years. Also, a taxpayer will be permitted to forgo the carryback, and instead carry the loss forward. Losses carried to 2019 and 2020 will be permitted to offset 100% of taxable income, as opposed to 80% under the TCJA.

Section 2304. Changes to Business Loss Limitations

As part of the TCJA, Congress added another limitation on an individual's ability to use losses from a business. The new Section 461(l) provides that the amount of "net business loss" an individual may use in a year to offset other sources of income is capped at \$250,000 (if single; \$500,000 if married filing jointly). Any excess loss is converted into a net operating loss, which became subject to more stringent utilization rules than prior to the TCJA.

The CARES Act puts a temporary halt on Section 461(l), for 2020 and retroactive to January 1, 2018. As a result, a taxpayer who found a loss limited by the provision in 2018 or 2019 can file an amended return to claim a refund.

The CARES Act clarifies that when the provision kicks back in for 2020 and beyond, wages will not be considered business income.

Section 2305. Modification of credit for prior year minimum tax liability of corporations

The corporate alternative minimum tax (AMT) was repealed as part of the TCJA, but corporate AMT credits were made available as refundable credits over several years, ending in 2021. This section in the CARES Act accelerates the ability of companies to recover those AMT credits, permitting companies to claim a refund now for additional cash flow during the COVID-19 emergency.

Section 2306. Changes to Business Interest Limitations

The TCJA amounted to a \$1.5 trillion tax cut over ten years. On the domestic side, there were only three notable revenue raisers (the net operating loss changes, Section 461(l), and new Section 163(j)), and the CARES Act largely reverses all three.

Section 163(j) limited a business's ability to deduct its interest expense to 30% of adjusted taxable income ("ATI"), with any excess interest expense carried forward. The CARES Act would increase that limit to 50% of adjusted taxable income for 2019 and 2020, and given that most businesses will not have taxable income in 2020, the business can elect to use its 2019 adjusted taxable income in computing its 2020 limitation. Thus, if a business had ATI of \$1 million in 2019 but a negative ATI in 2020, it could elect to deduct \$500 thousand of interest expense in 2020 (50% of \$1 million), generate a bigger loss, and then use the favorable new net operating loss provisions to carry back the loss to 2019 and recover taxes paid in that year.

A partnership is treated differently and does not get to use the 50% limit of ATI for 2019. Instead, any interest disallowed at the partnership level is passed out to the partners and is suspended at the partner level under the normal rules. In 2020, however, 50% of the suspended interest frees up, and



will be fully deductible, while the other 50% will remain suspended until the partnership allocates excess taxable income or excess interest income to the partner (or the partnership is no longer subject to Section 163(j)).

Section 2307. Qualified Improvement Property

As part of the TCJA, Congress intended to speed up depreciation on “qualified improvement property” (“QIP”), generally defined as any improvement made to the interior portion of a nonresidential building any time after the building was placed in service. The depreciable life of QIP was to be reduced from 39 to 15 years, and 100% bonus depreciation being available for all assets with a life of 20 years or less. For example, a taxpayer who spent \$1 million in 2018 renovating their buildings should have been entitled to an immediate \$ million tax deduction.

Unfortunately, Congress forgot to give QIP a 15-year life in the bill text. As a result, the life remained 39 years, and thus the property was not eligible for 100% bonus depreciation. As a result, the taxpayer who spent that \$1 million renovating got stuck depreciating the \$1 million over 39 years rather than immediately.

The CARES Act provides a technical correction to the QIP problem by giving it its intended 15-year life, while making the change retroactive to January 1, 2018. Thus, taxpayers should be entitled to file amended returns to obtain the benefits of accelerated depreciation in 2018 and 2019.

