

Outside the box. Within the lines.<sup>SM</sup>

CERTIFIED PUBLIC ACCOUNTANTS

# Holsinger PC Presents the Coronavirus Aid, Relief and Economic Security (CARES) Act

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# Agenda

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- Due Dates
- Tax Updates:
  - QIP Technical Correction
  - Interest Expense Limitation (163(j))
  - Business Loss Limitations
  - NOLs
  - Individual changes/updates
- Small Business Loans
  - Paycheck Protection Program
  - Economic Injury Disaster Loan
- Payroll Credit Programs
- Future Outlook
  - IRS
  - Economy
  - Cost Segregation

# Notice 2020-18 / Notice 2020-20

## Payment of tax; Due Date; Extension

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Any person with a Federal income tax payment or a Federal income tax return due April 15, 2020 is automatically postponed to July 15, 2020.

This includes an individual, a trust, estate, partnership, association, company or corporation and includes all Federal income tax payments and Federal estimated income tax payment for the 2020 taxable year.

Notice 2020-20 extends the due date and payment date of Form 709 (US Gift and Generation-Skipping Transfer Tax Return) from April 15, 2020 to July 15, 2020

Does apply to section 965 installment payments due on April 15, 2020.

Does not apply to payroll or excise tax.

Does not apply to estate taxes.

Does not apply to 2<sup>nd</sup> quarter estimated tax payments due on June 15, 2020

<https://www.irs.gov/coronavirus>

# Notice 2020-18 (Continued)

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The Notice postpones the filing and payment of Federal income taxes reported on the following forms:

Form 1040, 1040-SR, 1040-NR, 1040-NR-EZ, 1040-PR, 1040-SS

Form 1041, 1041-N, 1041-QFT

Form 1120, 1120-C, 1120-F, 1120-FSC, 1120-H, 1120-L, 1120-ND, 1120-PC, 1120-POL, 1120-REIT, 1120-RIC, 1120-SF

Form 8960

Form 8991

With respect to Form 990-T, if that Form is due to be filed on April 15, then it has been postponed to July 15 under the Notice. For taxpayers whose Form 990-T is due on May 15, that due date has not been postponed under the Notice.

With respect to returns due on March 16, 2020, which include Form 1065, Form 1065B, Form 1066, and Form 1120-S for calendar year taxpayers, the filing of those returns has not been postponed.

# Pennsylvania

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Pennsylvania filing and payment deadline has been extended to July 15, 2020 for all personal income tax returns.

Estimated personal income tax payments for tax year 2020 for the 1<sup>st</sup> and 2<sup>nd</sup> quarter are due on July 15, 2020

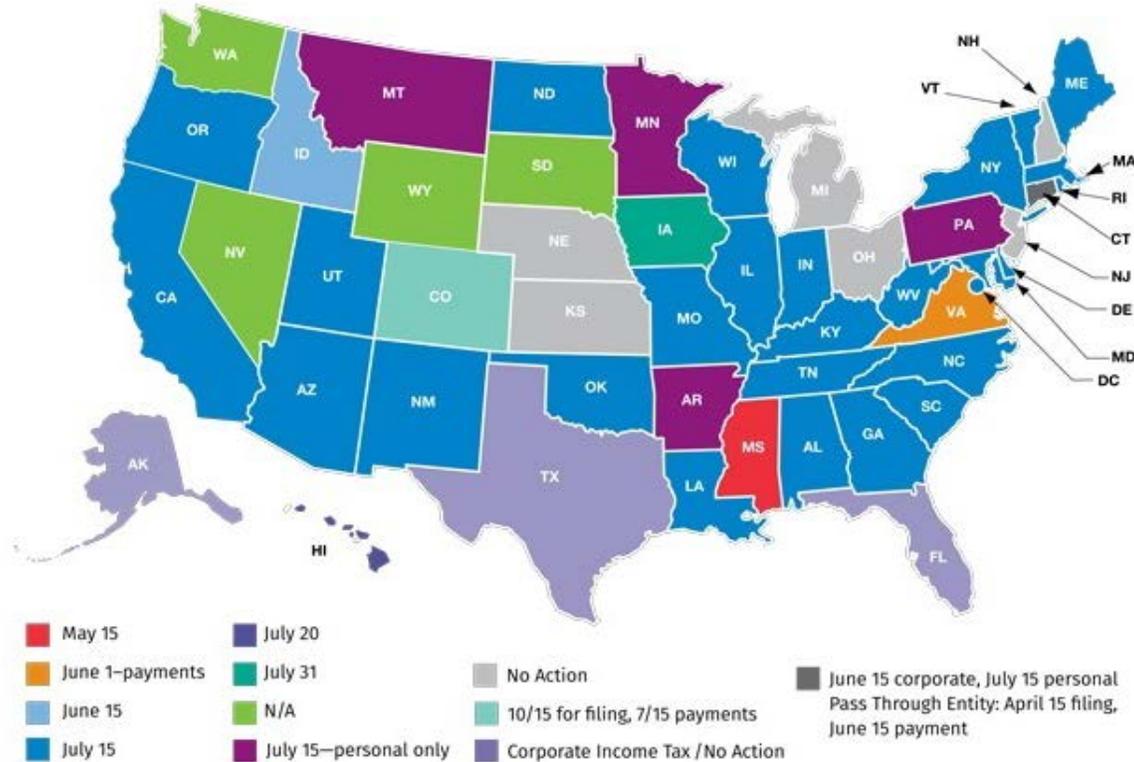
For PA Corporations filing Form RCT-101, 72 P.S. §7401(a)(1)(ii) states that for taxable years after December 31, 2015 the due date for the return is on or before 30 days after the return to the Federal Government is due. Therefore, with the extension of the Federal return to July 15, the PA RCT-101 will be due August 14, 2020. The payment deadline for tax due with the 2019 RCT-101 remains unchanged from the May 15, 2020 due date. Per a conference call with the PA DOR that took place on March 31, 2020, guidance on this issue will be forthcoming in the next few weeks.

Corporate 2020 estimated tax payments are still due on 3/15; 6/15; 9/15 & 12/15 for calendar year taxpayers

<https://www.revenue.pa.gov/Pages/COVID19.aspx#PITDeadline>

## Income Tax Filing Deadline Changes Due to Coronavirus/COVID-19 Pandemic

### COVID-19 Pandemic State Income Tax Filing Deadline Changes



# CCH US COVID-19 Map of state due dates

as of March 29, 2020

# Qualified Improvement Property

(CARES Act Section 2307)

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The CARES Act contains a technical correction to the Tax Cuts and Jobs Act (TCJA) for Qualified Improvement Property (QIP).

As defined by Code Sec. 168(e)(6) and Reg. §1.168(b)-1(a)(5), QIP is broadly defined as an internal improvement to nonresidential real property but does not include improvements related to elevators and escalators, the internal structural framework, or an enlargement of the building. The improvement must be placed in service after the date the improved building is first placed in service.

With the correction, QIP is treated as 15 year property under MACRS and is eligible for 100% bonus depreciation. Taxpayers that make and have made improvements to their facilities will be able to deduct the costs immediately. The technical correction is effective as of the enactment of the TCJA. This allows taxpayers to amend returns and claim refunds for costs that were previously depreciated.

# Qualified Improvement Property

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If a taxpayer filed two or more returns using a 39-year recovery period for qualified improvement property placed in service after 2017 an incorrect accounting method was adopted and automatic consent to change to the correct method must be filed on Form 3115 using the procedures described in Sec. 6.01 of Rev. Proc. 2019-43.

Taxpayers who only filed one return using a 39-year recovery period (e.g., a calendar year taxpayer who has not filed a 2019 return) may file an amended return to correct the recovery period or may file Form 3115 with their current year return (Rev. Proc. 2007-16). The Form 3115 or amended return will generally be filed taking into account the adjustments required if the taxpayer had claimed 100 percent bonus depreciation.

Generally, a taxpayer must elect out of bonus depreciation by the extended due date of the return for the tax year in which the property eligible for the bonus was placed in service. Some taxpayers may not want to claim 100 percent bonus depreciation on qualified improvement property that retroactively qualifies for the additional allowance. The IRS will presumably issue guidance allowing these taxpayers to make a late election out of bonus depreciation and to file an amended return or Form 3115, as applicable, based on a 15-year recovery period.

# Business Interest Deduction Limitation for 2019 and 2020

## (CARES Act section 2036)

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The business interest deduction limit under Code Sec. 163(j) increased to 50 percent of the taxpayer's adjusted taxable income (ATI) for the 2019 and 2020 tax years.

In the case of a partnership, however, the 50 percent limitation applies only for the 2020 tax year.

A taxpayer may also elect, for the 2020 year only, to use 2019 ATI in calculating the limitation

# Limitation on business interest under IRC 163(j)

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A taxpayer's deduction of business interest expenses paid or incurred for tax years beginning after 2017 is limited to the sum of:

- the taxpayer's business interest income for the tax year for which the taxpayer is claiming the deduction (not including investment income)
- **30 percent of the taxpayer's adjusted taxable income (ATI)**, but not less than zero
- the taxpayer's floor plan financing interest (Code Sec. 163(j))

The adjusted taxable income (ATI) of a taxpayer for purposes of the limitation is the taxpayer's regular taxable income computed without regard to:

- any item of income, gain, deduction, or loss that is not properly allocable to a trade or business;
- any business interest or business interest income;
- the amount of any net operating loss (NOL) deduction;
- the 20-percent deduction for qualified business income of a passthrough entity under Code Sec. 199A (see ¶330); and
- in tax years beginning before January 1, 2022, and allowable deduction for depreciation, amortization, or depletion (Code Sec. 163(j)(8), as added by the 2017 Tax Cuts Act).

# Limitation on business interest under IRC 163(j)

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Any business interest expense not allowed as a deduction for the current tax year may be carried forward and treated as business interest expense paid or accrued in the succeeding tax year.

The limitation applies to all taxpayers except a small business with average annual gross receipts for the three prior tax years that does not exceed a threshold amount (\$26 million for 2019 and 2020). The small business exception is not available to a tax shelter even if it meets the gross receipts test.

- “Tax Shelter” is defined under various Code sections. However, it includes a partnership or other entity (other than a corporation that is not an S Corporation) if more than 35% of the losses of the entity during the tax year are allocable to limited partners or limited entrepreneurs (Sec. 1256(e)(3)(B)).

It also does not apply to certain excepted businesses including a trade or business of providing services as an employee, an electing real property business, an electing farming business, and certain regulated utility businesses.

The limit applies after application of other interest limits except the at-risk and passive loss limits.

# Limitation on business interest under IRC 163(j)

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The deduction limit applies regardless of how the taxpayer's business is organized (i.e., corporation, partnership, sole proprietorship, etc.). In the case of a partnership, the deduction limit applies at the entity level. If a partnership has deductible business interest expense, it is not subject to any additional application of Code Sec. 163(j) limitation at the partner level because it is taken into account in determining the non-separately stated taxable income or loss of the partnership. However, deductible business interest expense and excess business interest expense retain their character as business interest expense at the partner-level for all other purposes of the Code.

Any disallowed interest of a partnership is not carried forward to the succeeding tax year. Instead, the disallowed interest of the partnership is treated as excess business interest that is allocated to each partner in the same manner as any non-separately stated taxable income or loss (Code Sec. 163(j)(4)(B); Proposed Reg. §163(j)-6(g)). The allocated excess business interest of a partnership for the current tax year is treated by the partner as business interest paid or accrued by the partner in the next succeeding year. In other words, the allocated excess business interest is carried forward to next succeeding tax year by the partner, but only to the extent the partner is allocated excess taxable income or excess business interest income from the partnership in the succeeding year. Excess taxable income allocated to a partner for any tax year must be used against excess business interest from the partnership from all tax years before it may be used against any other business interest.

# Under the CARES Act

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Taxpayers will be able to deduct more interest expense for tax years 2019 and 2020.

The limitation was previously based on **30% of ATI and is now 50% of ATI** for any tax year beginning in 2019 and 2020 (Code Sec. 163(j)(10)(A)(i), as added by the CARE Act) .

Taxpayers will be allowed to use the ATI from 2019 in tax year 2020 (rather than their 2020 ATI) for purposes of applying the 50% limitation (Code Sec. 163(j)(10)(B), as added by the CARES Act). In the case of a partnership, the election is made by the partnership and not the partners.

Form 8990 (Simplified)					
<b>Section I - Business Interest Expense</b>					
1.	Current year business interest expense before section 163j limit	500,000			
2.	Disallowed business interest expense c/f from prior years				
3.	Partner's excess business interest expense				
4.	Floor plan financing interest expense				
5.	<b>Total business interest expense</b>	<b>500,000</b>			
<b>Section II - Adjusted Taxable Income</b>					
6.	Taxable Income	300,000.00			
7.	Any item of loss or deduction which is not properly allocable to a trade or business	0			
8.	Any business interest expense not from a pass-through entity.	500,000			
9.	Net Operating Loss	0			
10.	Amount of any qlfd. business income deduction allowed under 199A	60,000			
11.	Depreciation, Amortization, Depletion	25,000			
18.	Any business interest income not from a pass-through entity	(100,000)			
21.	<b>Total</b>	<b>485,000</b>			
22.	<b>Adjusted taxable income (not to go below zero)</b>	<b>785,000</b>			
<b>Section III - Business Interest Income</b>					
23.	Current year business interest income	100,000			
24.	Excess business interest income from pass-through entities (total of Schedule A, line 44, column (g) and Schedule B, line 46 column (d))	0			
25.	<b>Total</b>	<b>100,000</b>			
<b>Section IV - 163(j) Limitation Calculations</b>					
26.	Multiply line 2g by 30% (50% for years 2019/2020)	392,500		235,500	
27.	Business interest income (line 25)	100,000		100,000	
28.	Floor plan financing interest expense (line 4)	0		0	
29.	<b>Total</b>	<b>492,500</b>		<b>335,500</b>	
30.	<b>Total current year business interest expense deduction</b>	<b>492,500</b>		<b>335,500</b>	
31.	<b>Disallowed business interest expense</b>	<b>7,500</b>		<b>164,500</b>	

# Example – Simplified

# Special Partnership Rules Under the CARES Act

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The increased 50% of ATI threshold would NOT apply to partnership taxable years beginning in 2019 (Code Section 163(j)(10)(A)(ii), added by the CARES Act).

Instead, excess business interest expense (business interest expense exceeding 30% of the partnerships ATI) allocated by a partnership to a partner from a taxable year beginning in 2019 would be bifurcated.

- 50% of that excess business interest expense would be treated as paid or accrued in 2020 & deductible by the partner without regard to the 163(j) limitations.
- The other 50% of the excess business interest would be subject to the existing rules, which generally treat excess business interest expense paid or accrued only if the partner receives an allocation of excess taxable income or excess business interest income in a later year from the same partnership.
- A partner may elect not to have this allocation apply. The time and manner for making this election will be determined by the IRS.

# Business Loss Limitations: Excess Business Losses of Noncorporate Taxpayers (CARES Act Section 2304)

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The Limitation on the deduction of excess business losses for noncorporate taxpayers will not apply for tax years beginning 2018, 2019 and 2020

- The deduction limitation will apply for tax years beginning after December 31, 2020

A noncorporate taxpayer is not allowed to claim a deduction for excess business losses for tax years beginning after December 31, 2017 and before January 1, 2026 (IRC Section 461(l))

- Any excess business loss that is disallowed is treated as a net operating loss carryover to the following year
- The taxpayer applies the at-risk rules and the passive activity loss rules before application of the rules for excess business losses
- An excess business loss is the excess, if any, of
  - The taxpayer's aggregate deductions for the tax year from the taxpayer's trades or business, determined without regard to whether or not such deductions are disallowed for such tax year under the excess business loss limitation; over
  - The sum of
    - The taxpayer's aggregate gross income or gain for the tax year from such trades or businesses, plus
    - \$250,000 adjusted annually for inflation (200 percent of the \$250,00 amount for a joint return)

# Business Loss Limitations (Cont.)

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A noncorporate taxpayer is not allowed to claim a deduction for excess business losses for tax years beginning after December 31, 2017 and before January 1, 2026 (IRC Section 461(l))

- This applies to the following:
  - Schedule C, Profit or Loss from Business (Sole Proprietorship)
  - Capital gains and losses from business activities and gains and losses from sales of business property
  - Certain activities reported on Schedule E, Supplemental Income and Loss
  - Activities reported on Schedule F, Profit or Loss from Farming and
    - For tax year beginning after December 31, 2017 and before January 1, 2020, the limitation on excess business loss rules replace the rules limiting noncorporate taxpayers' farm losses
    - Under that rule, the loss was limited to the greater of \$300,000 or the taxpayer's aggregate net farm income for the five preceding tax years (Code Sec. 461(j))
- The activity of being an employee

# Business Loss Limitations (Cont.)

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The limitation on excess business losses is postponed for tax years beginning in 2018, 2019 and 2020.

- The limitation applies for tax year beginning after December 31, 2020 (Code Sec. 462(l)(1), as amended by the CARE Act)
- The excess farm loss rules, which were replaced by the excess business loss rules for 2018 through 2025, will continue to not apply for tax years 2019 through 2020

To the extent a 2018 or 2019 federal income tax return has already been filed and reported an excess business loss, a taxpayer can amend the return to claim a refund of taxes or report a net operating loss under section 172.

Other items to consider relate to the ability to deduction 100 percent of the NOL for regular tax purposes but only 90 percent of the NOL for AMT purposes

# Business Loss Limitations (Cont.)

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The CARE Act also included technical amendments to TCJA

- Aggregate deductions in determining the loss are computed without regard to any deduction allowable under Code Sec. 172 for NOLs or Code Sec. 199A (Qualified Business Income) (Code Sec. 461(l)(3)(A)(i), as amended by the CARES Act).
- Deductions for losses from sales or exchanges of capital assets shall not be taken into account for purposes of aggregate deductions in determining the loss (Code Sec. 461(l)(3)(B)(i), as added by the CARES Act).
- The taxpayer's aggregate gross income or gain for the tax year from its trades or businesses, plus \$250,000 (\$500,000 for joint returns) (adjusted annual for inflation) is determined without regard to any deductions, gross income, or gains attributable to any trade or business of performing services as an employee (Code. Sec. 461(l)(3)(A), as amended by the CARES Act).
  - In effect this means that wage income would not be includible as business income for purposes of the excess business loss limitation
- The amount of gains from sales or exchanges of capital assets taken into account in determining aggregate gross income or gain may not exceed the lessor of (1) the capital gain net income determined by taking into account only gains and losses attributable to a trade or business, or (2) the capital gain net income (Code Sec. 461(l)(3)(B)(ii), as added by the CARES Act)

# Business Loss Limitations (Cont.)

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These technical amendments are retroactive to taxable years after December 31, 2017

Final observation: Partnerships and S Corporations were required to report certain information on Schedule K necessary for partners and shareholders to prepare their returns. Because the effective date of 461(l) is deferred until after 2020, partnership and S Corporations no longer need to report section 461(l) information on returns prepared for 2018, 2019 and 2020.

# Modifications for Net Operating Losses

## (CARES Act section 2303)

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Net Operating losses (NOLs) arising in tax year beginning in 2018, 2019 and 2020 have a five-year carryback period and an unlimited carryforward period.

TCJA section 172(a) states that “there shall be allowed as a deduction for the taxable year an amount equal to the lesser of (1) the aggregate of the net operating loss carryovers to such year, plus the net operating loss carrybacks to such year or (2) 80 percent of the taxable income computed without regard to the deduction allowable under this section

- The amendment to section 172 applies to NOLs arising in taxable years **beginning** after December 31, 2017
- While NOLs arising in taxable years beginning **after** December 31, 2017 are limited to 80 percent of taxable income computed without regard to the deduction allowable under section 172, the amount allowed as a deduction for NOLs arising in taxable years **before** January 1, 2018 is not subject to 80 percent limitation

# Modifications for Net Operating Losses

## (Technical correction to TCJA)

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The TCJA also eliminated the carryback period that had applied (generally 2 years) and made the NOL carryforward period indefinite for losses generated in taxable years ending after December 31, 2017.

- The CARES act provides a technical correction to TCJA and amends the effective date provision included in section 13302(e) of the TCJA. Thus, for fiscal year taxpayers with a taxable year that began in 2017 and ended during 2018, an NOL arising in that year is available for carryback under the rules of section 172 as in effect before their amendment by TCJA
- Under the CARES Act, an application under section 5411(a) for a “tentative refund” with respect to the carryback of an NOL arising in taxable year beginning before January 1, 2018 and ending after December 31, 2017 can be made within 120 days after the date of the enactment of the CARES Act.
- Any election to (1) forgo any carryback of such NOL, (2) reduce any period to which such NOL may be carried back, or (3) revoke any election made under section 172(b) to forgo any carryback of such NOL will be timely made if not later than the date which is 120 days after the date of the enactment of the CARES Act.

# Modifications for Net Operating Losses

## (Continued)

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The CARES Act suspends the rule limiting an NOL deduction that arises in a tax year beginning after December 31, 2017 to 80 percent of taxable income in a carryback or carryforward (Code Sec. 172(a)(1) as amended by the CARES Act).

- These amendments apply to taxable years beginning after December 31, 2017 and taxable years beginning on or before December 31, 2017, to which NOLs arising in taxable years beginning after December 31, 2017 are carried.

The CARE Act also addresses the calculation of the 80 percent limitation for taxable years beginning after December 31, 2020.

- The 80 percent limitation is amended such that it applies **before** taking into account the deductions allowed under section 199A (Qualified Business Income) and 250 (GILTI) and **after** taking into account the NOL deductions for NOL carryovers arising in taxable years beginning before January 1, 2018

# Modifications for Net Operating Losses

## (Continued)

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The CARES Act provides that NOLs arising in taxable year **beginning after December 31, 2017**, and **before January 1, 2021**, are allowed as a carryback to each of the five taxable years preceding the taxable year of such loss (Code Section 172(b)(1)(D) as added by the CARES Act (P.L. 116-136).

- The temporary repeal of the 80 percent limitation and the new five-year NOL carryback period affords taxpayers the ability
  - To utilize NOLs in taxable years beginning as early as 2013 (for an NOL generated in a taxable year beginning in 2018) and
  - To offset taxable income in those prior years that had been subject to tax at higher rates (35% for corporations; 39% for individuals)
- The carryforward period for NOLs remains unlimited
- The twenty-year carryforward period for NOLs arising in tax years beginning before 2018 also is unchanged. An election may be made under section 172(b)(3) to waive the five-year carryback period.

# Modifications for Net Operating Losses

## (Continued)

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For NOLs that arose in tax years beginning in 2018 or 2019, the time for making the waiver election is extended to the due date (including extension) for filing the taxpayer's return for the first year ending after March 27, 2020 (Code Sec. 172(b)(1)(D)(v)(II), as added by the CARES Act).

- Normally, the election is required by the due date (including extensions) of the return for the tax year in which the NOL arose (Code Sec. 172(b)(3)).
- The regular election deadline continues to apply to NOLs arising in a tax year that begins in 2020.
- The new legislation contains no specific relief that allows taxpayers with a 2018 or 2019 NOL to file a late tentative refund application
  - Tentative refund applications for individuals are filed on Form 1045 and must be filed within 1 year after the end of the year in which an NOL, unused credit, net section 1256 contracts loss, or claim of right adjustment rose. Thus the deadline for an application for a tentative refund for an NOL for tax year ending December 31, 2018 was December 31, 2019. In lieu of Form 1045 not filed timely, an amended return can be filed to claim the NOL.
  - Tentative refund application for corporations are filed on Form 1139 and must be also be filed within 12 months of the end of the tax year in which an NOL, net capital loss, unused credit or claim of right adjustment arose. So again, for an NOL arising from tax year December 31, 2018, the time period for filing Form 1139 has passed but an amended Form 1120 can be filed in its place.

# Modifications for Net Operating Losses

## (Continued)

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The current rules are reinstated for NOLs arising in tax years beginning after December 31, 2020.

- These NOLs may not be carried back and are deductible only to the extent of 80 percent of taxable income (Code Sec. 172(a)(2), as amended by the CARES Act).
- For NOLs arising in years beginning after December 31, 2020, the NOL that is claimed as a deduction in a carryforward year is equal to the sum of:
  - The aggregate amount of unused NOLs that arose in tax years beginning before January 1, 2018 plus
  - The lessor of –
    - The aggregate amount of unused NOLs that arose in tax years that began after December 31, 2017 or
    - 80 percent of the excess (in any) of
      - Taxable income computed without regard to any NOL deductions or the deductions claimed under Code Secs. 199A or 250, over
      - The aggregate amount of unused net operating losses that arose in tax years that began before January 1, 2018

# Modifications for Net Operating Losses

## (Additional provisions under the CARE Act)

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Additional provisions with respect to NOLs arising in a taxable year beginning after December 31, 2017 and before January 1, 2021

- For Farmers and non-life insurance companies, the five-year carryback replaces the two year carryback that otherwise applies (Code Section 172(b)(1)(D), as added by the CARES Act).
- Farmers and Non-insurance companies may not elect out of the five-year carryback period in order to use a two-year carryback period
- The 20-year carryforward period for non-life insurance companies continues to apply (Code Sec. 172(b)(1)(A)(ii), as added by the CARES Act).
- Special rules are provided for REITs
  - The 5-year carryback for NOLs arising in tax year beginning in 2018, 2019 or 2020 does not apply to an NOL for a REIT year and is not carried to any preceding tax year in the five-year carryback period that is a REIT year (Code Sec. 172(b)(1)(D)(ii), as added by the CARES Act).

# Modifications for Net Operating Losses

## (Additional provisions under the CARE Act)

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Additional provisions continued...

- If an NOL is carried to a life insurance company (as defined in section 816(a)) taxable year beginning before January 1, 2018 such NOL carryback is treated in the same manner as an operations loss carryback (within the meaning of section 810 as in effect prior to its repeal by the TCJA) (Code Sec. 172(b)(1)(D)(iii), as added by the CARES Act).
- Former Deferred Foreign Income Corporation (DFIC)
  - If an NOL arising in a tax year beginning 2018, 2019 or 2020 is carried back to any year in the five-year carryback period in which an amount is included in gross income under Code Sec. 965(a) (the “transition tax”), a taxpayer is treated as having made the election described in Code Sec. 965(n) (Code Sec. 172(b)(1)(D)(iv), as added by the CARES Act).
  - If one or more carryback years of a taxpayer is a year in which an amount is included in gross income under Code Sec. 965(a) the taxpayer may elect to exclude those years from the carryback period. This election is in lieu of the general election under Code Sec. 172(b)(3) to waive the entire carryback period (Code Sec. 172(b)(1)(D)(v)(I), as added by the CARE Act). The election to exclude a year from the carryback period in the case of an NOL arising in a tax year beginning in 2018 or 2019 must be made by the due date (including extensions) for filing the taxpayers return for the first tax year ending after March 27, 2020 (Code Sec. 172(b)(1)(D)(v)(II), as added by the CARE Act).

# Individual Tax Relief: Recovery Rebates (CARES Act section 2201)

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Eligible individuals are entitled to a Recovery Rebate Credit for their first tax year beginning in 2020 (Code Sec. 6428, as added by the CARE Act (P.L. 116-136))

- Advance payments of this credit are to be made as soon as possible
- Credit is generally based on 2019 tax return
- If an eligible individual has not filed a 2019 return by the time advanced credits are determined, the advance credit is based on the individual's 2018 tax return
  - If a 2018 return has not yet been filed, the advance payment is based on information provided for calendar year 2019 in Form SSA-1099, Social Security Benefit Statement or Form RRB-1099, Payments by the Railroad Retirement Board (Code Sec. 6428 (f)(5), as added by the CARES Act)
  - It appears that retirees who did not file tax returns for 2018 or 2019 will receive advance payments but non-filers who received only SSI (Supplemental Security Income or disability) benefits in those years will not receive the refund
  - If upon filing the taxpayer's 2019 tax return it is determined that the taxpayer was not eligible for the credit as computed, the taxpayer will be responsible for repayment of the credit received

# Individual Tax Relief: Recovery Rebates (CARES Act section 2201)

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<https://www.irs.gov/newsroom/economic-impact-payments-what-you-need-to-know>

The maximum credit is:

- \$1,200 for each eligible individual (so \$2,400 for two eligible individuals who file a joint return) plus
  - Eligible individual are all individuals other than
    - An individual who qualifies as another taxpayer's dependent for a tax year beginning during the calendar year in which the individual's tax year begins
    - A nonresident alien
    - An estate or trust (Code Sec. 6428(d), as added by the CARES Act)
- \$500 for each qualifying child (Code Section 6428(a), as added by the CARES Act)
  - A qualifying child is generally:
    - A taxpayer's son, daughter, stepchild, adopted child, foster child, brother, sister, stepbrother, stepsister or a descendent of any of them who was under age 17 at the end of the tax year, lived with the taxpayer for more than half of year
    - Did not provide over half of his or her own support for the year
    - Was a US Citizen, US National, Or Us Resident
    - Is claimed as a dependent on the taxpayer's tax return and
    - Has a SSN (or other identification number) that is reported on the tax return

# Individual Tax Relief: Recovery Rebates (CARES Act section 2201)

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- The maximum credit is reduced (but not below zero) by five percent of the taxpayer's AGI that exceeds:
  - \$150,000 for joint filers
    - credit phases out completely at \$198,000
  - \$112,500 for a head of household
    - Credit phases out completely at \$136,500
  - \$75,000 for any other taxpayer
    - Credit phases out completely at \$99,000
- Once the credit phases out, the \$500 credit for a qualifying child phases out with another \$10,000 in AGI over the threshold
  - For example, the total credit for a married couple with two children is \$3,400 (\$1,200 for each eligible individual plus \$500 for each qualifying child). The phaseout for this example is \$218,000 (\$198,000 plus \$10,000 for each qualifying child).

# Individual Tax Relief: Recovery Rebates (CARES Act section 2201)

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The Recovery Rebate Credit is a fully refundable personal credit (Code Sec. 6428(b), as added by the CARES Act)

The advance credit reduces the amount of the taxpayer's credit for the 2020 tax year but not below zero

- Note: Since the credit on a 2020 return cannot be reduced below zero, it does not appear that taxpayers have to repay any of the advance credit if they would be entitled to a lesser credit based on their 2020 circumstances

If an eligible individual did not receive a rebate and is entitled to one, the computed amount is allowed as a refundable credit against the individual's 2020 income tax

The IRS must mail a notice to the rebate recipient no later than 15 days after the date on which the rebate was distributed indicating the method used to pay the rebate, the amount of the rebate, and a phone number to contact IRS if the rebate was not received

# Individual Tax Relief:

## Partial Above the Line Deduction for Charitable Contributions (CARES Act Section 2204)

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For tax years beginning after 2019, an eligible individual may claim an above-the-line deduction in computing adjusted gross income of up to \$300 for any qualified charitable contribution (Code Sec. 62(a)(22), as added by the CARES Act)

An individual is eligible for the above-the-line deduction so long as he or she does not otherwise claim any itemize deductions on Schedule A (Form 1040)

Only contributions to public charities (excluding private foundations, supporting organizations or donor advised funds) made during tax year beginning in 2020 qualify

Charitable contributions carryovers from prior years do not qualify for this deduction

# Individual Tax Relief:

## Modifications of limitations on charitable contributions during 2020 (CARES Act Section 2205)

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For cash contributions made to public charities (excluding private foundations, supporting organizations and donor advised funds), individual taxpayers who itemize deductions can elect to deduct up to 100 percent of their AGI remaining after factoring in all other current charitable contributions which are subject to AGI limitations.

Any excess cash contributions that are not deducted in 2020 can be carried forward subject to the 60 percent of AGI limit in the succeeding 5 years.

Corporations may also elect expanded deduction limits, up to 25 percent of taxable income (from 10 percent), for cash contributions paid in calendar year 2020 to public charities other than supporting organizations and donor advised funds.

An enhanced deduction is also available for contributions of food inventory during 2020, which increases the limit for corporate taxpayers from 15 percent to 25 percent of taxable income. (See the section on “Corporate and general business provisions” elsewhere in this publication for additional discussion)

# Individual Tax Relief:

## Extension for certain employer payments of student loans (CARES Act Section 2206)

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Payments made before January 1, 2021 by an employer to either an employee or a lender to be applied toward an employee's student loans can be excluded from the employee's income (Code Sec. 172(c)(1)(B), as amended by the CARES Act).

- The payments can be of principal or interest on any qualified education loan, as defined in Code Sec. 221(d)(1) that is incurred by the employee for the employee's education

An Employer may pay up to \$5,250 each tax year toward an employee's student loan and that amount would be excludable from the employee's income (Code Sec. 127(a)(2))

The \$5,250 annual maximum exclusion applies to both the new student loan repayment benefit as well as other educational assistance already provided by the employer under current law such as for tuition, fees and books

- Any excess benefits is subject to income and employment taxes

Employers should update their education assistance plan documentation to incorporate the payments into its plan administration and recordkeeping processes

# CARES Act: PAYCHECK PROTECTION PROGRAM (“PPP”)

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Among other things, the act creates the “Paycheck Protection Program,” which provides up to \$349 billion to expand the Small Business Administration’s (SBA’s) existing 7(a) loan program to support new loan guarantees and subsidies.

# CARES Act:

## PAYCHECK PROTECTION PROGRAM (“PPP”):

### *BACKGROUND*

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- Qualifying loans are 100% federally backed loans to cover specified expenses.
- Specified expenses include:
  - “Payroll costs”, including but not limited to Wages, Commissions, bonuses, benefits and payroll taxes.
  - Rent and utilities.
  - Interest on certain preexisting debt.
- Loan amount is determined based on stated parameters.
- Eligibility is determined based on coronavirus impact and number of employees (subject to affiliation rules)
- Terms are favorable and the Act allows for forgiveness of certain amounts received.
  - **UPDATE 4/3/20: Terms less favorable than anticipated. 1% over 2 years.**

# CARES Act:

## PAYCHECK PROTECTION PROGRAM (“PPP”):

### *DETERMINATION OF QUALIFYING LOAN AMOUNTS*

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Current SBA lenders can make loans under the program immediately. Loan amounts are determined as follows:

Maximum loan amounts equal to the lesser of:

- \$10 million; or
- Sum of 250% of average total monthly “payroll cost” during the 1-year period before the loan is made (Note: special provisions calculation of average payroll with respect to seasonal businesses or business which commenced operations within the last 12 months), and
- The outstanding amount of a loan under the CARES Act **Section 1102 subsection (b)(2)** that was made during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available to be refinanced through this program.
- Clarifications:
  - “Payroll Costs” – Defined in Section 1102 of the CARES Act as: the sum of payments of any compensation with respect to employees that is a salary, wage, commission, or similar compensation; payment of cash tip or equivalent; payment for vacation, parental, family, medical, or sick leave; allowance for dismissal or separation; payment required for the provisions of group health care benefits, including insurance premiums; payment of any retirement benefit; or payment of State or local tax assessed on the compensation of employees; and the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in 1 year, as prorated for the covered period;
  - “Payroll Costs” do not include: the compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period; taxes imposed or withheld under **chapters 21, 22, or 24 of the Internal Revenue Code of 1986** during the covered period; any compensation of an employee whose principal place of residence is outside of the United States; qualified sick leave wages for which a credit is allowed under section **7001 of the Families First Coronavirus Response Act** (Public Law 116–127); or qualified family leave wages for which a credit is allowed under section **7003 of the Families First Coronavirus Response Act** (Public Law 116–127).

# CARES Act:

## PAYCHECK PROTECTION PROGRAM (“PPP”):

### *DETERMINATION OF QUALIFYING LOAN AMOUNTS*

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- **Section 1102, Subsection (b): COMMITMENTS FOR 7(A) LOANS:** During the period beginning on February 15, 2020 and ending on June 30, 2020:
  - (1) the amount authorized for commitments for general business loans authorized under section 7(a) of the Small Business Act (15 U.S.C. 636(a)), including loans made under paragraph (36) of such section, as added by subsection (a), shall be \$349,000,000,000; and
  - (2) the amount authorized for commitments for such loans under the heading “BUSINESS LOANS PROGRAM ACCOUNT” under the heading “SMALL BUSINESS ADMINISTRATION” under title V of the Consolidated Appropriations Act, 2020 (Public Law 116–93; 133 Stat. 2475) shall not apply.
  - What does this mean? Per recently published SBA guidelines, If you received an EIDL loan related to COVID-19 between January 31, 2020 and the date at which the PPP becomes available, you would be able to refinance the EIDL into the PPP for loan forgiveness purposes. However, you may not take out an EIDL and a PPP for the same purposes. Remaining portions of the EIDL, for purposes other than those laid out in loan forgiveness terms for a PPP loan, would remain a loan. If you took advantage of an emergency EIDL grant award of up to \$10,000, that amount would be subtracted from the amount forgiven under PPP.
  - **4/3/2020UPDATE:** Recent chatter amongst the banks suggests that eligible businesses are not permitted to apply for both the EIDL and the PPP. Our take:
    - The guidance we see says that EILD loans received between 1/1/20 and 4/3/20 can be rolled into the PPP as an addition to the amount which a business concern is eligible. No guidance has been issued with respect to required/eligible use of inflated funds as t pertains to PPP loan forgiveness.
    - SBA guidance and/or CARES Act (the law) currently does not appear to specifically prohibit applying for both.
    - SBA guidance currently does not address applications in process as of 4/3/20.
    - It does not seem right that the programs are for separate purposes, that those who received the funds already will get to roll it into the PPP, that pending applications have not ben addressed.
    - Conclusion: We believe it ok to continue to apply for both. We expect that loan forgiven provisions and SOP in general and regarding EIDL proceeds will be published early next week. The provisions are likely to include an option to accept and keep EIDL proceeds and conversely an option to roll into the PPP and apply for forgiveness.

# CARES Act:

## PAYCHECK PROTECTION PROGRAM (“PPP”):

### *DETERMINATION OF QUALIFYING LOAN AMOUNTS*

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- **Chapters 21, 22, or 24 of the Internal Revenue Code of 1986:** 4/3/2020 UPDATE: The purpose of the inclusion these broad IRC chapters was clarified on 4/3/20 by the SBA. Largely, the intended interpretation was that all federal payroll tax is to be excluded from payroll costs for purposes of determining the maximum loan amount. Reference applicable IRC Chapters for further information.
  - What does this mean: As the law reads today, for the period 4/1/19 – 2/15/2020, gross wages are eligible to be use when determining the average monthly payroll cost for the business. For the period 2/15/2020 – 4/4/2020, net wages plus state and local payroll taxes (excluding federal income taxes) are to be used.
  - If this remains the law, there will likely be confusion an incorrect computation of maximum loan amounts.
  - Loan forgiveness will consider net wages paid plus state and local tax.
- **Section 7001 and 7003 of the Families First Coronavirus Response Act:** This provision references a payroll credit allowed for employers required to provide sick leave and family pay for those impacted by the Coronavirus. For more information reference Section 7001 and 7003 of the Family First Coronavirus Response Act:
  - <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/Families%20First%20Summary%20FINAL.pdf>

# CARES Act:

## PAYCHECK PROTECTION PROGRAM (“PPP”):

### *ELIGIBILITY*

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- IN GENERAL: During the covered period, in addition to small business concerns, any business concern, nonprofit organization, veterans organization, or Tribal business concern shall be eligible to receive a covered loan if the business concern, nonprofit organization, veterans organization, or Tribal business concern:
  - Employs not more than the greater of 500 employees; or
  - if applicable, the size standard in number of employees established by the Administration for the industry in which the business concern, nonprofit organization, veterans organization, or Tribal business concern operates.
    - 4/3/2020 UPDATE: note the intentional nature of the language in this part of the law. The law states that the size standard in number of employees based on industry specific guidance may adjust the 500 employee threshold previously mentioned.
    - Note that the SBA size standards in the NAICS information available includes both adjusted size standards based on gross receipts and number of employees.
    - Conclusion: To the extent that the SBA provides gross receipts metrics as an alternative size standard, that information is irrelevant when determining eligibility.
- INCLUSION OF SOLE PROPRIETORS, INDEPENDENT CONTRACTORS, AND ELIGIBLE SELF-EMPLOYED INDIVIDUALS:
  - IN GENERAL: During the covered period, individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals shall be eligible to receive a covered loan.
  - An eligible self-employed individual, independent contractor, or sole proprietorship seeking a covered loan shall submit such documentation as is necessary to establish such individual as eligible, including payroll tax filings reported to the Internal Revenue Service, Forms 1099–MISC, and income and expenses from the sole proprietorship, as determined by the Administrator and the Secretary.
- AFFILIATION RULES FOR PURPOSES OF DETERMINING TOTAL NUMBER OF EMPLOYEES:
  - During the covered period, the provisions applicable to affiliations under **section 121.103 of title 13, Code of Federal Regulations**, or any successor regulation, are waived with respect to eligibility for a covered loan for any business concern with not more than 500 employees that, as of the date on which the covered loan is disbursed, is assigned a North American Industry Classification System code beginning with **72**;
    - **NAICS Code 72:** The Accommodation and Food Services sector comprises establishments providing customers with lodging and/or preparing meals, snacks, and beverages for immediate consumption.

# CARES Act:

## PAYCHECK PROTECTION PROGRAM (“PPP”):

### *ELIGIBILITY*

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- **Section 121.103 of title 13, Code of Federal Regulations:** How does SBA Determine Affiliation?
- General Principles of Affiliation:
  - Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.
  - SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists.
  - Control may be affirmative or negative. Negative control includes, but is not limited to, instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.
  - Affiliation may be found where an individual, concern, or entity exercises control indirectly through a third party.
  - In determining whether affiliation exists, SBA will consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation.
  - In determining the concern's size, SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit.
  - For SBA's Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs, the bases for affiliation are set forth in § 121.702.
  - **For applicants in SBA's Business Loan, Disaster Loan, and Surety Bond Guarantee Programs, the size standards and bases for affiliation are set forth in § 121.301.**

# CARES Act:

## PAYCHECK PROTECTION PROGRAM (“PPP”):

### *ELIGIBILITY*

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**Section 121.301 of title 13, Code of Federal Regulations:** What size standards and affiliation principles are applicable to financial assistance programs?

- Section 121.301(f): Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists. Affiliation under any of the circumstances described below is sufficient to establish affiliation for applicants for SBA's Business Loan, Disaster Loan, and Surety Bond Programs. For this rule, the Business Loan Programs consist of the 7(a) Loan Program, the Microloan Program, the Intermediary Lending Pilot Program, and the Development Company Loan Program (“504 Loan Program”). The Disaster Loan Programs consist of Physical Disaster Business Loans, **Economic Injury Disaster Loans**, Military Reservist Economic Injury Disaster Loans, and **Immediate Disaster Assistance Program loans**. The following principles apply for the Business Loan, Disaster Loan, and Surety Bond Guarantee Programs:
  - Affiliation based on ownership: For determining affiliation based on equity ownership, a concern is an affiliate of an individual, concern, or entity that owns or has the power to control more than 50 percent of the concern's voting equity. If no individual, concern, or entity is found to control, SBA will deem the Board of Directors or President or Chief Executive Officer (CEO) (or other officers, managing members, or partners who control the management of the concern) to be in control of the concern. SBA will deem a minority shareholder to be in control, if that individual or entity has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.
  - Affiliation arising under stock options, convertible securities, and agreements to merge:
    - In determining size, SBA considers stock options, convertible securities, and agreements to merge (including agreements in principle) to have a present effect on the power to control a concern. SBA treats such options, convertible securities, and agreements as though the rights granted have been exercised.
    - Agreements to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date are not considered “agreements in principle” and are thus not given present effect.
    - Options, convertible securities, and agreements that are subject to conditions precedent which are incapable of fulfillment, speculative, conjectural, or unenforceable under state or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is shown to be extremely remote, are not given present effect.
    - An individual, concern or other entity that controls one or more other concerns cannot use options, convertible securities, or agreements to appear to terminate such control before actually doing so. SBA will not give present effect to individuals', concerns', or other entities' ability to divest all or part of their ownership interest in order to avoid a finding of affiliation.

# CARES Act:

## PAYCHECK PROTECTION PROGRAM (“PPP”):

### *ELIGIBILITY*

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- **Section 121.301 of title 13, Code of Federal Regulations:** What size standards and affiliation principles are applicable to financial assistance programs?
  - ***Affiliation based on management:*** Affiliation arises where the CEO or President of the applicant concern (or other officers, managing members, or partners who control the management of the concern) also controls the management of one or more other concerns. Affiliation also arises where a single individual, concern, or entity that controls the Board of Directors or management of one concern also controls the Board of Directors or management of one of more other concerns. Affiliation also arises where a single individual, concern or entity controls the management of the applicant concern through a management agreement.
  - ***Affiliation based on identity of interest:*** Affiliation may arise among two or more individuals or firms with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as close relatives, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated. Where SBA determines that such interests should be aggregated, an individual or firm may rebut that determination with evidence showing that the interests deemed to be one are in fact separate.
  - ***Affiliation based on the newly organized concern:*** Affiliation may arise where current or former officers, directors, owners of a 20 percent interest or greater, managing members, or persons hired to manage day-to-day operations of one concern organize a new concern in the same or related industry or field of operation, and serve as the new concern's officers, directors, owners of a 20 percent interest or greater, or managing members, and there are direct monetary benefits flowing from the new concern to the original concern. A concern may rebut such an affiliation determination by demonstrating a clear line of fracture between the two concerns. **A concern will be considered “new” for the purpose of this paragraph (f)(5) if it has been actively operating for two years or less.** However, where an SBA Lender has made a determination of no affiliation under this ground, SBA will not overturn that determination as long as it was reasonable when made given the information available to the SBA Lender at the time.
  - ***Affiliation based on totality of the circumstances.*** In determining whether affiliation exists, SBA may consider all connections between the concern and a possible affiliate. Even though no single factor is sufficient to constitute affiliation, SBA may find affiliation on a case-by-case basis where there is clear and convincing evidence based on the totality of the circumstances. However, where an SBA Lender has made a determination of no affiliation, SBA will not overturn that determination as long as it was reasonable when made given the information available to the SBA Lender at the time.

# CARES Act:

## PAYCHECK PROTECTION PROGRAM (“PPP”):

### *ELIGIBILITY*

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- Other Eligibility Provisions:
  - Borrowers must certify that the loans necessary due to the uncertainty of current economic conditions; that proceeds will be used to retain workers and maintain payroll or make mortgage, rent or utility payments; and that they are not receiving money from another SBA program for the same uses.
  - Operational on February 15, 2020.
  - Had employees for whom the borrower paid salaries and payroll taxes, or paid independent contractors.
  - Is substantially impacted by public health restrictions related to COVID-19. (Eligible borrowers would be required to make good faith certification that they have been affected by COVID-19 and will use funds to retain workers and maintain payroll and other debt obligations.) There is no requirement to evaluate the borrowers’ ability to repay the covered loan or that the borrower not be able to find credit elsewhere, unlike the normal 7(a) requirements.

# CARES Act:

## PAYCHECK PROTECTION PROGRAM (“PPP”):

### ELIGIBILITY

- Update as of 3/31/2020:
- On 3/31/2020, the SBA issued further clarification regarding the eligibility requirements for the PPP.
- Specifically, the SBA clarified that the eligibility from an employee number perspective is defined as follows:
  - This program is for any small business with less than 500 employees (including sole proprietorships, independent contractors and self-employed persons), private non-profit organization or 501(c)(19) veterans organizations affected by coronavirus/COVID-19.
  - **Businesses in certain industries may have more than 500 employees if they meet the SBA's size standards for those industries.**
  - Small businesses in the hospitality and food industry with more than one location could also be eligible at the store and location level if the store employs less than 500 workers. This means each store location could be eligible.
- Important to note is that the size standard can be adjusted for Companies operating in certain industries.
  - For example, those operating in certain coal mining industries (as defined by NAICS Code) can be considered a small business concerns for purposes of this program in spite of having more than 500 employees.
  - Adjusted size requirements are noted to the right.
- Size adjustments can come in the form of gross receipt tests or adjustments to employee numbers.
  - More information on this can be found at: <https://www.sba.gov/funding-programs/loans/paycheck-protection-program-ppp>

NAICS Codes	NAICS Industry Description	Size standards in number of employees
Subsector 212 – Mining (except Oil and Gas)		
212111	Bituminous Coal and Lignite Surface Mining	1,250
212112	Bituminous Coal Underground Mining	1,500
212113	Anthracite Mining	250
212210	Iron Ore Mining	750
212221	Gold Ore Mining	1,500
212222	Silver Ore Mining	250
212230	Copper, Nickel, Lead, and Zinc Mining	750
212291	Uranium-Radium-Vanadium Ore Mining	250
212299	All Other Metal Ore Mining	750
212311	Dimension Stone Mining and Quarrying	500
212312	Crushed and Broken Limestone Mining and Quarrying	750
212313	Crushed and Broken Granite Mining and Quarrying	750
212319	Other Crushed and Broken Stone Mining and Quarrying	500
212321	Construction Sand and Gravel Mining	500
212322	Industrial Sand Mining	500
212324	Kaolin and Ball Clay Mining	750
212325	Clay and Ceramic and Refractory Minerals Mining	500
212391	Potash, Soda, and Borate Mineral Mining	750
212392	Phosphate Rock Mining	1,000
212393	Other Chemical and Fertilizer Mineral Mining	500
212399	All Other Nonmetallic Mineral Mining	500

# CARES Act: PAYCHECK PROTECTION PROGRAM (“PPP”): ELIGIBILITY

Update as of 3/31/2020 & 4/3/2020

- The SBA Has provided a sample application for the program.
- 4/3/20 UPDATE: New sample application included.
- The program is to become available on Friday, April 3, 2020.
- 4/3/20 UPDATE: Most banks failed this test.
- It is expected that receipt of funds can occur in as few as 7 days from the date of application.
- 4/3/20 UPDATE: Unlikely considering updated lists of information required to apply for loans (Forms 940 & 941, Monthly payroll reports, Internal financial information, etc...)
- All banks with SBA affiliations can process applications.
- 4/3/20 UPDATE: Banks can choose to participate or not. Most large banks only taking existing customers to limit exposure. The SBA will provide a list of ophtr institution with whom you can apply.

**Paycheck Protection Program Borrower Application Form**

OMB Control No.: 3245-0407  
Expiration Date: 09/30/2020

**Check One:**  Sole proprietor  Partnership  C-Corp  S-Corp  LLC  Independent contractor  Eligible self-employed individual  501(c)(3) nonprofit  501(c)(19) veterans organization  Tribal business (sec. 31(b)(2)(C) of Small Business Act)  Other

**DBA or Tradename if Applicable**

**Business Legal Name**

**Business Address** **Business TIN (EIN, SSN)** **Business Phone**

**Primary Contact** **Email Address**

Average Monthly Payroll: \$ \_\_\_\_\_ x 2.5 + EIDL, Net of Advance (if Applicable) Equals Loan Request: \$ \_\_\_\_\_ Number of Employees: \_\_\_\_\_

Purpose of the loan (select more than one):  Payroll  Lease / Mortgage Interest  Utilities  Other (explain): \_\_\_\_\_

**Applicant Ownership**

List all owners of 20% or more of the equity of the Applicant. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN, SSN)	Address

*If questions (1) or (2) below are answered "Yes," the loan will not be approved.*

Question	Yes	No
1. Is the Applicant or any owner of the Applicant presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?	<input type="checkbox"/>	<input type="checkbox"/>
2. Has the Applicant, any owner of the Applicant, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the Applicant or any owner of the Applicant an owner of any other business, or have common management with, any other business? If yes, list all such businesses and describe the relationship on a separate sheet identified as addendum A.	<input type="checkbox"/>	<input type="checkbox"/>
4. Has the Applicant received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.	<input type="checkbox"/>	<input type="checkbox"/>

*If questions (5) or (6) are answered "Yes," the loan will not be approved.*

Question	Yes	No
5. Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole? <i>Initial here to confirm your response to question 5 →</i> _____	<input type="checkbox"/>	<input type="checkbox"/>
6. Within the last 5 years, for any felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted; 2) pleaded nolo contendere; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)? <i>Initial here to confirm your response to question 6 →</i> _____	<input type="checkbox"/>	<input type="checkbox"/>
7. Is the United States the principal place of residence for all employees of the Applicant included in the Applicant's payroll calculation above?	<input type="checkbox"/>	<input type="checkbox"/>
8. Is the Applicant a franchise that is listed in the SBA's Franchise Directory?	<input type="checkbox"/>	<input type="checkbox"/>

**By Signing Below, You Make the Following Representations, Authorizations, and Certifications**

**CERTIFICATIONS AND AUTHORIZATIONS**

I certify that:

- I have read the statements included in this form, including the Statements Required by Law and Executive Orders, and I understand them.
- The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (the Paycheck Protection Program Rule).
- The Applicant (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 or employees or, if applicable, the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant's industry.
- I will comply, whenever applicable, with the civil rights and other limitations in this form.
- All SBA loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rule.
- To the extent feasible, I will purchase only American-made equipment and products.
- The Applicant is not engaged in any activity that is illegal under federal, state or local law.
- Any loan received by the Applicant under Section 7(b)(2) of the Small Business Act between January 31, 2020 and April 3, 2020 was for a purpose other than paying payroll costs and other allowable uses loans under the Paycheck Protection Program Rule.

For Applicants who are individuals: I authorize the SBA to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.

**CERTIFICATIONS**

The authorized representative of the Applicant must certify in good faith to all of the below by **initialing** next to each one:

The Applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.

Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.

The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.

The Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan.

I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the forgiven amount may be for non-payroll costs.

During the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the Paycheck Protection Program.

I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

I acknowledge that the lender will confirm the eligible loan amount using required documents submitted. I understand, acknowledge and agree that the Lender can share any tax information that I have provided with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

Signature of Authorized Representative of Applicant

Date

Print Name

Title

# CARES Act:

## PAYCHECK PROTECTION PROGRAM (“PPP”):

### *LOAN TERMS*

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- The loans are non-recourse (unless used for an unauthorized purpose) and no personal guaranty or collateral is required.
- Maximum loan term of 10 years.
  - **3/31/2020 UPDATE:** The SBA clarified last night that the PPP loans will have a maturity of 2 years.
  - This likely means that a 10 year amortization will be applied over a 2 year term with a balloon payment due as the end of the 2 year period.
  - **4/3/2020 UPDATE:** Loan terms stated at 2 year term (with 2 year amortization) at a 1% interest rate. Also stated that interest will accrue during the 6 month deferral period but eligible for forgiveness for good actors.
- Maximum interest rate of 4%.
- Principal, interest and fee payments can be deferred from 6 months to 1 year.
- Businesses can obtain loan forgiveness equal to the amount spent by the business in the 8-week period following loan origination.
  - The entire amount of the loan is eligible for forgiveness if spent on eligible expenses
  - Eligible Expenses Include:
    - **IN GENERAL.:** During the covered period, an eligible recipient may, in addition to the allowable uses of a loan made under this subsection, use the proceeds of the covered loan for: payroll costs; costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; employee salaries, commissions, or similar compensations; payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation); rent (including rent under a lease agreement); utilities; and interest on any other debt obligations that were incurred before the covered period.

# CARES Act:

## PAYCHECK PROTECTION PROGRAM (“PPP”):

### LOAN TERMS

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- Forgiven amounts will be reduced for employee or salary/wage reductions as follows:
  - For employee reductions, the amount forgiven will be reduced in proportion to the number of layoffs. To calculate the proportion, businesses can choose to compare their reduced workforce numbers to either their average FTEs from February 15 – June 30, 2019, or their average FTEs from January 1 – February 29, 2020. Note the reduction does not apply if, by June 30, 2020, a borrower rehires the same number of employees who were laid off between February 15, 2020 and 30 days after enactment of the act (or, likely, April 28, 2020).
  - For salary/wage reductions, the amount forgiven will be reduced dollar-for-dollar for the amounts of any salary or wage reductions in excess of 25% as compared to the employee’s most recent full quarter. However, this applies only to such salary/wage reductions for employees who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of more than \$100,000. Salary/wage reductions for employees above that pay range do not impact eligibility for loan forgiveness. Again, the reduction does not apply if, by June 30, 2020, a borrower restores any salaries/wages reduced between February 15, 2020, and 30 days after enactment of the act.
  - **3/31/2020 UPDATE:** The loan will be fully forgiven if the funds are used for payroll costs, interest on mortgages, rent, and utilities (due to likely high subscription, at least 75% of the forgiven amount must have been used for payroll).
- Forgiven amounts can be excluded from gross income.
  - Distributions in excess of basis: Addressed in IRC Code Sections 705, 1366 & 1367
- **4/3/2020 UPDATE:**
  - **Employee base numbers:** Average number of employees for purposes of completing the application should be determined based on the period used to determine the average monthly payroll costs (i.e. Trailing 12 months; 12 weeks following 2/15/19 or 3/1/19).
  - **75% rule:** 75% of loan proceeds needs to be allocated to payroll costs. 25% can be allocated to other eligible costs.
  - **25% monthly payroll reduction rule.** Actual monthly payroll cost during the evaluation period needs to be at least 75% of the monthly payroll cost noted on the application in order to be eligible for loan forgiveness.
    - Not sure if this is an all or nothing test.
    - Further clarity to come with loan forgiveness clarification and SOP.

# CARES Act:

## PAYCHECK PROTECTION PROGRAM (“PPP”):

### *OTHER CONSIDERATIONS*

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- Collateral and personal guarantee requirements would be waived during the covered period.
- Waives affiliation rules for businesses in the hospitality and restaurant industries.
- Government guarantees to the lenders of 7(a) loans are to be increased to 100% through December 31, 2020. After that date, guarantee percentages would return to 75% for loans exceeding \$150,000 and 85% for loans equal to or less than \$150,000.
- A complete deferment of 7(a) loan payments would be allowed for not more than one year and would require SBA to disseminate guidance on the deferment process within 30 days.
- Both borrower and lender fees for 7(a) loans would be waived.

# *THE PPP IS DIFFERENT THAN THE ECONOMIC INJURY DISASTER LOAN PROGRAM (“EIDL”)*

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- Outside the CARES Act, an alternative lending program is available: Through the EIDL program, the Small Business Administration Disaster Assistance Program offers small businesses, small agricultural cooperatives, and most non-profit organizations low interest (3.75%) unsecured loans up to \$25,000 and secured loans up to \$2,000,000 for use in paying fixed debts, payroll, accounts payable, and other bills that could have been paid but for the occurrence of the disaster. The repayment term, not to exceed 30 years, will be determined by a borrower’s ability to repay the loan. In order to be eligible, borrowers must have acceptable credit history, demonstrate ability to repay the loan amount, and be located in a county subject to a Disaster Declaration, which includes the Commonwealth of Pennsylvania. Under the CARES Act, an applicant can request an advance on the EIDL of up to \$10,000 to be paid within 3 days of the request in order to meet operating costs related to the Covid-19 crisis. An applicant that receives an advance will not be required to repay any advanced amounts, even if subsequently denied a loan. There is no cost to apply for an EIDL and no obligation to take the loan if offered. Disaster Loans are obtained directly from the SBA and borrowers can apply online at <https://disasterloan.sba.gov/ela>
- Generally:
  - The EIDL appears to consider a broader fixed cost base for the consideration of the total loan availability through this particular program (i.e. a business may be able to apply for more funding through this program as compared to the PPP).
  - Banks are currently awaiting guidance from the SBA regarding the implications of this loan program vs. the PPP.
  - SBA guidance released on March 29, 2020 indicates that If you received an EIDL loan related to COVID-19 between January 31, 2020 and the date at which the PPP becomes available, you would be able to refinance the EIDL into the PPP for loan forgiveness purposes. However, you may not take out an EIDL and a PPP for the same purposes. Remaining portions of the EIDL, for purposes other than those laid out in loan forgiveness terms for a PPP loan, would remain a loan. If you took advantage of an emergency EIDL grant award of up to \$10,000, that amount would be subtracted from the amount forgiven under PPP.
  - May under certain circumstances be beneficial to apply for the EIDL first and roll that loan into the PPP program.
  - Eligibility requirements are consistent with the PPP.
  - Loan applications currently do not include a requested loan amount. Likely means that the SBA will determine the amount of the loan a business is eligible for.

# CARES Act:

## PAYCHECK PROTECTION PROGRAM (“PPP”):

### *PROS/CONS OF EACH*

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- Loan applicants can apply for both EIDL and PPP loans. It is unclear if you can receive both. The SBA is expected to clarify in the coming days.
  - Regardless: Based on the most recent guidance and the CARES Act, it appears that an EIDL can be rolled into the PPP to effect the loan forgiveness provisions of the CARES Act with respect to amounts borrowed under the EIDL Program.
- EIDL requires a personal guaranty and collateral, but a PPP loan does not.
- PPP loans are forgivable if employment requirements are met.
- EIDL has a broader fixed cost base for determination of eligible loan amount.
- EIDL applicants can request an advance on the loan up to \$10,000.

# CARES Act

## Employee Retention Credits

Eligibility of Wages - 50% of qualified wages

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**Per Section 2301(j) – If an eligible employer receives a Small Business Interruption Loan (under Sec 1102 of this Act) – they are not eligible for this credit.**

Retroactive to apply to wages paid after March 12, 2020 and before January 1, 2021.

Qualified Wages are defined as:

Based on size of employer

- <100 Employees
  - **Any wages** paid to employees during specified period **Subclause (I)** or **(II)** (see next slide)
- >100 Employees
  - Wages paid while employee was **not working** due to impact noted in **Subclause (I)** or **(II)** (see next slide)

Includes “Qualified Health Plan Expenses”

Up to \$10,000 of wages per employee in total

# CARES Act

## Employee Retention Credits

### Eligibility of Employers

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Was operating during 2020

Was Impacted

- **Subclause (I)** - Had a quarter that operations were fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the coronavirus disease 2019 (COVID-19)

OR

- **Subclause (II)** - Starting in the Calendar Quarter where there were 50% less gross receipts than same period in prior year to calendar quarter when gross receipts exceed 80% of the gross receipts of the same period in the prior year.

# CARES Act

## Payroll Tax Deferral

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**Per Section 2302(a)(3) – If an eligible employer receives LOAN FORGIVENESS of a Small Business Interruption Loan (under Sec 1102 of this Act) – they are not eligible for this credit.**

Federal payroll taxes due between the enactment date and December 31, 2020 are deferred until December 31, 2021 (50%) and December 31, 2022 (50%)

Is only for Section 1401(a) taxes (Social Security & Medicare) reported on Form 941 quarterly.

# Families First Coronavirus Response Act

## Emergency Paid Sick Leave (Sec. 5101)

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Effective Date is April 1, 2020

Employee is unable to work (or telework) due to a need to leave because:

- 1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19
- 2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- 3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis

# Families First Coronavirus Response Act

## Emergency Paid Sick Leave (Sec. 5101)

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- 4) The employee is caring for an individual who is subject to an order described in clause (1) above or has been advised as described in clause (2) above
- 5) The employee is caring for the employee's son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable due to COVID-19 precautions; or
- 6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

# Families First Coronavirus Response Act

## Emergency Paid Sick Leave Payroll Credits (Sec. 7001)

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Credit = 100% of the Qualified Emergency Paid Sick Leave wages paid

- Maximum of 10 days
- Maximum of \$511 per day for covered reasons 1, 2 or 3
- Maximum of \$200 per day for covered reasons 4, 5 or 6
- “Qualified Health Plan Expenses” can also count as wages

Reduces FICA Taxes paid via Quarterly Form 941

CARES Act directs for regulations allowing for the advancing of credits that exceed FICA taxes on 941 (i.e. refunding)

- They will need to create
  - Forms
  - Process

# Families First Coronavirus Response Act

## Family Leave (Sec. 3101)

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Effective Date is April 1, 2020

First 10 Days are “unpaid”

- Unpaid under the Act provisions
- Employee can use “Emergency Paid Sick Leave” or other employer provided paid leave benefits in order to be paid during this time

Pay cannot be less than two-thirds the regular rate of pay and the normal hours worked (special rules for non-salaried employees with variable hours)

- Maximum of \$200 per day and \$10,000 in the aggregate can be paid

# Families First Coronavirus Response Act

## Family Leave Payroll Credits (Sec. 7003)

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Credit = 100% of the Qualified Family Leave wages paid

- Maximum of \$200 per day and \$10,000 in the aggregate per employee is considered qualified family leave wages
- “Qualified Health Plan Expenses” can also count as wages
- Reduced by any Emergency Paid Sick Leave Credits calculated

Reduces FICA Taxes paid via Quarterly Form 941

CARES Act directs for regulations allowing for the advancing of credits that exceed FICA taxes on 941 (i.e. refunding)

- They will need to create
  - Forms
  - Process

# Families First Coronavirus Response Act

## Self Employed Credits

SE Sick Leave Credits (Sec. 7002) (Maximum amount of \$2,000 or \$5,110)

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Individual must regularly carry on the business

Amount of Credit is lessor of:

- Per Day Amount (up to 10 days)
  - \$511 per day for covered reasons 1, 2 or 3
  - \$200 per day for covered reasons 4, 5 or 6
- Percentage of daily Self-employment income
  - Average daily self-employment income = net earnings from self-employment for the taxable year divided by 260
  - 100% of average daily self-employment income for covered reasons 1, 2 or 3
  - 67% of average daily self-employment income for covered reasons 4, 5 or 6

No provision in CARES Act for this being advanced via a refund, simply refundable.

# Families First Coronavirus Response Act

## Self Employed Credits

SE Family Leave Credits (Sec. 7004) (Maximum amount of \$10,000)

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Individual must regularly carry on the business

Up to 50 days

Amount of Credit is lessor of:

- 67% of average daily self-employment income
  - Average daily self-employment income = net earnings from self-employment for the taxable year divided by 260
- \$200 per day

No provision in CARES Act for this being advanced via a refund, simply refundable.

# Future Outlook

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- IRS
- Economy
- Questions?

# Contact Information

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Thank you for attending! Please feel free to reach out to us if you have any additional questions!

# WILLIAM R. COLLIER, CPA, MST

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## **Education and Certifications:**

B.S. in Accounting, Grove City College

Masters in Taxation, Robert Morris University

Certified Public Accountant, Pennsylvania

## **Experience:**

In his role as Vice President and Tax Partner-In-Charge, Bill Collier manages the firm's tax operations, family office group and M&A team. He applies his highly skilled expertise to develop tax saving ideas for our clients business challenges. He develops internal standards governing the delivery of tax services to clients and maintains a close pulse on the legislative and regulatory changes impacting our client's tax positions, both domestically and internationally.

University

# ANDY BIANCO, CPA/MT

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## **Education and Certifications:**

B.S. in Accounting, St. Vincent College with a minor in Finance

Masters of Taxation, Villanova University School of Law

Certified Public Accountant, Pennsylvania

## **Experience:**

As a Shareholder at Holsinger, has over a decade of experience in the areas of tax, accounting, auditing, forensic accounting, mergers and acquisitions and general business consulting services. Andy has served both domestic and international clients in a broad range of industries during his career in the accounting profession. He consistently proves value through quality service, attention to detail and unique perspective.

# JESSICA MOSLANDER, CPA

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## **Education and Certifications:**

B.A. in both Accounting and Business Administration (Magna Cum Laude), Thiel College

Certified Public Accountant, Pennsylvania

## **Experience:**

Jessica, a Tax Manager at Holsinger is a CPA with over 18 years of experience in tax preparation, tax planning, research and consulting. Her main focus has been multistate and consolidated business returns which includes both domestic and foreign entities. Jessica also has extensive experience in tax research, resolving client issues with state and federal authorities and developing tax planning strategies for multistate and multinational corporations along with owners of pass through entities.

# WILLIAM L. STUNKEL, CPA

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## **Education and Certifications:**

B.S. in Accounting (with Honors), Grove City College

Certified Public Accountant, Pennsylvania

## **Experience**

While being the Director of Holsinger's Business Solutions ("HBS") group, Wil has over fourteen years of experience in areas of accounting, tax planning, payroll and financial literacy. Wil has extensive experience with private companies in a broad range of industries including manufacturing, construction, restaurants, professional services, non-profit organizations, home healthcare, and others. He has worked extensively with clients in structuring compensation for themselves as well as for clients' employees to ensure the most efficient tax treatment. He specializes in working with small business owners to give them the attention and analysis they want while helping them increase their income.