

# MSF CLIENT ALERT

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## Tax Implications from the Cares Act

*The Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) was signed into law by the President Trump on March 27, 2020 in response to the economic distress caused by the coronavirus pandemic. The 883-page bill includes many provisions affecting taxes for individuals and businesses. The CARES Act made several significant amendments to the Internal Revenue Code of 1986 (the “Code”) and the recent Tax Cut and Jobs Act of 2017 (the “TCJA”) which are highlighted below.*

*For a more detailed discussion of each these provisions, [click here](#).*

### **Recovery Rebates for Individuals**

The CARES Act provides that each eligible individual taxpayer will receive a tax credit equal to the sum of \$1,200 for a single filer (and \$2,400 for taxpayers filing jointly) plus \$500 for each qualifying child. The rebate starts to phase out at adjusted gross income of \$75,000 for singles, \$112,500 for heads of household, and \$150,000 for taxpayers filing joint returns at the rate of \$50 per \$1,000 of income in excess of the phase-out amount. It phases out entirely at \$99,000 for single filers with no children and \$198,000 taxpayers filing jointly with no children.

### **Coronavirus Related Distributions from Retirement Accounts**

Individuals who elect to receive a “coronavirus-related distribution” from a qualified employer plan will not be subject to the traditional 10% tax penalty imposed under the Code for early withdrawals from eligible retirement accounts unless the aggregate amount of such distributions from all plans maintained by the employer (and any member of any “controlled group” which

includes the employer) to such individual exceeds \$100,000.

The CARES Act also extends exemption from the 10% early distribution penalty tax from coronavirus-related distributions made from both eligible employer sponsored retirement plans and individual retirement accounts (“IRAs”). These distributions are still subject to regular income tax (if any), although it may be spread over three years.

### **Required Minimum Distributions**

The CARES Act temporarily waives the minimum distribution requirements that otherwise would have been required to be made in 2020. This includes required minimum distributions from: (i) most defined contribution plans (e.g., 401(k) plan); (ii) Section 457(b) deferred compensation plans that are maintained by an eligible employer; or (iii) IRAs.

### **Deduction and Limitations for Charitable Contributions During 2020**

The CARES Act provides a temporary suspension of certain limitations on charitable contribution for both

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individual and corporate taxpayers by allowing taxpayers that do not itemize their deductions to take a limited above-the-line deduction for charitable contributions. The CARES Act allows taxpayers that do not itemize to deduct up to \$300 in cash contributions made to qualifying charitable organizations.

## ***Employer Retention Payroll Tax Credit and SECA Tax Payments***

Eligible Employers under the CARES Act will receive a payroll tax credit each calendar quarter for 50% of qualified wages with respect to each employee. The amount of qualified wages taken into account for each employee, however, will not exceed \$10,000 per calendar quarter and the credit will not exceed the applicable employment taxes owed for such calendar quarter.

For purposes of the credit, qualified wages vary depending on whether the employer has more than 100 full-time employees or not. For those with more than 100 full-time employees, qualified wages are those paid to employees when they are not providing services due to the coronavirus outbreak. For those with 100 or fewer full-time employees, essentially all wages qualify for the credit.

The CARES Act will also allow employers and self-employed individuals to defer paying their portion of the social security payroll tax (6.2%) otherwise due. The amounts will ultimately have to be paid with half of the deferred amount of payroll taxes from 2020 due December 31, 2021, with the remaining half due December 31, 2022.

## ***Net Operating Loss Rules Loosened***

Under the TCJA, NOLs arising after 2017 generally cannot be carried back and, when carried forward, can offset no more than 80% of taxable income. The CARES Act now allow corporate NOLs arising in a taxable year beginning after December 31, 2017 and before January 1, 2021, to be carried back to each of the five taxable years preceding the taxable year of the loss (and continue to be carried forward indefinitely). No election is required to carry back such NOLs.

In addition to the above, the CARES Act retroactively suspends the 80% income limitation on use of NOL carryovers for taxable years beginning before January 1, 2021, and allows 100% of any such taxable income to be offset by the amount of such NOL carryforward. This 80% income limitation is reinstated (with slight modifications) for tax years beginning after December 31, 2021.

## ***Modification of Limitation on Business Interest***

After TCJA, Section 163(j) of the Code imposed a sharp limit on trade or business interest to deduct interest payments when calculating their taxable income. Due to this limitation, a taxpayer's deductible business interest expense in a taxable year cannot exceed the sum of its business interest income plus 30% of "adjusted taxable income" with any excess carried forward to future years.

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The CARES Act increases the adjusted taxable income limit from 30% to 50% for taxable years beginning in 2019 and 2020. Taxpayers may now deduct interest up to the sum of 50% of adjusted taxable income plus 100% of business interest income. They can also elect to use 2019 adjusted taxable income for determining their 2020 interest deduction limitation.

Special rules apply to partnerships and the increase from 30% to 50% is only allowed for a partnership's taxable year beginning in 2020.

A REIT is not permitted to carry back any NOL (and an NOL may not be carried back to any year in which the taxpayer was a REIT). Also, life insurance companies are required to treat NOL carrybacks to pre-2018 tax years as operating loss deduction carrybacks (subject to from Section 810 of the Internal Revenue Code as in effect in those years).

## ***Modification of Limitation on Losses for Taxpayers other than Corporations***

Due to the TCJA, a non-corporate taxpayer's ability to deduct "excess business losses" was limited during tax years beginning after December 31, 2017, and before January 1, 2026. Excess business losses are the amount by which the total deductions attributable to all of a taxpayer's trades or businesses exceed such taxpayer's total gross income and gains attributable to those trades or businesses plus \$250,000 (or \$500,000 in the case of a joint return).

The CARES Act amends this limitation set forth in the TCJA so that it applies only to taxable years beginning

after December 31, 2020. As a result, excess business losses that would otherwise be disallowed for taxable years 2018 through 2020 will be permitted (and receive the same treatment as if the TCJA had not been enacted).

## ***Modification of Credit for Prior Year Minimum Tax Liability of Corporations***

The TCJA repealed the corporate alternative minimum tax ("AMT"), but allowed a credit of AMT paid in prior tax years to be used against a corporation's normal tax liability in taxable years 2018, 2019, 2020, and 2021 and to treat 50% of the credit as refundable in taxable years 2018-2020 and 100% for taxable years beginning in 2021. The CARES Act provides that 100% of an AMT credit will be treated as refundable in the case of a taxable year beginning in 2019.

Beginning after December 31, 2017, a corporation's ability to recover AMT refundable credits that otherwise could have been claimed in 2020 and 2021, is accelerated to 2018 and 2019, with an option to elect recovery of the full credit amount for 2018. As a result, corporations may obtain additional cash flow that can be used to address the impacts of Coronavirus.

## ***Technical Correction of Bonus Depreciation for Qualified Improvement Property***

The CARES Act includes a fix for, and clarification to, the bonus depreciation rules under Section 168(k) of the Code. The TCJA contained a provision allowing taxpayers to claim bonus depreciation deductions (up to 100%) for certain types of "qualified property," which included property with a depreciable life of 20 years or

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less. The TCJA also separately defined the concept of “qualified improvement property” (“QIP”), which was defined as “any improvement to an interior portion of a building which is nonresidential real property if such improvement is placed in service after the date such building was first placed in service.” While the TCJA defined qualified improvement property, it failed to assign it a 15-year depreciable life, thereby preventing it from being treated as “qualified property” that would be eligible for bonus depreciation deductions. The CARES Act corrects the drafting error by assigning a 15-year depreciable life to QIP, thereby allowing it to be characterized as “qualified property” eligible for bonus depreciation.

## ***Temporary Exception from Excise Tax for Alcohol Used to Produce Hand Sanitizer***

The CARES Act eliminates excise tax on distilled spirits removed after December 31, 2019 and before January 1, 2021, used in or contained in hand sanitizer produced and distributed in a manner consistent with any guidance issued by the FDA related to the outbreak of Coronavirus.

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For more information or if you have any questions about how this new development may affect your business, please contact a member of our Taxation & Estates team.



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