BUSINESS & CORPORATE SERVICES

# CARES Act: Tax Relief for Businesses

*By Timothy J. Edmier*

## INTRODUCTION

In the recently-adopted Coronavirus Aid, Relief and Economic Security (CARES) Act, Congress and the President put in place a program designed to introduce cash into the economy and provided greater liquidity for businesses. For many small and mid-sized businesses, the CARES Act provides a direct infusion of capital through the Paycheck Protection Program (PPP). The law also provides for the expansion of SBA Economic Injury Disaster Loans (EIDL).

However, some of the relief comes indirectly through modifications of the tax laws designed to increase liquidity, provide for tax credits and refunds, and delay tax payments. Set forth below are some of the tax law modifications that business owners should assess and consider.

## CHANGES TO TREATMENT OF NET OPERATING LOSSES

As part of the Tax Cuts and Jobs Act of 2017 (TCJA), corporate net operating loss (NOL) carryforwards were deductible only to the extent of 80 percent of taxable income, and NOLs generally could not be carried back to prior tax years. The CARES Act has changed these rules and provides corporations with the ability to use their NOLs to offset taxable income.

The Cares Act liberalizes the uses of corporate NOLs in two significant respects:

- Corporate NOLs arising in 2018, 2019, and 2020 can now be carried back to one or more of the five preceding years and a taxpayer will able to file an amended tax return and receive a refund. The refunds will be based on the tax rates applicable at the time of the initial filing. (There are special rules for foreign income and the new provisions do not apply to real estate investment trusts.)
- The CARES Act temporarily suspends the 80 percent restriction on NOL carryforwards and permits corporations to offset 100 percent of a taxpayer's current taxable income.

The CARES Act also removes the offset limitation for non-corporate taxpayers. The CARES Act allows non-corporate taxpayers to claim excess business losses for applicable years. Thus, the NOL is allowed to offset 100 percent of taxpayer’s current taxable income.

## MORE FAVORABLE DEPRECIATION FOR QIP

Qualified improvement property (QIP) is generally defined as improvement made to the interior portion of a non-residential building any time after the building was first placed in service. The CARES Act effectively adjusts the TCJA-assigned 39-year MACRS recovery period to QIP to a 15-year recovery period.

The CARES Act allows for 100 percent bonus depreciation available for assets with life of 20 years or less. As a result, taxpayers are allowed to take full write-off for QIP property beginning in January 2018.

## ACCELERATION OF RECOVERY OF AMT

The TCJA eliminated alternative minimum tax (AMT) for corporate taxpayers' for tax years after 2017, and allowed corporations to fully offset regular tax liability with AMT credits. This was phased in over a number of years, with any remaining AMT credit amount being incrementally refundable from 2018 through 2021. The CARES Act accelerates the refund schedule, permitting corporate taxpayers to claim the refund in full in either 2018 or 2019, and even permits taxpayers to elect to have all of the credit refunded as part of their 2018 tax return.

## CONCLUSION

In pursuing the immediate financial relief options through the PPP and EIDL, taxpayers should not lose sight of substantial additional tax relief provided in the CARES Act, including the ability to obtain refunds through amendment of prior year's tax filings.

If you have questions about the CARES Act or tax relief options for businesses, please contact your Lawrence Kamin attorney.