COVID-19 UPDATE:

THE CARES ACT AND WHERE WE ARE NOW

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CARES Act
Paycheck Protection Program: Overview

- "PPP Loan"
- The application process is a two-step process. First you apply for the loan, then you apply for forgiveness.
- Loosened eligibility guidelines.
- As of July 2020, nearly 700,000 businesses received PPP loans of $100,000 or more, representing approximately 75% of total PPP loans.*

* https://www.cnbc.com/2020/07/06/coronavirus-stimulus-list-of-ppp-small-business-loan-recipients-released.html

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CARES Act
Paycheck Protection Program: Overview

- The loan amount is calculated based on 2.5x your average monthly payroll (historically). Payroll includes and excludes certain costs. You will want to have calculations prepared of payroll along with the application. PLEASE NOTE THERE ARE DIFFERENT CALCS IF YOUR BUSINESS HAS BEEN OPERATING LESS THAN 1 YEAR.

- The payroll tax credits are less time sensitive. While they are also dependent on wages, you have through December 31, 2020 to take advantage of them.

CARES Act
Employee Retention Credit: Eligible Employer

- Employers that carried on a trade or business during 2020 and
  - Suspended operations fully or partially as a result of a COVID-19- related governmental order

    OR
  - Experienced at least a 50% year over year decline in calendar quarter gross receipts.

- An employer becomes an “eligible employer” under the “significant decline in gross receipts” test <u>during the first calendar quarter for which gross receipts for that quarter are less than 50 percent of gross receipts</u> for the same calendar quarter in the prior year. **(beginning quarter)**.

- The eligibility period ends in the calendar quarter following the first calendar quarter in which gross receipts are greater than 80 percent of gross receipts. **(ending quarter)**.

- Tax exempts can also take advantage of this credit.

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CARES Act
Employee Retention Credit: Credits

Amounts Qualified for Credit

- For eligible employers that had an average number of full-time employees in 2019 greater than 100:
  - Wages paid to employees with respect to which an employee is not providing services
- For eligible employers that had an average number of full-time employees in 2019 of 100 or fewer:
  - Wages paid to employees with respect to an employee (regardless of whether employee provides services)

Limits

- An employer receiving a loan under the Paycheck Protection Program is not eligible for the credit
- Qualified employee wages may not exceed the amount the employee would have been paid for working an equivalent duration during the previous 30-day period
- The credit is not allowed for any employee for any period in which the Work Opportunity Tax Credit (WOTC) is claimed on such employee
- Wages used for this credit may not be used for the paid leave credits under IRC Section 45S or the FFCRA paid leave credits

Calculation of the Credit

- 50% of qualified wages paid or incurred including health insurance expense
- Maximum credit of $5,000/employee (50% of maximum $10,000 wages)
- Claim 100% of qualified amounts on form 941 or claim advanced payment
- Note the Form 941 will not be revised with the fields necessary to claim this credit until the second quarter, 2020

CARES Act
Relaxation of 163(j): Background

- TCJA imposed limits on business interest expense deductions for taxpayers with average gross receipts in excess of $25 million.

- Section 163(j) limits the deduction for business interest expense (“BIE”) to the sum of:
  - The taxpayer’s business interest income,
  - 30 percent of the taxpayer’s adjusted taxable income (“ATI”), and
  - The taxpayer’s floor plan financing interest expense for the taxable year.

- Real estate businesses could elect out of 163(j).

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CARES Act
Relaxation of 163(j): Overview

- The CARES Act increases the 30 percent ATI threshold to 50 percent for taxable years beginning in 2019 or 2020.

- In addition, the CARES Act allows taxpayers to elect to use their 2019 ATI as their ATI in 2020.

- Revenue Procedure 2020-22 explains how to address the problem of taxpayers who elected to be electing real estate or farming business to opt out of the section 163(j) interest limitation rules on 2018 or 2019 returns.

- Note there are special partnership rules – 50% ATI threshold does not apply to 2019 but does apply for 2020.

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CARES Act
Relaxation of 163(j): Solution

- Withdrawing the election is done by amending the return for the year in which the election as made, with an election withdrawal statement.

- If there is a change to the section 163(j)(7) election, then changes to depreciation for such QIP or other depreciable property affected by such change in election must be made according to certain sections in Revenue Procedure 2020-25.

- Email me if you would like an example (this can get quite technical).

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CARES Act
NOL Carrybacks: Background

- TCJA changed the treatment of net operating losses ("NOL's") in years ending after 12/31/2017 (known as "excess business losses" for noncorporate taxpayers).

- Applied to corporate taxpayers:
  - NOL deduction limited was to 80% of taxable income for year of the claimed deduction. Additionally, NOL carrybacks were repealed & carryovers allowed indefinitely.

- Applied to noncorporate taxpayers:
  - The aggregate of all trade or business deductions over gross income or gain from such trades or businesses, plus a threshold $250,000 or $500,000 if MFJ.
  - Excess treated as a NOL carryover.

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CARES Act
NOL Carrybacks: Overview

- In Notice 2020-24, the IRS has issued guidance concerning the CARES Act rule permitting a five-year 5-year carryback and not limited by 80% of Taxable Income Rule. This applies to NOLs from 2018, 2019, or 2020.

- Limitation on Net Business Losses Suspended. For non-corporate taxpayers who under TCJA were limited to using net business losses to the extent of $250,000 ($500,000 for married filing joint), taxable incomes for 2018, 2019 and 2020 can be computed without this limitation.

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CARES Act
NOL Carrybacks: Solution

- IRS Notice 2020-26 provides guidance on the ability to use forms 1045 or 1139 to claim refund for claiming NOL carrybacks (instead of using Forms 1040X or 1120X to amend).

- These forms are generally due within 12 months of the close of the tax year in which the NOL arose.

- For calendar year 2018 returns, this would be December 31, 2019, which has already passed; The Service grants a six-month extension of time to file Form 1045 or 1139, as applicable, to taxpayer taxpayers with a tax year beginning in 2028 and ending before June 30, 2019.

- While previously Forms 1045 and 1139 could only be filed hard copy through USPS or by private delivery service, a temporary fax processing procedure has been established.

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CARES Act
Other Business Tax Provisions

- Immediate Refund of the Corporate AMT Credit. Instead of a 4-year period (2018-2021), the credits can be taken over 2018 and 2019. An election can be made to recover the credits entirely in 2018.

- Temporary Exception from Excise Tax on alcohol used to produce hand sanitizer.

- Corporation Charitable Deduction Limit is increased from 10% of Taxable Income to 25 of Taxable for 2020. Limitation on Deduction for Contribution of Food Inventory is increased from 15% to 25%.

- Under the CARES Act, and effective with payments made on and after March 27, 2020, and before January 1, 2021, IRC Section 127 is revised to include in the $5,250 annual limit an employer’s payment of the principal or interest on employee’s student loans.

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Qualfied Improvement Property

- For property placed in service after December 31, 2017, the TCJA eliminated the 15-year MACRS property classification for leasehold improvement property, qualified restaurant property and qualified retail improvement property. These three classifications were replaced with qualified improvement property.

- The legislative history of the TCJA indicates that the intention was to assign a 20-year or less life to QIP so that it would be eligible for the new 100% bonus deprecation rate. However because of a drafting oversight QIP had a 39-year recovery period, making it ineligible for bonus deprecation.

Qualfied Improvement Property

- Must be placed in service before 1/1/2027 (1/1/2028 for longer production period property of certain aircraft)

- Retroactive Relief Creates Administrative Complexity
- Amended Returns
- Form 3115 accounting method change w/ Sec. 481 adjustment
- Make late elections
- Withdrawing election
- Will NOLs help

NO 10% Additional Tax for Coronavirus Related Retirement Plan Distributions

- A distribution from a qualified retirement plan is subject to a 10% additional tax unless 1) the distribution meets an exception under Code Sec. 72 or 2) if a coronavirus-related distribution is any distribution made on or after January 1, 2020, and before December 31, 2020, **from an eligible retirement plan** (defined in Code Sec. 402(c)(8)(B)), **made to a qualified individual**.

- IRS Notice 2020-50.

RMD Requirement Waived for 2020

- The RMD requirements also do not apply to any distribution which is required to be made in calendar year 2020 by reason of: (I) a required beginning date occurring in calendar year 2020, and (II) such distribution not having been made before January 1, 2020. (Code Sec. 401(a)(9)(I) (ii), as amended by Act Sec. 2203(a)).

- IRS Notice 2020-51.

$300 Above-the-Line Charitable Deduction

- Eligible Individual---Does not itemize deductions.
- Made in cash.
- Public charity (no donor advised funds, supporting organizations).
- For years beginning in 2020.

Modification of Limitations on Individual Cash Charitable Contributions During 2020

- They are paid in cash during calendar year 2020 to public charities and certain foundations; (not to donor advised funds and Sec. 509(a) (3) supporting organizations); and the taxpayer has elected to apply this provision with respect to the contribution.

- Qualified contributions are allowed as a deduction only to the extent that the aggregate of those contributions does not exceed the excess of the individual's contribution base over the amount of all other charitable contributions allowed as deductions for the contribution year.

- In the case of a partnership or S corporation, the election is made separately by each partner or shareholder.

Tax-Excluded Education Payment by an Employer Temporarily Include Student Loan Repayments

- **Eligible student loan repayments** are payments by the employer, whether paid to the employee or a lender, of principal or interest on any qualified higher education loan for the education of the employee (but not of a spouse or dependent).

- Must be made before January 1, 2021.

- Loan repayments for which the exclusion is allowable cannot be deducted by the employee.

State Tax Consequences

- Qualified Improvement Property – Many states have decoupled from bonus depreciation.
- Net operating loss.
- Corporate and individual rules may differ within the same state.

COVID-19 Tax Issues

- Employees working in many states (nexus and withholding issues).

- Residency issues for employee.