

In response to the global COVID-19 pandemic, several emergency legislative measures have been enacted to help alleviate the personal and financial distress facing individuals, businesses and non-profits across the United States, including:

Notice 2020-18: Provides automatic extension of time to file tax returns and make payments

Families First Coronavirus Relief Act (FFCRA): Effective April 1, 2020; provides paid leave benefits to workers affected by the COVID-19 crisis and creates employer tax credits

Coronavirus Aid, Relief, and Economic Security Act (CARES Act): Provides a massive \$2 trillion stimulus package to expand unemployment benefits, support American families and ease economic distress

Many of the provisions created in the FFCRA and CARES Act are focused on assisting businesses and non-profits by providing much needed financial relief. Highlighted below are the key takeaways.



Kristin M. Carter, CPA
VP & Tax Officer

SUMMARY OF THE MOST SIGNIFICANT COVID-19 LEGISLATIVE RELIEF PROVISIONS FOR BUSINESSES & NON-PROFITS

- Automatic extension of April 15 deadline to July 15 for filing tax returns and making tax payments
- New “employee retention” payroll tax credit for employers affected by the COVID-19 crisis, for up to 50% of wages and health benefits paid (capped at \$10,000 per employee)
- New “paid leave” payroll tax credit for employers who are mandated to provide paid sick leave and expanded FMLA leave during the COVID-19 crisis
- Delay of paying employer’s portion of Social Security taxes through the end of 2020
- “Paycheck Protection Program” and “Economic Injury Disaster Loan” SBA loan programs provide cash flow relief, with substantial loan forgiveness available
- Expanded unemployment benefits, which includes self-employed workers and independent contractors
- Special relief for “coronavirus-related distributions” and loans from qualified plans and IRAs, up to \$100,000
- Relaxation of rules for carrying back net operating losses (NOLs)
- Interest expense deductibility limit increased from 30% to 50% for 2019 and 2020
- Bonus depreciation technical correction for qualified improvement property
- Expansion of employer-provided educational assistance for student loans

WHAT DO THESE PROVISIONS MEAN FOR YOUR ORGANIZATION?

These critical relief provisions made available to businesses and non-profits due to the COVID-19 pandemic are discussed in greater detail below.

Automatic extension of the April 15 deadline. The April 15, 2020 deadline for filing tax returns and making tax payments for a variety of taxpayers has been automatically extended until July 15, 2020.

- No formal extension request or form is required; the relief is applied automatically by the IRS. If you cannot file by July 15, a formal extension must be requested.
- There is no limit on the amount of tax that can be deferred until July 15. However, any tax liability not paid by July 15 will start to accrue interest and penalties, beginning on July 16, 2020.
- Q1 and Q2 2020 estimated tax payments have both been extended until July 15.
- Most states have aligned with the Federal automatic extension to July 15 for filing and making tax payments, including Missouri, Kansas and Illinois. Please confirm with the states in which you file whether they have allowed for COVID-19 relief.
- The IRS has also announced that digital signatures, such as those provided through services like DocuSign, will be temporarily accepted on tax documents due to the coronavirus pandemic. The IRS will also accept images of signatures that are scanned or photographed.

New “employee retention” payroll tax credit created. A new refundable “employee retention” payroll tax credit has been created to assist businesses and non-profits who have been affected by the COVID-19 crisis. The purpose of this tax credit is to encourage employers to keep employees on their payroll, despite experiencing economic hardship during these difficult times.

- The tax credit is available for up to 50% of wages and health benefits (capped at \$10,000 per employee) paid between March 13, 2020 and December 31, 2020. Thus, the maximum tax credit is \$5,000 per employee.
- To qualify, the business or non-profit must have been negatively impacted by the coronavirus pandemic by either experiencing a 50% drop in gross revenue (as compared to the same calendar quarter in the previous year), or had operations partially or fully suspended due to a government order.
- The credit is claimed by reporting qualified wages on quarterly federal employment tax returns (generally, Form 941), and is applied against the employer’s portion of Social Security taxes. Any credit in excess of tax owed will be refunded to the employer. Additionally, the employer may reduce its federal employment tax deposits by the amount of the anticipated tax credit, providing immediate cash flow relief. No “failure to deposit” penalties will be assessed by the IRS for the reduction in tax deposits.
 - o If an employer does not have sufficient funds to cover the federal employment tax deposits, the employer can file Form 7200 “Advance Payment of Employer Credits Due to COVID-19” with the IRS to claim an advance refund.

- Employers who averaged more than 100 full-time employees in 2019 can count wages paid to employees for time that the employee was not providing services due to the pandemic. Wages taken into account may not exceed what the employee would have been paid for equivalent work in the 30 days prior to the period of economic hardship.
- Employers who averaged less than 100 full-time employees in 2019 can count wages paid to any employee during the period of economic hardship.
- Numerous “double dipping” rules are in place to ensure that benefits are not received under multiple programs, including SBA loans, “paid leave” payroll tax credits, Work Opportunity Tax Credits, etc. Therefore, careful consideration should be given to determine which relief provision or tax credit provides the most benefit.

New “paid leave” payroll tax credit for employers who are mandated to provide paid sick and expanded FMLA leave during the COVID-19 crisis. Under the Families First Coronavirus Relief Act (FFCRA), employers with less than 500 employees are required to provide mandatory sick time and paid family leave. The FFCRA rules are effective April 1, 2020.

- To help offset the costs for employers, a dollar-for-dollar refundable payroll tax credit was created to reimburse all required sick and family leave paid, including the employer’s share of related Medicare tax and the cost of maintaining health insurance for the affected employees.
- Under FFCRA, employees who cannot work due to the COVID-19 crisis are eligible for:
 - o Up to 80 hours paid sick leave at the employee’s regular rate of pay, or if higher, the Federal or state minimum wage (up to \$511 per day, and up to \$5,110 in total), or
 - o For employees unable to work because they are caring for a quarantined individual or child if the child’s school has been closed, 80 hours of sick leave must be paid at 2/3 the employee’s regular rate of pay, or if higher, the Federal or state minimum wage (up to \$200 per day, and up to \$2,000 in total).
 - o Employers are not required to pay employees more than the mandated amounts.
 - o Small businesses with less than 50 employees are eligible for an exemption.
 - o Self-employed individuals can also qualify.
- In addition to the sick leave benefits listed above, employees are also eligible for 10 weeks of paid family leave at 2/3 pay (up to \$200 per day, and up to \$10,000 in total).
- The “paid leave” tax credit applies to qualified sick leave wages and qualified family leave wages paid from April 1 through December 31, 2020.
- Similar to the “Employee Retention” payroll tax credit, employers may claim the “paid leave” tax credit on their quarterly federal payroll tax returns (generally, Form 941). Employers may also reduce their federal payroll tax deposits by the anticipated amount of the credit to provide immediate cash flow

relief. As mentioned above for the “Employee Retention” credit, employers may claim an advance refund of the “paid leave” tax credit by filing Form 7200 with the IRS.

Payroll tax postponement allowed. Employers can delay payment of their portion of Social Security taxes through the end of 2020.

- Employer’s portion of Social Security taxes equals 6.2% of wages paid, up to the wage base of \$137,700 per employee.
- Deferral does not include Federal withholding, employer’s portion of Medicare taxes, or the employee’s portion of Social Security taxes.
- There is no cap on the amount of tax that can be deferred.
- The delayed payments are due in equal installments, with 50% to be paid by December 31, 2021 and the remaining 50% to be paid by December 31, 2022. No interest is due on the deferral.
- Self-employed workers and independent contractors can also defer 6.2% of their self-employment tax by reducing their estimated tax payments.

SBA loan programs provide cash flow relief, with substantial loan forgiveness available.

Two Small Business Administration (SBA) loan programs are providing much needed funding to keep eligible businesses and non-profits afloat.

Paycheck Protection Program (PPP) – This newly created \$349 billion program provides forgivable loans, up to \$10 million, that are 100% guaranteed by the SBA. The main purpose of this program is to maintain pay for employees.

Eligibility:

- Must have 500 or fewer employees (with principal place of residence in the US), or if greater than 500, SBA employee-based size standards can be met for certain industries such as hotels, restaurants and franchises.
- Includes small businesses, non-profits, veterans’ organizations, Tribal concerns, sole proprietors, independent contractors and self-employed individuals.
- Must have been in operation on February 15, 2020 and had employees or independent contractors earning compensation.
- No collateral or personal guarantees are required as the loans are 100% guaranteed by the SBA to lenders. Only one loan is allowed per borrower. No fees will be charged by the SBA or lenders.

Maximum Loan Amount: Lesser of \$10 million, or average monthly payroll times 2.5.

- “Average monthly payroll” costs include salaries, wages, commissions, cash tips, payments for vacation and paid leave, employee benefits such as health insurance and retirement, and state

and local payroll taxes (Federal payroll taxes are not included). Payroll excludes employee or owner compensation in excess of \$100,000.

- Loan proceeds can be used for paying payroll costs, group health benefits and health insurance premiums, mortgage interest payments (but not principal or mortgage prepayments), rent, utilities, and interest payments on other debt.
 - At least 75% of the loan proceeds must be used for payroll costs.
- To avoid “double dipping”, an employer cannot include wages for which a tax credit is allowed, such as the new payroll tax credits under FFCRA.

Terms: Loan term is 2 years and loans must be made on or before June 30, 2020.

- Payments are deferred for 6 months, starting on the loan disbursement date. Interest will accrue during the deferment period.
- 1% interest rate for any loan amounts not forgiven.

Loan Forgiveness: If loan proceeds are used for forgivable purposes, the full amount of the loan principal and accrued interest can be forgiven!

- Employee counts and compensation levels must be maintained in order to request loan forgiveness.
- To ensure that the loan program’s primary purposes has been met, no more than 25% of loan forgiveness can be attributable to non-payroll costs.
- The actual amount of loan forgiveness will depend on the total amount of forgivable expenditures made over the 8-week period following the date of the loan.

Applications: Applications opened on Friday, April 3, 2020 for small businesses and sole proprietors. Applications open on April 10, 2020 for independent contractors and self-employed individuals.

Economic Injury Disaster Loan (EIDL) – This SBA program provides loans, up to \$2 million, directly to eligible small businesses and non-profits severely impacted by the COVID-19 crisis.

- EIDL loans are intended to be long-term loans with varying repayment terms, up to 30 years. The loan amount is determined by the actual economic injury incurred.
- For EIDL loans acquired due to COVID-19, interest rates are set at 3.75% for businesses and 2.75% for non-profits. Personal guarantee and collateral rules have also been relaxed.
- Under the CARES Act, an applicant can request an immediate advance of up to \$10,000 after submitting an application. The applicant will submit a self-certification to the SBA directly, and the advance will be issued within 3 days.
- The advance is considered an emergency grant and the applicant is not required to repay the advance, even if the loan is denied!

- Payments of principal and interest are automatically entitled to deferment through the end of 2020.
- Loan proceeds can be used more broadly than the Paycheck Protection Program loan for expenses such as debt payments and operating expenses.
- An applicant cannot receive a Paycheck Protection Program loan in addition to an EIDL loan for the same purposes (i.e. for the same wages). However, an applicant can receive both loans for different purposes and has the option to refinance an existing EIDL loan into a PPP loan.
- If an applicant also receives a loan under the Paycheck Protection Program, the \$10,000 advance is subtracted from the loan forgiveness amount under the Paycheck Protection Program.

Expanded unemployment benefits for taxpayers affected by COVID-19. The CARES Act dramatically expanded unemployment benefits.

- Self-employed workers, “gig” workers, part-time workers and those with limited work history who are generally ineligible for “regular” unemployment benefits can now receive up to 39 weeks of benefits.
- The “first week” waiting period has been suspended, and the Federal government will reimburse states for providing unemployment compensation immediately, without the one-week waiting period.
- An additional \$600 of unemployment compensation will be added on top of “regular” unemployment benefits provided by states, for up to four months.
- Unemployment benefits have been extended by 13 weeks.

Special relief for “coronavirus-related distributions” from qualified plans and IRAs. Under the CARES Act, special relief is allowed for employees and IRA owners taking distributions, up to \$100,000, from retirement plans and IRAs during 2020. The employee or IRA owner must have been negatively impacted by the coronavirus and must meet at least one qualification set out in the CARES Act. Several key benefits are included in this provision:

- 10% early withdrawal penalty on IRA and qualified plan distributions has been waived for taxpayers who are under the age of 59 ½.
- The taxable income associated with the “coronavirus-related distributions” (up to \$100,000) is defaulted to be spread over 3 tax years in 2020, 2021 and 2022; however, a taxpayer can elect to include all of the income on his or her 2020 tax return.
- Funds can be repaid to the IRA or qualified plan within 3 years, beginning the day after the distribution is made. The repayment can be made from a single rollover or through multiple partial rollovers during the 3-year period.
- Additionally, employees may take loans (up to \$100,000) against the vested balances in their retirement plans. The rules have been relaxed to allow for larger loans and greater flexibility. Loan payments can be deferred for one year.

- For employers, the “coronavirus-related distribution” rules and loan provisions are voluntary, although many employers will likely adopt the changes in order to assist their employees.
 - o Plan amendment requirements have been delayed to allow employers to begin adopting the new rules without formally amending their plans first.
 - o Plan administrators may rely on the participant’s self-certification as satisfaction of the eligibility criteria.
 - o Additional guidance from the IRS will be necessary for plan administrators and financial institutions to administer these changes properly.
- Sponsors of single employer defined benefit pension plans will also benefit from the CARES Act as annual minimum required contributions can be delayed until January 1, 2021.

Several other business-friendly rules enacted under the CARES Act. The provisions included in the CARES Act are vast in quantity and scope. Several other business-friendly measures are worth mentioning:

- Net operating loss (NOL) rules have been expanded to include a 5-year carryback period. The 80% limitation on NOL absorption has also been temporarily suspended. The purpose of these changes is to allow business owners the ability to “carry back” NOLs to previous years by amending prior tax returns and receiving cash refunds of taxes previously paid.
- Interest expense deductibility limits, enacted under the Tax Cuts and Jobs Act of 2017, have been increased from 30% to 50% for 2019 and 2020.
- A technical correction for qualified improvement property has been issued in order to correct a drafting error in the Tax Cuts and Jobs Act of 2017 that has had a substantial effect on businesses. The correction has restored the 15-year recovery period for depreciation on “qualified improvement property”, which allows the cost of improvements to be deducted over a shorter 15-year life (rather than 39 years) and makes the property eligible for bonus depreciation. Bonus depreciation provides an immediate write-off of the full cost of the property, resulting in a smaller tax bill (or potentially larger NOL) for businesses.
- Employers may also provide up to \$5,250 in educational assistance to employees by paying principal or interest on student loans. The \$5,250 assistance can be excluded from employee wages, and must be coordinated with the employer’s other educational assistance programs.

We hope that you, your families, your employees and your business organizations stay well. Please know that Central Trust Company is here to support and guide you at all times.