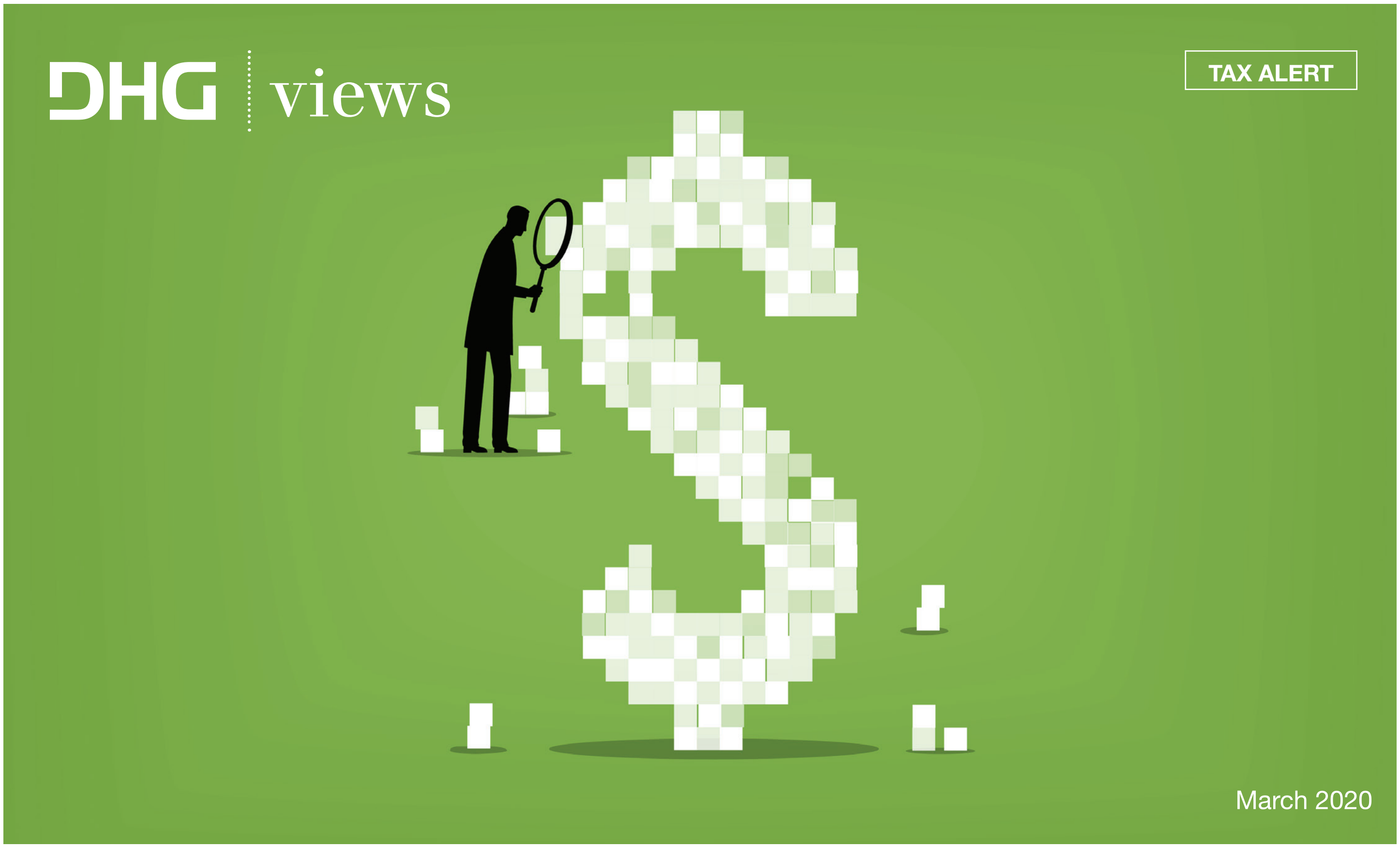


# Coronavirus Aid, Relief, and Economic Security (CARES) Act Signed Into Law

**The Coronavirus Aid, Relief and Economic Security (CARES) Act was signed into law March 27 which includes a significant number of tax and other provisions designed to support businesses and individuals impacted by the coronavirus pandemic.**

Some of the Act's provisions will provide opportunities to access much needed cash currently while others will not result in a realized benefit until taxpayers begin filing their 2019 and 2020 tax returns.

Some of the provisions which would be most likely to provide for immediate access to funds include:

**Expansion of SBA 7(a) loan program:** The CARES Act provides additional funding to the SBA for its 7(a) loan program. The Act also expands the availability of these loans to businesses which would not normally qualify. Additionally all or a portion of the loan may effectively be converted to a grant through a special loan forgiveness provision.

| Description of provision | Provides for expansion of the SBA 7(a) loan program between February 15, 2020 and June 30, 2020 with possible effective conversion to grant funding for all or a portion of the loan through forgiveness of debt provisions. |
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| **Expanded eligibility during the period** | • Business, non-profit or veterans organization that employs 500 or fewer employees (or, if applicable and larger, the employee size standard established for the industry)<br>• Special provisions for Accommodations and Food Services Industry (NAICS codes beginning with 72) for determining number of employees:<br>» Affiliated employer rule waived<br>» Measured per physical location<br>• Affiliated employer rule waived for franchiser that is issued a franchise ID code and businesses receiving financial assistance from an SBIC<br>• Sole-proprietors, independent contractors and self-employed individuals who would be eligible for Emergency Sick Pay under the Families First Coronavirus Response Act (FFCRA) |
| **Maximum loan amount** | lesser of:<br>• 2.5 times average monthly payroll costs based upon year immediately preceding date of loan (special computations available for seasonal employers and businesses not in business for full year), plus outstanding loan amount under 7(b)(2) made on or after January 31, 2020 and before or on the date covered loans are made available to be refinanced under the covered loan; or<br>• $10 million |
| **Payroll costs** | • Salary, wage, commissions or similar compensation payments (to the extent that it would not exceed an annualized amount of $100,000 to the individual employee)<br>• Payments of cash tip or equivalent<br>• Paid vacation, parental, family, medical or sick leave (other than payments for which credit allowed under FFCRA)<br>• Allowance for dismissal or separation<br>• Payments for provision of group health benefits, including premiums, and retirement benefits<br>• State and local taxes assessed on compensation of employees<br>*Excluded: payments for employee whose principal residence is outside of the US |
| **Allowable use of proceeds** | Payroll costs, continuation group health benefits during periods of leave, interest portion of mortgage payments, rent, and utilities. Proceeds may also be used to make interest payments on other debt obligations originated before February 15, 2020 |
| **Amount of loan that is forgivable with no inclusion in taxable income** | • Sum of payments made during the period for: payroll costs, interest on covered mortgage, covered rent and covered utilities.<br>• The amount is reduced for decreases in full-time equivalent (FTE) employees and decreases of more than 25% in compensation to employees making less than $100,000 on annualized basis. (Reductions in FTE's or compensation occurring between February 15, 2020 and 30 days after enactment of the Act are not taken into consideration if restored by June 30, 2020.) |
| **Maximum repayment term for balance (if any) remaining after forgiveness** | 10 years |

**Retention Credit:** The Act provides a retention credit for eligible employers equal to 50 percent of "qualifying wages." Eligible employers are those whose operations were fully or partially suspended as the result of a government order limiting commerce, travel or group meetings due to the coronavirus or where gross receipts decreased by more than 50 percent when compared to the same calendar quarter in 2019. Qualification of an employer is not based upon size or number of full time employees, however the latter will impact the amount of wages to which the credit will apply.

The credit is allowable against employer FICA taxes with any excess credit being refundable. The Treasury Secretary is directed to provide guidance for obtaining an advance payment of the credit. Taxpayers obtaining a loan under the expanded SBA 7(a) program as provided by this Act may not claim the retention credit so taxpayers will want to weigh the benefits of these two provisions.

| | Employs >100 Average Full-time Employees (within meaning §4980H) | Employs <= 100 Average Full-time Employees (within meaning §4980H) |
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| **Eligible Employer** | Eligible employers are those which carry on a trade or business during the 2020 calendar year and either:<br>1. fully or partially suspend operations during 2020 as a result of a governmental order limiting commerce, travel, or group meetings due to the coronavirus, or<br>2. have gross receipts for any 2020 calendar quarter which are less than 50% of gross receipts for the same calendar quarter in 2019. | |
| **Eligible Period** | Period during which operations were fully or partially suspended; and if applicable, the period beginning with the first quarter in which gross receipts < 50% of gross receipts for same calendar quarter in 2019 and ending with the calendar quarter immediately following the quarter in which gross receipts are > 80% of gross receipts for same calendar quarter in 2019. | |
| **Qualified Wages** | Qualifying amounts paid after March 12, 2020 and before December 31, 2020 to employees when they are not providing services during the eligible period(s) as a result of the suspension of operations or decrease in business/receipts.<br>Qualified Wages paid or incurred with respect to an employee may not exceed the amount such employee would have been paid for working an equivalent amount of time during the 30 days immediately preceding such period. | Qualifying amounts paid after March 12, 2020 and before December 31, 2020 to employees with respect to the eligible period(s). |
| **Qualifying Amounts** | Wages (as defined in §3121(a) - other than wages for which credit is allowed under FFCRA), compensation (as defined in §3231(e)) and expenses to provide a group health plan (to extent excludable from gross income under §106(a)) properly allocable to such wages | |
| **Cap and other limitations** | Total qualified wages with respect to any employee may not exceed $10,000.<br>Taxpayers receiving SBA 7(a) loans provided for under this Act are not eligible for the credit.<br>Wages to related individuals (§51(i)(1)) are not credit eligible. | |
| **How claimed** | Credit is claimed against the employer portion of social security taxes (not medicare taxes<br>Any credit in excess of total employer social security taxes on the wages with respect to the employment of all employees of the employer the excess shall be a refundable credit to the employer.<br>The Secretary of Treasury is instructed to provide guidance for obtaining advance payment of the credit. | |
| **No double benefit** | An employee shall not be included for this purpose if employer is allowed a credit under §51 with respect to such employee. Wages taken into account under this section may not be taken into account for purposes of determining the credit allowed under §45S. Rules similar to those under §280C(a) employment credits apply. | |

**Delay payment of payroll taxes:** Federal payroll taxes, generally defined as employer OASDI tax (6.2 percent) and 50 percent of OASDI tax of self-employed individuals (12.4 percent), otherwise required to be deposited during the period beginning on the date of enactment of the Act and ending on December 31, 2020 may be deferred. One-half of the deferred taxes are required to be deposited by December 31, 2021 and the remaining balance must be deposited by December 31, 2022.

The deferral of tax deposits does not apply to any taxpayer who has had indebtedness forgiven either with respect to a SBA 7(a) loan or under the Treasury management program as provided by this Act.

**Correction of the Qualified Improvement Property (QIP) depreciation:** This provision provides a technical correction to the Tax Cuts and Jobs Acts (TCJA) signed into law in December of 2017. The TCJA intended to provide for immediate expensing for certain improvements to real property, known as Qualified Improvement Property (QIP), through bonus depreciation. Additionally, the intention was to allow for a 15 year recovery period (as opposed to the current 39 years) to the extent not immediately expensed. Due to an acknowledged drafting error in the TCJA this did not occur.

The Act would correct this error and retroactively apply this treatment back to the 2018 tax year. If taxpayers have incurred costs relating to these types of improvements, the taxpayer could possibly file an amended return to get an immediate refund of prior year cash.

Each dollar of QIP placed in service since 2018 could potentially generate in excess of forty cents of immediate cash refunds.

In order to qualify for this treatment, the improvements must meet a few key requirements. The improvements must be to an existing building, must be to the interior of the building, and must not be related to an enlargement of the building.

**Use of Excess Business Loss and Net Operating Losses (NOL):** In addition to quicker depreciation of QIP, the Act allows taxpayers a temporary reprieve from the limitations on use of net operating losses (NOL). This change temporarily removes the limits put in place by the TCJA which only allows NOLs to offset 80 percent of taxable income. In addition to removing the limits, the Act also allows taxpayers to carryback certain NOLs up to 5 years in order to get an immediate refund of taxes paid in prior year.

Additionally, the Act removes the limitation on excess business losses enacted as part of the TCJA. Under the Act the use of business losses for the 2018 and 2019 tax years are no longer limited and may fully offset other types of income.

Taxpayers who had losses which were limited in the 2018 tax year, or in the 2019 tax year in the case of those who have already filed, may be able to amend returns to claim additional refunds.

**Corporate AMT Credits:** The corporate alternative minimum tax (AMT) was repealed as part of TCJA with corporate AMT Credits being made available as refundable credits over several years, ending in 2021. The refund period has been accelerated and companies can elect to take the entire refundable credit in 2018 by filing an application for a tentative refund in the manner and form as the Secretary may prescribe.

The application has to be filed by December 31, 2020 and the Secretary must act on the application within 90 days.

**Unemployment Benefits:** The Act also provides for expanded unemployment benefits which will be made available primarily through existing state programs. A link to state unemployment programs, as well as other helpful information, is provided on the Department of Labor's Coronavirus page at https://www.dol.gov/coronavirus.

Access to funds in retirement plans and individual retirement accounts (IRA)

The Act allows taxpayers to more readily access funds held in retirement plans and IRA's by allowing up to $100,000 of coronavirus related distributions from these plans with no early withdrawal penalty. Distributions paid back within a three year period will be treated as having met the eligible rollover rules normally applicable. Distributions which will not be repaid are includable in taxable income equally over a three year period beginning with the taxable year of receipt.

The Act also provides for an increase in the amount of allowable loans from qualified retirement plans from $50,000 to $100,000.

**Cash Payments:** Lastly, the Act provides for immediate cash in the form of advance credit payments to individuals. Under this provision taxpayers are eligible to receive up to $1,200 ($2,400 if Married Filing Joint) plus an additional $500 per qualifying child. These amounts begin to phase-out for taxpayers with adjusted gross income in excess of specified amounts. ($150,000 MFJ; $112,500 Head of Household; $75,000 all other taxpayers). Advance refund checks will be issued to taxpayers based upon their 2019 tax return, or their 2018 tax return cases where the taxpayer has not yet filed for the 2019 tax year.

While the Act has many more provisions that could assist taxpayers, the items discussed above could have an immediate benefit by providing cash now as opposed to when future tax returns are filed.

For more information, reach out to us at tax@dhg.com or visit the DHG COVID-19 page for additional resources.