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President Trump Signs Massive \$2 Trillion Aid Package Into Law In Response to COVID-19 Crisis

On March 27, 2020, President Trump signed into law the “[Coronavirus Aid, Relief, and Economic Security Act](#)” (CARES Act or Act below). (References to the Code below are references to the Internal Revenue Code of 1986, as amended. Section references below are references to sections of the Act.) Highlights of some of the tax provisions in the Act include:

- **Section 2201. 2020 recovery rebates for individuals:** Certain individuals with an annual income of up to \$75,000 (\$150,000 for taxpayers filing a joint return) are entitled to a one-time rebate of \$1,200 (\$2,400 for taxpayers filing a joint return), plus an additional \$500 for each qualifying child of the taxpayer. The rebate is subject to a phase-out reduction (but not below zero) for certain individuals with an annual income of up to \$99,000 (\$198,000 for taxpayers filing a joint return).
- **Section 2202. Special rules for the use of retirement funds:** If the plan is amended by the end of 2021 to permit, plan participants suffering from COVID-19 directly or indirectly (as described above) may borrow from the plan up to the lesser of \$100,000 or the vested account balance through 180 days after the date the CARES Act was enacted. Installments on existing and new loans that are payable during the remainder of 2020 may be delayed up to one year. These provisions of the Act will generally apply only to active participants.
- **Section 2203. Temporary waiver of required minimum distribution (RMD) rules for certain retirement plans and accounts:** If permitted by the plan, defined contribution plans and IRAs do not have to comply with the required minimum distribution rules for 2020. The plan must be amended by the end of 2021.
- **Section 2204. Allowance of partial above the line deduction for charitable contributions:** For the 2020 tax year, taxpayers that do not take itemized deductions may take up to a \$300 deduction for qualified charitable contributions in determining their adjusted gross income. The deduction does not apply in the case of a gift made to donor-advised funds. The donation must be given directly to a qualifying charitable organization.
- **Section 2205. Modification of limitations on charitable contributions during 2020:** For taxable years after Dec. 31, 2019, the limitation on the amount of the charitable deduction available to individual taxpayers is modified and any qualified cash contribution shall be allowed as a deduction only to the extent that the aggregate of such cash contributions does not exceed the taxpayer’s adjusted gross income over the amount of all other charitable contributions made. Any excess may be carried over in accordance with the law. Increases the charitable deduction for itemized filers, temporarily raising the limit for deductible individual giving to 60% of adjusted gross income (up from the current 50% limit). Corporate giving and corporate donations of

food inventory are expanded to allow up to 25% deductible (both up from the current 10% rate).

- **Section 2206. Exclusion for certain employer payments of student loans:** A payment made by an employer in 2020 of principal or interest on any qualified student loan of an employee is not included in such an employee's gross income. Consequently, the employee is not entitled to a deduction of the payment by an employer of any such interest.
- **Section 2301. Employee retention credit for employers subject to closure due to COVID-19:** provides a refundable payroll tax credit for 50% of wages paid by eligible employers to certain employees during the COVID-19 crisis. The credit is available to employers, including non-profits, whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel, or group meetings. The credit is also provided to employers who have experienced a greater than 50% reduction in quarterly receipts, measured on a year-over-year basis. The credit is not available to employers receiving Small Business Interruption Loans under the Act. For employers who had an average number of full-time employees in 2019 of 100 or fewer, all employee wages are eligible, regardless of whether the employee is furloughed. For employers who had a larger average number of full-time employees in 2019, only the wages of employees who are furloughed or face reduced hours as a result of their employers' closure or reduced gross receipts are eligible for the credit. No credit is available with respect to an employee for any period for which the employer is allowed a Work Opportunity Credit with respect to the employee. The term "wages" includes health benefits and is capped at the first \$10,000 in wages paid by the employer to an eligible employee. Wages do not include amounts taken into account for purposes of the payroll credits, for required paid sick leave or required paid family leave in the Families First Coronavirus Act or for wages taken into account for the Code Section 45S employer credit for paid family and medical leave.
- **Section 2302. Delay of payment of employer payroll taxes:** allows taxpayers to defer paying the employer portion of certain payroll taxes through the end of 2020. Notwithstanding any other provision of law, the payment for "applicable employment taxes" for the "payroll tax deferral period" will not be due before the "applicable date." For purposes of the above rules, the term "applicable employment taxes" means: (a) the taxes imposed under Code Section 3111(a) (social security taxes), (b) so much of the taxes imposed under Section 3211(a) as are attributable to the rate in effect under Section 3111(a), and (c) so much of the taxes imposed under Section 3221(a) as are attributable to the rate in effect under Code Section 3111(a) (RRTA taxes). The term "payroll tax deferral period"



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means the period beginning on the date of enactment of the Act and ending before Jan. 1, 2021. The term "applicable date" means: (a) Dec. 31, 2021, with respect to 50% of the amounts to which Act Section 2302(a) (employment taxes) and Act Section 2302(b) (self-employment tax), as the case may be, apply, and (b) Dec. 31, 2022, with respect to the remaining 50% of those amounts. An employer will be treated as having timely made all deposits of applicable employment taxes required (without regard to Act Section 2302) to be made during the payroll tax deferral period if all such deposits are made not later than the applicable date. The above rules will not apply to any taxpayer who has had indebtedness forgiven under Act Section 1106 with respect to a loan under Small Business Act Section 7(a)(36), as added by Act Section 1102, or indebtedness forgiven under Act Section 1109.

Notwithstanding any other provision of law, the payment for 50% of the taxes imposed under Code Section 1401(a) (self-employment taxes) for the payroll tax deferral period will not be due before the applicable date. For purposes of applying Code Section 6654 (requiring individuals to make estimated tax payments) to any tax year which includes any part of the payroll tax deferral period, 50% of the self-employment taxes imposed under Code Section 1401(a) for the payroll tax deferral period will not be treated as taxes to which Code Section 6654 applies. For purposes of Code Section 3504 (imposing third party liability for withholding tax), in the case of any person designated under that section (and any regulations or other guidance issued by IRS with respect to that section) to perform acts otherwise required to be performed by an employer, if an employer directs that person to defer payment of any applicable employment taxes during the payroll tax deferral period under Act Section 2302, the employer will be solely liable for the payment of the applicable employment taxes before the applicable date for any wages paid by that person on behalf of that employer during that period. (Act Section 2302(c)(1)).

- **Section 2303. Modifications for net operating losses (NOL):** Under Code Section 172(a) the amount of the NOL deduction is equal to the lesser of (a) the aggregate of the NOL carryovers to such year and NOL carrybacks to such year, or (b) 80% of taxable income computed without regard to the deduction allowable in this section. Thus, NOLs are currently subject to a taxable-income limitation and cannot fully offset income. The Act temporarily removes the taxable income limitation to allow an NOL to fully offset income.

Code Section 172(b)(1) provides that, except for farming losses and losses of property and casualty insurance companies, an NOL for any tax year is carried forward to each tax year following the tax year of the loss but isn't carried back to any tax year preceding the tax year of the loss. The Act provides that NOLs arising in a tax year beginning after Dec. 31, 2018, and before Jan. 1, 2021 can be carried back to each of the five tax years preceding the tax year of such loss.

- **Section 2304. Modification of limitation on losses for taxpayers other than corporations:** Code Section 461(l)(1) disallows the deduction of excess business losses by noncorporate taxpayers for tax years beginning after Dec. 31, 2017, and ending before Jan. 1, 2026. Generally, Code Section 461(l)(3)(A) provides that an “excess business loss” is the excess of the (1) taxpayer’s aggregate trade or business deductions for the tax year over (2) the sum of the taxpayer’s aggregate trade or business gross income or gain plus \$250,000 (as adjusted for inflation). The Act temporarily modifies the loss limitation for noncorporate taxpayers so they can deduct excess business losses arising in 2018, 2019, and 2020.
- **Section 2305. Modification of credit for prior year minimum tax liability of corporations:** Corporations (for which the alternative minimum tax was repealed for tax years after 2017) may claim outstanding MTCs (subject to limits) for tax years before 2021, at which time any remaining MTC may be claimed as fully refundable. Thus, under Code Section 53(e), the MTC is refundable for any tax year beginning in 2018, 2019, 2020, or 2021, in an amount equal to 50% (100% for tax years beginning in 2021) of the excess MTC for the tax year, over the amount of the credit allowable for the year against regular tax liability. (Code Section 53(e)).

The Act changes “2018, 2019, 2020, or 2021” (above) to “2018 or 2019,” and changes “(100% for tax years beginning in 2021)” to “(100% for tax years beginning in 2019)” (Code Section 53(e)(1), as amended by Act Section 2305(a), and Code Section 53(e)(2), as amended by Act Section 2305(a)). Therefore, the CARES Act allows corporations to claim 100% of AMT credits in 2019. The

CARES Act also provides for an election to take the entire refundable credit amount in 2018. (Code Section 53(e)(5), as amended by Act Section 2305(b)(1)). Under the Act, a claim for credit or refund where a corporation elects to take the entire refundable credit amount in 2018 must be treated as made under Code Section 6411, i.e., as a tentative carryback refund claim. (Act Section 2305(d)(1)). Taxpayers may file an application for a tentative refund of any amount for which a refund is due by reason of an election under Code Section 53(e)(5). The application, which must be filed before Dec. 31, 2020, must be in the manner and form IRS provides, must be verified in the same manner as an application for a tentative carryback adjustment, and must set forth: (a) the amount of the refundable credit claimed under Code Section 53(e) for the tax year, (b) the amount of the refundable credit claimed under Code Section 53(e) for any previously filed return for the tax year, and (c) the amount of the refund claimed. (Act Section 2305(d)(2)(A)). Within 90 days from the date the application is filed, IRS must: (a) review the application, (b) determine the amount of the overpayment, and (c) apply, credit, or refund the overpayment, in a manner similar to that provided in Code Section 6411(b) (allowance of tentative carryback adjustments). (Act Section 2305(d)(2)(B)).

- **Section 2306. Modifications of limitation on business interest:** The 2017 Tax Cuts and Jobs Act of 2017 (TCJA) generally limited the amount of business interest allowed as a deduction to 30% of adjusted taxable income. The Act temporarily and retroactively increases the limitation on the deductibility of interest expense under Code Section 163(j)(1) from 30% to 50% for tax years beginning in 2019 and 2020. (Code Section 163(j)(10)(A)(i) as amended by Act Section 2306(a)).

Under a special rule for partnerships, the increase in the limitation will not apply to partners in partnerships for 2019 (it applies only in 2020). (Code Section 163(j)(10)(A)(ii)(I) as amended by Act Section 2306(a)). For partners that do not elect out, any excess business interest of the partnership for any tax year beginning in 2019 that is allocated to the partner will be treated as follows (Code Section 163(j)(10)(A)(ii)(II) as amended by Act Section 2306(a)):

- 05% of the excess business interest will be treated as paid or accrued by the partner in the partner’s first tax year beginning in 2020 and isn’t subject to any limits in 2020. (Code Section 163(j)(10)(A)(ii)(II)(aa) as amended by Act Section 2306(a)).
- 50% of the excess business interest will be subject to the limitations of paragraph 163(j)(4)(B)(ii) (relating to the usual treatment of excess business interest allocated to partners) in the same manner as any other excess

business interest that is so allocated. (Code Section 163(j)(10)(A)(ii)(II)(bb) as amended by Act Section 2306(a)). In other words, it will remain suspended until the partnership allocates excess taxable income or excess interest income to the partner (or the partnership is no longer subject to Code Section 163(j)).

Taxpayers may elect out of the increase, for any tax year, in the time and manner IRS prescribes. Once made, the election can be revoked only with IRS consent. For partnerships, the election must be made by the partnership and can be made only for tax years beginning in 2020. (Code Section 163(j)(10)(A)(iii) as amended by Act Section 2306(a)).

In addition, taxpayers can elect to calculate the interest limitation for their tax year beginning in 2020 using the adjusted taxable income for their last tax year beginning in 2019 as the relevant base. For partnerships, this election must be made by the partnership. (Code Section 163(j)(10)(B)(i) as amended by Act Section 2306(a)).

If an election is made to calculate the interest limitation using 2019 adjusted taxable income for a tax year that is a short tax year, the adjusted taxable income for the taxpayer's last tax year beginning in 2019 which is substituted under the election will be equal to the amount which bears the same ratio to such adjusted taxable income as the number of months in the short taxable year bears to 12. (Code Section 163(j)(10)(B)(ii) as amended by Act Section 2306(a)).

- **Section 2307. Technical amendments regarding qualified improvement property:** The TCJA amended Code Section 168 to allow 100% additional first-year depreciation deductions (100% Bonus Depreciation) for certain qualified property. The TCJA eliminated pre-existing definitions for (a) qualified leasehold improvement property, (b) qualified restaurant property, and (c) qualified retail improvement property. It replaced those definitions with one category called qualified improvement property (QI Property). A general 15-year recovery period was intended to have been provided for QI Property. However, that specific recovery period failed to be reflected in the statutory text of the TCJA. Thus, under the TCJA, QI Property is within the 39-year recovery period for nonresidential rental property, which makes the QI Property category ineligible for 100% Bonus Depreciation.

The Act provides a technical correction to the TCJA, and specifically designates QI Property as 15-year property for depreciation purposes. (Code Section 168(e)(3)(E)(vii), as amended by Act Section 2307(a)(1)(A)). This makes QI

Property a category eligible for 100% Bonus Depreciation. QI property also is specifically assigned a 20-year class life for the Alternative Depreciation System. (Code Section 168(g)(3)(B), as amended by Act Section 2307(a)(3)(B)).

- **Section 4003. Emergency relief and taxpayer protections:** The discretionary loans made by the Treasury Secretary under the Act will be treated as debt for tax purposes and any interest on such loans will be qualified stated interest.
- **Section 4007. Suspension of certain aviation excise taxes:** Generally, no tax shall be imposed under Code Section 4261 (tax on the transportation by air of persons), Code Section 4271 (tax on the transportation by air of property), or Code Sections 4081 and 4041(c) (taxes on the use of kerosene in commercial aviation) from the date of enactment of the Act through Dec. 31, 2020.
- **Section 4013. Temporary relief from troubled debt restructurings:** From March 13, 2020, through the earlier of Dec. 31, 2020, or 60 days after the date on which the national emergency terminates, a financial institution may elect to suspend (a) the requirements under the generally accepted accounting principles (GAAP) for loan modifications related to COVID-19 that would otherwise be categorized as a troubled debt restricting and (b) any determination of a loan modified as a result of the effects of COVID-19 as being a troubled debt restructuring.
- **Section 4014. Optional temporary relief from current expected credit losses:** From the date of enactment of the Act through the earlier of Dec. 31, 2020, or the date on which the national emergency terminates, no insured depository institution, bank holding company, or any affiliate thereof shall be required to comply with the Financial Accounting Standards Board Accounting Standards Update No. 2016-13, "Measurement of Credit Losses on Financial Instruments," including the methodology for estimating allowances for credit losses.

IRS Issues Notice Regarding Filing Deadline Postponement

The IRS issued [Notice 2020-18, IRB 2020-15](#), which discusses the postponement, until July 15, 2020, of the filing date for 2019 federal income tax returns and 2020 federal income tax estimates that would otherwise be due on April 15, 2020. Notice 2020-18 also updates a previous Notice with respect to the amount of tax payment that can be postponed.

IRS Issues Information Release Regarding Employers Claiming Coronavirus-Related Credits

The IRS issued an [information release \(IR 2020-57\)](#) announcing that employers can begin taking advantage of two new refundable payroll tax credits created by the Families First Coronavirus Response Act (the Act). The IRS also announced

that it will release guidance on how eligible employers who pay qualifying sick or childcare leave under the Act will be able to file a request for an accelerated payment from the IRS.

IRS Issues FAQs Answering Filing and Payment Postponement Questions

The IRS, in a series of [frequently asked questions \(FAQs\)](#) on its website, provides answers with respect to its recently announced guidance that postpones until July 15, 2020, the filing of returns and payment of taxes that were initially due on April 15, 2020.

IRS Suspends Certain Compliance Programs Due to COVID-19

The IRS, in an [Information Release \(IR 2020-59\)](#), announced that beginning April 1, it will provide relief to taxpayers that range from easing payment guidelines for installment agreements and offers in compromise to postponing certain compliance actions.

IRS Extends Form 8966 (FATCA Report) Filing Deadline to July 15

The IRS, in its [FATCA News & Information newsletter](#) and its [FATCA FAQs website \(FAQ Q4 in the “Reporting” category\)](#), extended, from March 31 to July 15, the filing date of Form 8966, FATCA Report, for Reporting Model 2 Financial Institutions and Participating Foreign Financial Institutions.

IRS Finalizes Regulations Regarding Foreign Tax Credits and Covered Asset Acquisitions

The IRS issued [final regulations \(TD 9895\)](#), which provide rules for computing the disqualified portion of foreign income

taxes under Code Section 901(m) that is not taken into account for purposes of calculating the foreign income tax credit. The regulations address covered asset acquisitions, i.e., transactions that generally are treated as asset acquisitions for U.S. federal income tax purposes, but that are either treated as stock acquisitions or disregarded for foreign income tax purposes.

Reporting 2018 Empowerment Zone Gain Rollovers

The IRS, [on its website](#), explains how taxpayers can report the election to roll over gains from the sale of empowerment zone assets in 2018, now that the empowerment zone rules were retroactively extended through 2020.

Philadelphia Extends Property and Business Tax Deadlines

The City of Philadelphia has [extended the deadline for filing and paying](#) business income and receipts tax (BIRT), net profits tax (NPT), and real estate tax due to the COVID-19 pandemic. Philadelphia will follow the federal extension with respect to returns and payment of BIRT and NPT due April 15, 2020, which must now be filed and paid by July 15, 2020. The deadline for paying real estate tax due March 31, 2020, is extended 30 days to April 30, 2020, and the 30-day extension also applies to applications for an installment payment plan for 2020 real estate taxes.