

# Tax-related provisions regarding employee benefits in the Coronavirus Aid, Relief, and Economic Security (CARES) Act

**Waiver of 10% early distribution penalty.** The additional 10% tax on early distributions from IRAs and defined contribution plans, such as 401(k) plans, is waived for distributions made between January 1 and December 31, 2020 by a person who (or whose family) is infected with the coronavirus or who is economically harmed by the coronavirus (a qualified individual). Penalty-free distributions are limited to \$100,000, and may, subject to guidelines, be re-contributed to the plan or IRA. Income arising from the distributions is spread out over three years unless the employee elects to turn down the option to spread out the distributions. Employers may amend defined contribution plans to provide for these distributions. Additionally, defined contribution plans are permitted additional flexibility in the amount and repayment terms of loans to employees who are qualified individuals.

**Waiver of required distribution rules.** Required minimum distributions that otherwise would have to be made in 2020 from defined contribution plans (such as 401(k) plans) and IRAs are waived. This includes distributions that would have been required by April 1, 2020, due to the account owner's having turned age 70½ in 2019.

**Exclusion for employer payments of student loans.** An employee currently may exclude \$5,250 from income for benefits from an employer-sponsored educational assistance program. The CARES Act expands the definition of expenses qualifying for the exclusion to include employer payments of student loan debt made before January 1, 2021.

**Break for remote care services provided by high deductible health plans.** For plan years beginning before 2021, the CARES Act allows high deductible health plans to pay for expenses for tele-health and other remote services without regard to the deductible amount for the plan.

**Break for nonprescription medical products.** For amounts paid after December 31, 2019, the CARES Act allows amounts paid from Health Savings Accounts and Archer Medical Savings Accounts to be treated as paid for medical care even if they aren't paid under a prescription. And, amounts paid for menstrual care products are treated as amounts paid for medical care. For reimbursements after December 31, 2019, the same rules apply to Flexible Spending Arrangements and Health Reimbursement Arrangements.

**Pension funding delay.** The CARES Act gives single-employer pension plan companies more time to meet their funding obligations by delaying the due date for any contribution otherwise due during 2020 until January 1, 2021. At that time, contributions due earlier will be due with interest. Also, a plan can treat its status for benefit restrictions as of December 31, 2019 as applying throughout 2020.

**Accelerated payment of credits for required paid sick leave and family leave.** The CARES Act authorizes the IRS broadly to allow employers an accelerated benefit of the paid sick leave and paid family leave credits allowed by the Families First Coronavirus Response Act by, for example, not requiring deposits of payroll taxes in the amount of credits earned.

**Employee retention credit for employers.** Eligible employers can qualify for a refundable credit against, generally, the employer's 6.2% portion of the Social Security (OASDI) payroll tax, or against the Railroad Retirement tax, for 50% of certain wages (below) paid to employees during the COVID-19 crisis.

# Tax-related provisions regarding employee benefits in the Coronavirus Aid, Relief, and Economic Security (CARES) Act

2

The credit is available to employers carrying on business during 2020, including non-profits, but not government entities, whose operations for a calendar quarter have been fully or partially suspended as a result of a government order limiting commerce, travel, or group meetings. The credit is also available to employers who have experienced a more than 50% reduction in quarterly receipts, measured on a year-over-year basis relative to the corresponding 2019 quarter, with the eligible quarters continuing until the quarter after there is a quarter in which receipts are greater than 80% of the receipts for the corresponding 2019 quarter.

For employers with more than 100 employees in 2019, the eligible wages are wages of employees who aren't providing services because of the business suspension or reduction in gross receipts described above.

For employers with 100 or fewer full-time employees in 2019, all employee wages are eligible, even if employees haven't been prevented from providing services. The credit is provided for wages and compensation, including health benefits, and is provided for the first \$10,000 in eligible wages and compensation paid by the employer to an employee. Thus, the credit is a maximum \$5,000 per employee.

Wages don't include (1) wages taken into account for purposes of the payroll credits provided by the earlier Families First Coronavirus Response Act for required paid sick leave or required paid family leave, (2) wages taken into account for the employer income tax credit for paid family and medical leave (under [Code Sec. 45S](#)), or (3) wages in a period in which an employer is allowed for an employee a work opportunity credit (under Code Sec. 51). An employer can elect to not have the credit apply on a quarter-by-quarter basis.

The IRS has authority to advance payments to eligible employers and to waive penalties for employers who do not deposit applicable payroll taxes in reasonable anticipation of receiving the credit. The credit is not available to employers receiving Small Business Interruption Loans. The credit is provided for wages paid after March 12, 2020 through December 31, 2020.

**Charitable deduction liberalizations.** The CARES Act makes four significant liberalizations to the rules governing charitable deductions:

**(1)** Individuals will be able to claim a \$300 above-the-line deduction for cash contributions made, generally, to public charities in 2020. This rule effectively allows a limited charitable deduction to taxpayers claiming the standard deduction.

**(2)** The limitation on charitable deductions for individuals that is generally 60% of modified adjusted gross income (the contribution base) doesn't apply to cash contributions made, generally, to public charities in 2020 (qualifying contributions). Instead, an individual's qualifying contributions, reduced by other contributions, can be as much as 100% of the contribution base. No connection between the contributions and COVID-19 activities is required.

**(3)** Similarly, the limitation on charitable deductions for corporations that is generally 10% of (modified) taxable income doesn't apply to qualifying contributions made in 2020. Instead, a corporation's qualifying contributions, reduced by other contributions, can be as much as 25% of (modified) taxable income. No connection between the contributions and COVID-19 activities is required.

**(4)** For contributions of food inventory made in 2020, the deduction limitation increases from 15% to 25% of taxable income for C corporations and, for other taxpayers, from 15% to 25% of the net aggregate income from all businesses from which the contributions were made.

**Delayed payment of employer payroll taxes.** Taxpayers, including self-employeds, will be able to defer paying the employer portion of certain payroll taxes through the end of 2020, with all 2020 deferred amounts due in two equal installments, one at the end of 2021, the other at the end of 2022. Taxes that can be deferred include the 6.2% employer portion of the Social Security (OASDI) payroll tax and the employer and employee representative portion of Railroad Retirement taxes (that are attributable to the employer 6.2% Social Security (OASDI) rate). The relief isn't available if the taxpayer has had debt forgiveness under the CARES Act for certain loans under the Small Business Act as modified by the CARES Act (see below). For self-employeds, the deferral applies to 50% of the Self-Employment Contributions Act tax liability, including any related estimated tax liability.

**Certain SBA loan debt forgiveness isn't taxable.** Amounts of Small Business Administration Section 7(a)(36) guaranteed loans that are forgiven under the CARES Act aren't taxable as discharge of indebtedness income if the forgiven amounts are used for one of several permitted purposes. The loans have to be made during the period beginning on February 15, 2020 and ending on June 30, 2020.

IRS information site. Ongoing information on the IRS and tax legislation response to COVID- 19 can be found at <https://www.irs.gov/coronavirus>.

This document is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.  
© 2020 Thomson Reuters/Tax & Accounting. All Rights Reserved.