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Business Tax Relief under the CARES Act

The recently enacted Coronavirus Aid, Relief, and Economic Security Act, H.R. 748 (the CARES Act) is broadly intended to mitigate the economic pressures created by the pandemic. The following is a brief summary of income tax provisions aimed at helping corporate and business taxpayers.

- **Expanded use of net operating losses.** Under current law, businesses may only carry forward net operating losses (NOLs). Additionally, businesses may only use an NOL carry forward to offset a maximum of 80 percent of computed taxable income. The CARES Act expands the use of NOLs by (1) temporarily suspending the 80 percent of taxable income limit for tax years beginning in 2018, 2019, and 2020; and (2) allowing NOLs arising in tax years beginning in 2018, 2019, and 2020 to be carried back up to five years. Importantly, NOLs may be carried back to tax years prior to enactment of the Tax Cuts and Jobs Act (TCJA), which means that NOLs applied to those years may be more valuable because of higher effective rates of tax (the TCJA lowered the corporate tax rate considerably). This carryback is also provided to taxpayers which are pass-throughs or sole proprietorships. Accordingly, taxpayers should consider reviewing their current and recent tax positions relative to 2013 and thereafter to determine whether refunds might be available.

- **Relaxation of deductibility limit for business interest expense.** Under IRC sec. 163(j), enacted as part of the TCJA, the amount of business interest expense that may be deducted by a taxpayer is limited to the sum of: (1) the taxpayer’s business interest income for the year; (2) 30 percent of the taxpayer’s adjusted taxable income (ATI) for the year; and (3) the taxpayer’s floor plan financing interest expense for the year. The CARES Act increases the ATI limitation from 30 percent to 50 percent for tax years beginning in 2019 and 2020. Additionally, because the coronavirus will likely have an adverse effect on taxpayers’ 2020 ATI, taxpayers may to elect to use 2019 ATI for purposes of calculating their 163(j) business interest expense limitation for 2020.

- **AMT credits.** The TCJA repealed the alternative minimum tax (AMT); however, under current law, corporate AMT credits for prior AMT payments are allowed as refundable credits until 2021. The CARES Act accelerates the ability of corporations to recover their AMT credits and makes the credits refundable in tax years 2018 and 2019.

- **Corrective amendment regarding Qualified Improvement Property (QIP).** A technical error in the TCJA increased the depreciation schedule for QIP from 15 years to 39 years. The CARES Act corrects this error, reducing the recovery period to 15 years, thus rendering those costs eligible for bonus depreciation under IRC sec. 168(k) (only property with a useful life of 20 years or less is eligible for 168(k) bonus depreciation). This provision is effective for property placed in service after December 31, 2017. Taxpayers that placed such property in service in 2018 should consider amending their 2018 income tax return to treat the property as eligible for bonus depreciation (because 2019 corporate returns have yet to be filed, this change can be taken into account this year for tax year 2019). This amendment could prove very valuable for taxpayers pushed into an NOL position because of the 168(k) deduction, thus allowing them to carry the NOL back to a pre-TCJA year in which they had taxable income, as described above.

- **Taxation of Forgiven Loans.** Under the Paycheck Protection Program of the CARES Act, federally guaranteed loans may be issued to small employers to underwrite employee and other operating expenses for the next eight weeks which may be forgiven in whole or in part. The CARES Act provides that cancellation of indebtedness amounts under this program are to be excluded from gross income for federal income tax purposes.

- **Expanded Charitable Contribution Deductions.** Under current law, only individual taxpayers that itemize deductions are entitled to deduct charitable contributions, cash charitable contributions are limited to 60% of an individual’s adjusted gross income, and corporate charitable contributions are limited to 10% of a corporation’s taxable income. The CARES Act provides an additional maximum $300 charitable contribution for individuals using the standard deduction, increases the charitable contribution limit to 100% of an individual’s adjusted gross income and 25% of a corporation’s taxable income.

For more information about the ongoing developments related to the COVID-19
pandemic, please visit Miller & Martin’s Coronavirus Resources.