# Stimulus Bill – Tax Relief for Individuals and Businesses

*By Michael P. Duffy, Esq., CPA*

On March 27, 2020, President Trump signed into law H.R. 748, an 880-page stimulus bill (the "Stimulus Bill") designed to counter the economic effects of COVID-19. As you are probably already aware, the Stimulus Bill is broad in scope, and provides funding for the health care system, as well as relief for businesses and individuals impacted by shutdowns.

Below is a list of key changes the bill made to the Internal Revenue Code to provide relief for businesses and families.

## ENHANCED ACCESS TO RETIREMENT SAVINGS

One way many taxpayers will likely need to deal with a sudden loss of income is to tap retirement savings. For impacted taxpayers, the Stimulus Bill removes the 10% early withdrawal penalty on early withdrawals from retirement accounts of up to $100,000. The distribution may be taken from an employer-sponsored retirement plan or an individual retirement account. An impacted taxpayer is an individual who is diagnosed with COVID-19, or whose spouse or dependent is diagnosed with COVID-19, or who has otherwise suffered adverse financial consequences as a result of being furloughed, laid off, or quarantined. A withdrawal by an impacted taxpayer at any point during the 2020 calendar year will qualify.

Suspending the 10% penalty for hardship distributions is not new, but the Stimulus Bill gives additional relief. Taxpayers receiving such distributions have the option of spreading the income recognized from the withdrawal over a three-year period instead of having to recognize the income all at once. The Stimulus Bill also lets taxpayers repay the withdrawal at any point within three years of receipt in order to avoid recognizing taxable income. Amounts repaid under this provision are treated instead as if they were trustee-to-trustee transfers or rollover contributions.

For seniors, the Stimulus Bill offers another form of relief. During the 2020 tax year, required minimum distributions from retirement accounts are suspended. The rationale behind offering this incentive was to give seniors a respite from having to withdraw funds at a time where market prices on investments are depressed.

Lastly, Congress has temporarily increased the amount that may be borrowed from a qualified employer-sponsored retirement plan to $100,000, up from $50,000. Loans may now be taken against the entire present value of the nonforfeitable balance in the account as well, rather than being restricted to one-half of the present value. In order to take advantage of these expanded retirement plan loan rules, taxpayers must borrow the money by September 23, 2020. For taxpayers who already have such loans outstanding, all payments due as of March 27, 2020 through December 31, 2020 are delayed for one year.

## EMPLOYER TAX-FAVORABLE STUDENT LOAN ASSISTANCE

The Stimulus Bill added a temporary, but potentially powerful, fringe benefit for employers to offer workers with outstanding student loans. Under Section 127 of the Internal Revenue Code, employers have historically been able to pay or reimburse most current education costs incurred by employees pursuant to a qualifying "educational assistance program" plan. An educational assistance program is a separate written plan that allows an employer to cover the cost of employee educational expenses including, but not limited to, tuition fees, books, and supplies. Amounts paid under one of these plans are deductible as compensation paid by the employer, but the first $5,250 furnished is excluded from the recipient's taxable income. Like employer-sponsored healthcare coverage, the fact that the employer doesn't lose a deduction, even though the employee doesn't recognize the payment as income, makes this a valuable fringe benefit.

The Stimulus Bill changed the definition of qualifying educational expenses under Section 127 to include principal and interest payments on student loans. The revisions permit an employer to either directly pay the obligation or reimburse the employee for the costs of servicing such debt.

Employees with student loans have not generally been given much in terms of benefits in the Internal Revenue Code. Interest paid on student loan obligations is deductible, but this benefit is not available for taxpayers with high net incomes. The Stimulus Bill amendments to Section 127, however, are available to employees at all income levels.

There are two drawbacks to this change that employers and employees should be aware of. First, student loan interest and principal payments are eligible expenses under Section 127 only through December 31, 2020. Employers may therefore be reluctant to go through all the steps of adopting a Section 127 plan if the main purpose is to provide a benefit that won't be available next year. Second, if an employee receives a Section 127 benefit with respect to a particular student loan, that same employee can no longer deduct the student loan interest paid on that same loan.

## QUALIFIED IMPROVEMENT PROPERTY CLARIFICATION

One of the provisions of the Stimulus Bill is actually a technical amendment to the depreciation rules. When the Tax Cuts and Jobs Act ("TCJA") was passed in 2017, it was supposed to contain

a reclassification of certain improvements made to nonresidential real property that would have made such improvements eligible for bonus depreciation. Bonus depreciation permits a taxpayer to immediately deduct a significant part – and frequently all – of the costs incurred in acquiring or improving property in the year in which the property is placed in service. The rationale was that by permitting the immediate expensing of improvements made to real property, such as renovations in outfitting a restaurant or retail establishment, Congress could spur investment in those activities. Under the rules existing prior to passage of the TCJA, improvements made to real property were depreciable only using a straight-line methodology. But in the final version of the TCJA, Congress inadvertently left in a technical error that prevented so-called "qualified improvement property" from being eligible for bonus depreciation.

This error was picked up by tax experts and made known to Congress shortly after the passage of the TCJA, but it had not been corrected until recently. The Stimulus Bill fixes the error retroactive back to the original effective date of the TCJA. Because of the Stimulus Bill, taxpayers who made investments in qualified improvements to commercial property in 2018 and 2019 may actually go back and amend their tax returns to obtain refunds based on the amount of additional depreciation expense allowed.

## RELAXATION OF NET OPERATING LOSS RULES AND OTHER BUSINESS ITEMS

The Stimulus Bill relaxes various deduction limitations that will permit businesses to deduct more expenses in 2020 and potentially carry losses back to earlier tax years in order to generate refund opportunities.

The largest opportunity for many businesses is in the relation of the net operating loss rules. A net operating loss is a loss in one tax year than can be used to offset positive net income in another tax year. After passage of the TCJA in 2017, taxpayers have only been able to carry such losses forward to offset income in future periods. The Stimulus Bill permits net operating losses recognized in 2018, 2019, and 2020 to be carried back up to five years to offset income. Although large losses for the 2020 tax year aren't available until after this year ends, the ability to turn net operating losses into refunds in earlier periods is a huge opportunity for businesses to generate more cash in 2021. The Stimulus Bill further removes other limitations on the percentage of net operating losses that may be used to offset income in the 2018 and 2019 tax years.

The Stimulus Bill loosens up the amount of interest expense that may be deducted. In the tax years 2019 and 2020, the deduction limit has been increased from 30% to 50% of an eligible business's adjusted taxable income.

## RETENTION CREDITS AND TEMPORARY FICA PAYMENT EXTENSION

The Stimulus Bill creates a new retention credit that employers can use to offset some of their payroll tax liability. In order to qualify for this credit, an employer must either have suffered a decline in gross receipts during a quarter in 2020 that represents a more than 50% decrease over the same calendar quarter in 2019, or had its operations fully or partially suspended during the same quarter because of government authority in response to COVID-19. This decline in business – and credit eligibility – lasts until the employer's gross receipts in a subsequent quarter are at or exceed 80% of the gross receipts relative to the same quarter in 2019.

The retention credit amount is equal to half the "qualified wages" that an employer pays to employees in an eligible quarter, up to a maximum of $10,000 in qualified wages per employee in 2020. "Qualified wages" is a technical term in the statutory language, and what is included depends on whether the employer has 100 full-time employees or less. For smaller employers, qualified wages include all payments made to employees during the affected quarter or quarters, whereas for larger employers qualified wages include only wages paid to employees who are not performing services because of a COVID-19 emergency. The retention credit reduces the employer portion of Social Security taxes due for the quarter in which it is earned. To the extent the retention credit available exceeds the employer's Social Security payroll tax liability, the excess is refundable.

The Stimulus Bill provides employers with additional relief from the payment deadlines for the employer portion of federal Social Security and Medicare payroll taxes. From March 27, 2020 through December 31, 2020, the deadline to remit the payment of these payroll taxes to the IRS is postponed; half are now due on December 31, 2021, and the other half are due on December 31, 2022. With respect to the employer portion of Social Security and Medicare taxes incurred during the remainder of 2020, the Stimulus Bill treats employers as if they timely made all required deposits, assuming the tax is ultimately paid by the deferred due date. The extension of these payments also applies to the employer portion of Social Security and Medicare taxes assessed on a self-employed individual.

It should be noted the retention credit is not available to employers that receive a loan under the Small Business Administration's Paycheck Protection Program. The payment extension for the employer portion of payroll taxes is additionally not available to the extent an employer or self-employed individual both obtains a loan through the Paycheck Protection Program and receives any loan forgiveness under said program. Considering the Paycheck Protection Program is a major component of the total Stimulus Bill's aid for small businesses, employers should proceed cautiously to avoid any potential confusion concerning eligibility for overlapping benefits.

## ENHANCED CHARITABLE CONTRIBUTION DEDUCTION

The Stimulus Bill creates expanded opportunities for taxpayers to deduct contributions to charities in 2020. The first such change permits taxpayers claiming the standard deduction to deduct $300 worth of contributions to certain charities as an "above-the-line" deduction. This is a break from the traditional rule that provides charitable contributions may only be deducted by a taxpayer claiming itemized deductions on his or her personal income tax return.

For taxpayers who are claiming itemized deductions on their personal income tax returns, the Stimulus Bill raises the adjusted

gross income limit for the 2020 tax year to 100%. Normally, contributions made to a public charity may offset only 60% of the taxpayer's adjusted gross income for a given tax year. The Stimulus Bill provides that an individual taxpayer may offset all of his or her adjusted gross income by making charitable contributions of cash in 2020. Contributions in excess of this amount may still be carried forward for use in future tax years for up to five years.

Corporate taxpayers may now offset 25% of their income by making charitable contributions in 2020. This is an increase from the normal limit on charitable contributions a corporation may make in a single tax year, which is usually set at 10% of the corporation's total net income.

## CONCLUSION

For many folks, taxes might be the last thing on their mind right now. But it is important to note that the Internal Revenue Code touches many of the important pieces of the Stimulus Bill. If you have any questions on how your business might be affected by these changes, we would be happy to advise you.

**Michael P Duffy**
**P:** 508.459.8043
**F:** 508.459.8343
**E:** mduffy@fletchertilton.com

Fletcher Tilton PC
Attorneys at law

**FletcherTilton.com**

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