The Status of Temporary COVID Tax Relief Measures After the New Law

Before President Trump signed the latest economic stimulus law, several temporary COVID-19-related federal tax relief measures were set to expire on December 31, 2020. This article explains the current status of eight important temporary relief measures and whether the Consolidated Appropriations Act (CAA) extended them.

Note: The tax changes explained in this article are found in the CAA, which was signed into law on December 27, 2020, and two laws passed in March of 2020.

1. Borrowing from Your IRA and Paying It Back Up to Three Years Later with No Tax Consequences

Thanks to the CARES Act, which was signed on March 27, 2020, IRA owners who were adversely affected by the COVID-19 pandemic were eligible to take tax-favored "*coronavirus-related distributions"* from their IRAs during 2020 but only during 2020. Let's call these distributions CVDs. They can add up to as much as $100,000. You can then recontribute a CVD back into your IRA within three years of the withdrawal date and treat the withdrawal and later recontribution as a federal-income-tax-free rollover.

In effect, the CVD drill allows you to borrow up to $100,000 from your IRA(s) and recontribute (repay) the amount(s) any time up to three years later with no federal income tax consequences. There are no limitations on what you can use CVD funds for during the three-year period.

Status: The CAA doesn't extend the CVD deal beyond 2020, but it clarifies that similar tax rules can apply to IRA distributions taken by people who are affected by specified future disasters.

2. The Suspension of Retirement Account Required Minimum Distributions

In normal times, you must begin taking annual required minimum distributions (RMDs) from traditional IRAs and tax-deferred retirement plan accounts after you reach age 72 (or age 70½ if you turned 70½ before 2020). As a COVID-19 tax relief measure, The CARES Act suspended RMDs for calendar year 2020 but only for that one year. That meant that taxpayers could put off RMDs, not have to pay tax on them and allow their tax-deferred retirement accounts to continue growing.

Status: It was hoped that RMD relief would be extended into 2021 to help seniors who will only be getting a paltry 1.3% increase in their 2021 Social Security benefits. But the CAA didn't extend it.

3. Small Employer Tax Credits to Cover Required COVID-19-Related Employee Paid Leave

The Families First Coronavirus Response Act (FFCRA), passed in March of 2020, granted a new federal tax credit to small employers. It covers mandatory payments to employees who take time off under the law's COVID-19-related emergency sick-leave and family-leave provisions.

Specifically, a small employer can collect a tax credit equal to 100% of qualified emergency sick-leave and family-leave payments made by the employer pursuant to the FFCRA. However, the credit under the law only covers leave payments made between April 1, 2020, and December 31, 2020. Equivalent tax credit relief was available to self-employed individuals who took qualified leave between those dates.

Status: The FFCRA expired on December 31, 2020. However, the CAA extends the small employer credit to cover leave payments made between January 1, 2021, and March 31, 2021, that fall within the FFCRA framework. There is apparently no *requirement* for small employers to continue to provide emergency sick leave or family leave payments after December 31, 2020. But between January 1, 2021 and March 31, 2021, employers can *choose* to make voluntary leave payments that fall within the FFCRA framework and collect the credit if they do so. An equivalent tax credit is available to self-employed individuals who take qualified leave between those dates.

4. The Employee Retention Tax Credit

The CARES Act included the employee retention credit. The credit amount equaled 50% of qualified employee wages paid by an eligible employer in an applicable 2020 calendar quarter. It was subject to an overall wage cap of $10,000 per eligible employee and was available to eligible large and small employers.

Status: The CAA extends and greatly enhances the employee retention credit. Here are the details.

- Under the CARES Act rules, the credit only covered wages paid between March 13, 2020, and December 31, 2020.
- The new law extends the covered wage period to include the first two calendar quarters of 2021, ending on June 30, 2021.
- For the first two quarters of 2021 ending on June 30, the new law: 1) increases the overall covered wage ceiling to 70% of qualified wages paid during the applicable quarter (versus 50% under the original CARES Act rules) and 2) increases the per-employee covered wage ceiling to $10,000 of qualified wages paid during the applicable quarter (versus a $10,000 *annual* ceiling under the original rules).
  Key Point: For the first two quarters of 2021 ending on June 30, 2021, these changes effectively increase the maximum per-employee credit from $5,000 (50% x $10,000 of qualified wages) to $14,000 (70% x $10,000 of qualified wages x 2 quarters).
- For the first two quarters of 2021 ending on June 30, the new law includes a liberalized employer eligibility rule based on a required more-than-20% decline in gross receipts, compared to the corresponding 2019 quarter (versus a required more-than-50% decline under the original CARES Act rules).
- For the first two quarters of 2021 ending on June 30, the new law stipulates that for employers with 500 or more employees (versus 100 or more under the original rules), the employee retention credit can only be claimed for qualified wages paid to

employees who are unable to work due to a suspension of the employer's business or a lack of business. This change will allow more medium-sized employers to claim the credit in 2021.
- In a retroactive change, the new law stipulates that the employee retention credit can be claimed for qualified wages paid with proceeds from Paycheck Protection Program (PPP) loans that aren't forgiven. This retroactive change goes back to the day the CARES Act was signed.
- Finally, the new law includes technical corrections to the employee retention credit rules.

5. Payroll Tax Deferral Relief

Under payroll tax deferral relief offered by the CARES Act, your business could defer the 6.2% employer portion of the Social Security tax component of FICA tax owed on the first $137,700 of an employee's 2020 wages — for wages paid during the deferral period. The deferral period began on March 27, 2020, and ended on December 31, 2020. Your business must then pay the deferred payroll tax amount in two installments:

- Half by December 31, 2021, and
- The remaining half by December 31, 2022.

This payroll tax deferral option was available to all employers, with no requirement to show any specific COVID-19-related impact.

If you're self-employed, you could defer half of your liability for the 12.4% Social Security tax component of the self-employment (SE) tax for the deferral period. The deferral period began on March 27, 2020, and ended on December 31, 2020. You must then pay the deferred SE tax amount in two installments:

- Half by December 31, 2021, and
- The remaining half by December 31, 2022.

Status: Unfortunately, the CAA doesn't extend this deferral.

6. Employee-Side Payroll Tax Deferral Relief

For eligible wages paid between September 1, 2020, and December 31, 2020, an employer could elect to defer withholding of the 6.2% employee share of the Social Security tax on wages, under President Trump's presidential memorandum signed last summer.

Status: The CAA extends the deadline for an electing employer to pay in deferred Social Security tax amounts via wage withholding. The original wage withholding repayment window was January 1, 2021, through April 30, 2021. The CAA enlarges the window to January 1, 2021, through December 31, 2021. After that end date, interest and penalties will start accruing for employers with deferred amounts that haven't been repaid.

7. Liberalized Business Net Operating Loss (NOL) Deduction Rules

Business activities that generate tax losses can cause you or your business to have a net operating loss (NOL) for the year. The CARES Act significantly liberalized the NOL deduction rules and allows NOLs that arose in tax years beginning in 2018-2020 to be carried back five years. So, an NOL that arose in 2020 can be carried back to 2015. NOL carry-backs allow you to claim refunds for taxes paid in the carry-back years. Because tax rates were higher in pre-2018 years, NOLs carried back to those years may result in hefty tax refunds.

Status: The CAA does nothing for NOLs that arise in tax years beginning in 2021. As things currently stand, an NOL arising in a tax year beginning in 2021 can only be carried forward to future years.

8. Suspension of the Excess Business Loss Disallowance Rule

Current deductions for so-called excess business losses incurred by individuals in tax years beginning in 2018-2025 were disallowed before a CARES Act relief provision became law. An excess business loss is one that exceeds $250,000 ($500,000 for a married couple filing jointly). The $250,000/ $500,000 limits are adjusted annually for inflation. The CARES Act suspended the excess business loss disallowance rule for losses that arose in tax years beginning in 2018-2020.

Status: The CAA does nothing for excess business losses that arise in tax years beginning in 2021. As things currently stand, an excess business loss arising in a tax year beginning in 2021 is effectively treated as an NOL arising in that year, and it can only be carried forward to future years.

Stay Tuned

This article only contains information about the status of some COVID-19 tax relief measures. It's possible that additional laws may pass in the future. We can advise you about your situation. Stay tuned for possible further developments.

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