

## K&amp;L Gates LLP

**FFCRA AND CARES Act - Tax Provisions - Summary Guide - Updated as of May 15, 2020**

The following chart outlines the tax provisions contained in the Families First Coronavirus Response Act (“FFCRA”), the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), and certain related notices issued by the Internal Revenue Service (the “IRS”). The applicable guidance is loosely separated into relief for businesses and relief for individuals, recognizing that some provisions affect both individuals and businesses, and a [comparison of the affiliation & aggregation rules](#) chart for the Paycheck Protection Program and the Employee Retention Credit. Although detailed, this chart is not a substitute for legal and tax analysis. Additional information on COVID-19-related legislation and tax guidance can be found here: [Responding to COVID-19](#). References to the “Code” or “I.R.C.” throughout are to the Internal Revenue Code of 1986, as amended.

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Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
Paid Sick Leave Requirement	FFCRA Section 5102  29 U.S.C. § 2611  29 U.S.C. § 2612  IRS Notice 2020-21	Employers must provide paid sick time to employees who are unable to work (or telework) due to the effects of COVID-19. This requirement allows paid sick time provided by this section to be used before other paid leave that may be available to an employee, regardless of whether full-time or part-time (i.e., qualified leave under the FFCRA is in addition to employees’ preexisting leave entitlements). Paid sick time does not carry over from one year to the next. Employers cannot require an employee to find a replacement to cover hours an employee is using paid sick time.	An employee is entitled to paid sick leave if the employee:  (1) is subject to a governmental quarantine or isolation order;  (2) has been advised by a health care provider to self-quarantine;  (3) is experiencing symptoms of COVID-19 and seeking a medical diagnosis;	Date Relief Granted: April 1, 2020 (See IRS Notice 2020-21)  Relief Expiration Date: December 31, 2020

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<a href="#">IRS Tax Credits for Required Paid Leave FAQs</a>  <a href="#">COVID-19-Related Tax Credits: Determining the Amount of the Tax Credit for Qualified Sick Leave Wages FAQs</a>  <a href="#">COVID-19-Related Tax Credits: Determining the Amount of the Tax Credit for Qualified Family Leave Wages FAQs</a>  <a href="#">COVID-19-Related Tax Credits: Determining the Amount of Allocable Qualified Health Plan Expenses FAQs</a>	<p>Employees who are unable to work for reasons described in (1), (2), or (3) in the next column:</p> <ul style="list-style-type: none"> <li>• Full-time employees are entitled to 80 hours of paid sick time, which is available immediately for use.</li> <li>• Part-time employees are entitled to such paid sick time for the average number of hours the part-time employee works during an average two-week period.</li> <li>• Compensation for paid sick leave may not exceed \$511 per day, or \$5,110 in the aggregate. See limitations under “Emergency Paid Sick Leave” below.</li> </ul> <p>Employees who take paid sick leave to care for another individual or child described in (4), (5), or (6) in the next column:</p> <ul style="list-style-type: none"> <li>• Full-time employees are entitled to 80 hours of paid sick time at 2/3 the employee’s regular rate of pay.</li> <li>• Part-time employees are entitled to such paid sick time for the average number of hours the part-time employee works during an average two-week period.</li> <li>• Compensation for paid sick leave may not exceed \$200 per day, or \$2,000 in the aggregate. See limitations under “Emergency Paid Sick Leave” below.</li> </ul>	<p>(4) is caring for an individual who is subject to governmental quarantine, isolation order or self-quarantine;</p> <p>(5) is caring for the employee’s child because the child’s school or child care provider is closed; or</p> <p>(6) is experiencing a substantially similar circumstance related to COVID-19 as specified by the Department of Health and Human Services, in consultation with the Department of Labor.</p> <p>An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from this paid sick time.</p>	
Tax Credits for Paid Sick Leave	FFCRA Section 7001	Employers may take a credit against the employer share of FICA and Medicare taxes of 100 percent of an amount equal to the qualified sick leave wages paid by the employer each calendar quarter, subject to specified limitations. Wages are capped at 10 days per employee. If the employee is individually unable to work, compensation for paid sick leave may not exceed \$511 per day, or \$5,110 in the aggregate. If the	Eligible employers that are entitled to claim the refundable tax credits are businesses and tax-exempt organizations that (1) have fewer than 500 employees, and (2) are required under the FFCRA to pay “qualified sick leave wages.”	Date Relief Granted: April 1, 2020 (See IRS Notice 2020-21)

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<p>FFCRA Section 7005</p> <p>CARES Act Section 2301</p> <p>I.R.C. § 45S</p> <p>I.R.C. § 106(a)</p> <p>I.R.C. § 3111(a), (e) and (f)</p> <p>I.R.C. § 3121(a)</p> <p>I.R.C. § 3221(a)</p> <p>I.R.C. § 3231(e)</p> <p>31 U.S.C. § 1324</p> <p>IRS Notice 2020-21</p> <p>IRS Notice 2020-22</p> <p><a href="#">COVID-19-Related Tax Credits: General Information FAQs</a></p> <p><a href="#">COVID-19-Related Tax Credits: Determining the Amount of the Tax Credit for</a></p>	<p>employee is unable to work because the employee is caring for another individual or child, compensation for paid sick leave may not exceed \$200 per day, or \$2,000 in the aggregate. See limitations under “Paid Sick Leave Requirement” discussed above.</p> <p>Employers may elect not to have this section apply. The credit does not apply to the government of the United States, any State or political subdivision thereof, or any agency or instrumentality. Credits are limited to the employer’s share of Social Security tax (6.2 percent) imposed on those wages, increased by the employer’s allocable cost of maintaining eligible group health plan insurance coverage for the employee during the sick leave period, and reduced by credits allowed by Code Sections 3111(e) and (f) for such quarter.</p> <p>The tax credits allowed for paid sick leave are increased by the amount of tax imposed by the Medicare Tax (1.45 percent) (Code Section 3111(b)) on paid sick leave wages. See FFCRA Section 7005.</p> <p>Ordinarily, employers will report their total qualified sick and family leave wages and the related credits for each quarter on its quarterly federal employment tax returns (generally, Form 941). Excess credits over the employment taxes owed by employers are refundable under Code Sections 6402 and 6413(b), and the manner of refund is the same as the credit provisions under 31 U.S.C. § 1324. However, see also “Advanced Refunds of Payroll Credit for Paid Sick Leave and Paid Family Leave” in the discussion below.</p> <p>See also “Penalty Relief for Failure to Deposit Employment Taxes (Qualified Leave and Retention Wages)” in the discussion below.</p>	<p>“Qualified sick leave wages” are wages and compensation (and any qualified health plan expenses) an employer is required to be pay to an employee who is unable to work or telework because of either the employee’s personal health status (i.e., the employee is under COVID-19 quarantine, self-quarantine or has COVID-19 symptoms and is seeking medical diagnosis) or the employee’s need to care for others (i.e., the employee is carrying for someone with COVID-19 or for a child whose school or place of care is closed or child care provider is unavailable).</p> <p>Increases for group health plan coverage are limited to amounts excludable from employee’s income under Code Section 106(a).</p> <p>Credits will increase employer gross income by the amount of the credit. Any wages taken into account in determining this credit will not be taken into account for purposes of determining the credit allowed under Code Section 45S for paid family and medical leave (effectively denying a double benefit).</p> <p>Any wages taken into account in determining this credit will reduce the available credit amount that may be taken against wages paid for purposes of the Employee Retention Credit under the CARES Act Section 2301. See limitations under “Employee Retention Credit for Employers Subject to Closure Due to COVID-19”.</p>	<p>Relief Expiration Date: December 31, 2020</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<a href="#">Qualified Sick Leave Wages FAQs</a>  <a href="#">COVID-19-Related Tax Credits: Determining the Amount of Allocable Qualified Health Plan Expenses FAQs</a>  <a href="#">COVID-19-Related Tax Credits: How to Claim the Credits FAQs</a>  <a href="#">COVID-19-Related Tax Credits: Special Issues for Employers FAQs</a>			
Tax Credit for Paid Family Leave	FFCRA Section 7003  FFCRA Section 7001 & 7005  CARES Act Section 2301  I.R.C. § 3111(a), (e) and (f)	<p>Employers may take a credit against the employer share of FICA and Medicare taxes of 100 percent of an amount equal to the qualified family leave wages paid by the employer each calendar quarter, subject to specified limitations. The amount of qualified family leave wages that may be taken into account for each employee is limited to \$200 per day and \$10,000 for all calendar quarters. See also "Increase FMLA Limitation" below.</p> <p>Employers may elect not to have this section apply. The credit does not apply to the government of the United States, any State or political subdivision thereof, or any agency or instrumentality. Credits are limited to the employer's share of Social Security tax (6.2 percent) imposed on those wages, increased by the employer's allocable cost of maintaining</p>	<p>Eligible employers that are entitled to claim the refundable tax credits are businesses and tax-exempt organizations that (1) have fewer than 500 employees, and (2) are required under the FFCRA to pay "qualified family leave wages."</p> <p>"Qualified family leave wages" are wages and compensation (and any qualified health plan expenses) an employer is required to pay to an employee who is unable to telework because the employee is caring for a child whose school or place of care is closed or child care provider is unavailable due to COVID-19-related reasons.</p>	<p>Date Relief Granted: April 1, 2020 (See IRS Notice 2020-21)</p> <p>Relief Expiration Date: December 31, 2020</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<p>I.R.C. § 3121(a)</p> <p>I.R.C. § 3221(a)</p> <p>I.R.C. § 3231(e)</p> <p>I.R.C. § 6402(a)</p> <p>I.R.C. § 6413(b)</p> <p>31 U.S.C. § 1324</p> <p>IRS Notice 2020-21</p> <p>IRS Notice 2020-22</p> <p><a href="#">COVID-19-Related Tax Credits: General Information FAQs</a></p> <p><a href="#">COVID-19-Related Tax Credits: Determining the Amount of the Tax Credit for Qualified Family Leave Wages FAQs</a></p> <p><a href="#">COVID-19-Related Tax Credits: Determining the Amount of Allocable</a></p>	<p>eligible group health plan insurance coverage for the employee during the sick leave period, and reduced by credits allowed by Code Sections 3111(e), 3111(f) and FFCRA Section 7001.</p> <p>The tax credits allowed for paid family leave are increased by the amount of tax imposed by the Medicare Tax (1.45 percent) (Code Section 3111(b)) on paid family leave wages. See FFCRA Section 7005.</p> <p>Ordinarily, employers will report their total qualified sick and family leave wages and the related credits for each quarter on its quarterly federal employment tax returns (generally, Form 941). Excess credits over the employment taxes owed by employers are refundable under Code Sections 6402 and 6413(b), and the manner of refund is the same as the credit provisions under 31 U.S.C. § 1324. However, see also “Advanced Refunds of Payroll Credit for Paid Sick Leave and Paid Family Leave” in the discussion below.</p> <p>See also “Penalty Relief for Failure to Deposit Employment Taxes (Qualified Leave and Retention Wages)” in the discussion below.</p>	<p>Increases for group health plan coverage are limited to amounts excludable from employee’s income under Code Section 106(a).</p> <p>Credits will increase employer gross income by the amount of the credit. Any wages taken into account in determining this credit will not be taken into account for purposes of determining the credit allowed under Code Section 45S for paid family and medical leave (effectively denying a double benefit).</p> <p>Any wages taken into account in determining this credit will reduce the available credit amount that may be taken against wages paid for purposes of the Employee Retention Credit under the CARES Act Section 2301. See limitations under “Employee Retention Credit for Employers Subject to Closure Due to COVID-19” in the discussion below.</p>	

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<a href="#">Qualified Health Plan Expenses FAQs</a>  <a href="#">COVID-19-Related Tax Credits: How to Claim the Credits FAQs</a>  <a href="#">COVID-19-Related Tax Credits: Special Issues for Employers FAQs</a>			
Wages paid under Act, not wages for 3111 purposes	FFCRA Section 7005  FFCRA Sections 7001 and 7003  I.R.C. § 1324  I.R.C. § 3111(a), (b), (e), and (f)  I.R.C. § 3221(a)  IRS Notice 2020-21  <a href="#">IRS Tax Credits for Required Paid Leave FAQs</a>	<p>Wages required to be paid to employees under the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act shall not be considered wages for purposes of the Federal Insurance Contributions Act ("FICA") and Railroad Retirement Tax Act ("RRTA").</p> <p>The tax credits allowed for paid sick leave (FFCRA Section 7001) and paid family leave (FFCRA Section 7003) are increased by the amount of tax imposed by the Medicare Tax (1.45 percent) (Code Section 3111(b)) on paid sick leave wages and paid family leave wages.</p> <p>Note that employers may elect not to have FFCRA Sections 7001 or 7003 apply. As stated earlier, these credits are limited to the employer's share of FICA and Medicare taxes imposed on those wages, and are increased by the employer's allocable cost of maintaining eligible group health plan insurance coverage for the employee during the sick leave and/or family leave period, and reduced by credits allowed by Code Sections 3111(e) and (f). For Section 7003, the credit is also reduced by FFCRA Section 7001.</p> <p>Excess credits over the employment taxes owed by employers are refundable under Code Sections 6402 and 6413(b), and the manner of refund is the same as the credit provisions under 31 U.S.C. § 1324.</p>	For denial of double benefit with respect to the credit increase, see FFCRA Sections 7001 and 7003 above.	Date Relief Granted: April 1, 2020 (See IRS Notice 2020-21)  Relief Expiration Date: December 31, 2020

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
Paycheck Protection Program and related PPP Loan Forgiveness	<p>CARES Act Section 1102</p> <p><a href="#">CARES Act Sec. 1106 and related IFRs</a></p> <p>PPPHCE Act Sec. 101(a) (April 24, 2020), P.L. 116-139.</p> <p>15 U.S.C. 636(a) Small Business Act Sec. 7(a)</p> <p>IRC §61(a)(11) explicitly inapplicable.</p> <p><a href="#">Treasury / SBA FAQs</a></p> <p><a href="#">SBA Website: "Frequently Asked Questions Regarding Participation of Faith-Based Organizations in the PPP and EIDL Programs"</a></p> <p><a href="#">IRS Notice 2020-32</a></p>	<p>The CARES Act Paycheck Protection Program ("PPP") provides federal guarantees for certain small businesses and nonprofits that take out loans for the purpose of paying (1) payroll costs, (2) employee health care costs, (3) employee salaries, commissions, etc., (4) mortgage interest, (5) rent, (6) utilities, and/or (7) interest on debts incurred prior to the covered period of February 15, 2020, through June 30, 2020. Details on eligibility for the program are further described here: <a href="#">[Nonprofit FAQ]</a> and <a href="#">PPP Guide</a>. The Interim Final Rules adopt the same standard as the PPP Loan forgiveness and require that seventy-five percent of the loan proceeds be used for payroll expenses even if the borrower does not seek loan forgiveness <a href="#">[Nonprofit FAQ]</a> and <a href="#">PPP Guide</a></p> <p>Although amounts paid to independent contractors or sole proprietors do not count as payroll costs, independent contractors and sole proprietorships may apply for their own PPP Loans and PPP Loan forgiveness if they meet the eligibility requirements.</p> <p>"Payroll costs" do <u>not</u> include individual compensation in excess of an annualized salary of \$100,000 (prorated for the covered period), taxes imposed by or withheld under FICA, income tax withholding, or the Railroad Retirement Tax Act, of the Code, compensation for nonresident employee, or qualified sick or family leave for which a credit is allowed under FFCRA Sections 7001 or 7003.</p> <p>Loans made under the PPP will be eligible for forgiveness in an amount equal to payroll costs incurred and payments made during the covered period (eight-week period beginning on the date on which the lender makes the first disbursement of the covered loan to the borrower). Borrowers may <u>not</u> make multiple draws from the loan to delay the start of the eight-week period. Forgiven amounts will <u>not</u> be included in the borrower's taxable income. The statute is silent on whether taxpayers may deduct expenses related to this non-included forgiven debt. <small>[ACM1]</small></p> <p>Applicants for loans under the PPP cannot receive loans for the same purpose and duplicative in amount under Section 7(a) of the Small Business Act during the covered period.</p>	<p>Applicants for PPP Loans must certify that the loan is necessary to support the applicant's ongoing operation regardless of whether the applicant intends to later seek loan forgiveness. SBA guidance suggests that public companies with substantial market value and access to capital markets will be unlikely to be able to make this certification in good faith. Private companies with access to capital are similarly unlikely to be able to make the certification in good faith. The SBA intends to review loans in excess of \$2M prior to granting loan forgiveness. Loans in which the original principal amount was over \$2M CANNOT be paid down to below \$2M to avoid review.</p> <p>A safe harbor in Section III, Question 5 of the April 24 IFR provides that borrowers who took out a PPP loan prior to April 24, 2020 and repay the loan in its entirety by May 7, 2020 will be deemed to have made the above certification in good faith. This Safe Harbor has been extended to May 18, 2020 in the Department of Treasury (the "Treasury") /SBA FAQs.</p> <p>PPP Loans are limited to an aggregate maximum of \$20,000,000 per corporate group. Treasury IFRs state that businesses are part of a single corporate group if they are majority owned, whether directly or indirectly, by a common parent.</p> <p>Applicants for loan forgiveness must submit an application with documentation verifying the number of full-time employees on payroll and pay rates for the covered period and certifying the loan was used to retain employees. Additional information may be required by the lenders implementing the program.</p> <p>The amount of loan forgiveness may not exceed the principal amount under the covered loan.</p> <p>The amount of loan forgiveness will be reduced proportionally by any reduction in the number of employees retained as compared to February 15, 2020. The amount of reduction will be calculated by multiplying the total of eligible costs by the number obtained by dividing the average number of full-time equivalent employees per</p>	<p>Relief Granted on March 27, 2020</p> <p>Covered Period:</p> <p>Feb. 15, 2020 through June 30, 2020 (inclusive)</p>



Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
		<p>The loan forgiveness amount is equal to the principal and interest paid in an amount equal to the borrower’s documented eligible costs, <b>reduced</b> by the amount of loan proceeds used for non-payroll costs in excess of 25 percent of the full amount of the loan. Continuing guidance is expected on loan forgiveness.</p> <p>The following costs are eligible for forgiveness under the CARES Act if they are incurred during the covered period of eight weeks beginning on the origination date of the PPP Loan (unless otherwise specified below):</p> <ul style="list-style-type: none"> <li>a) Payroll costs as defined in paragraph 36 of Section 7(a) of the Small Business Administration (“SBA”) (as amended by the CARES Act),</li> <li>b) Costs related to continuing health care benefits during periods of paid sick, medical, or family leave,</li> <li>c) Mortgage interest (but <u>not</u> principal) payments incurred in the ordinary course of business before February 15, 2020,</li> <li>d) Rent under a lease in force before February 15, 2020,</li> <li>e) Utility payments for certain services for which service began before February 15, 2020,</li> <li>f) Interest (but <u>not</u> principal) on any other debt obligations so long as such debt obligations were incurred prior to February 15, 2020, and</li> <li>g) Refinancing Economic Injury Disaster Loans (“EIDLs”) <u>used for payroll costs</u> made between January 31, 2020, and April 3, 2020.</li> </ul> <p>Employers may take advantage of the employer payroll tax deferral offered under CARES Act Section 2302 for amounts prior to the date on which loan forgiveness is granted.</p>	<p>month employed by the eligible recipient during the covered period; by</p> <p>For <u>non-seasonal employers</u>, the average number of full-time equivalent employees per month employed by the eligible recipient during either the period beginning on February 15, 2019, and ending on June 30, 2019, <b>or</b>, at the election of the borrower, the period beginning on January 1, 2020, and ending on February 29, 2020.</p> <p>For <u>seasonal employers</u>, the average number of full-time equivalent employees employed during the period beginning on February 15, 2019, and ending on June 30, 2019.</p> <p>The <u>average number of full-time equivalent employees per month</u> is calculated based on the average number of full-time equivalent employees for each pay period falling within the month.</p> <p>The amount of loan forgiveness will also be reduced proportionally by any reduction greater than 25 percent in the pay (measured during the most recent full quarter such employee was employed prior to the covered loan period) of any employee who received wages or salary, at an annualized rate <u>not</u> exceeding \$100,000 during any single pay period in 2019.</p> <p>Eligible recipients may receive forgiveness for additional wages paid to tippable employees as described in section 3(m)(2)(A) of the Fair Labor Standards Act.</p> <p>Reductions that are corrected, either by re-hiring the previously eliminated employee <u>or</u> by hiring a new employee, no later than June 30, 2020, shall not be counted as reductions. If an employer makes a good faith, written offer of rehire which an employee rejects, and the employer documents such rejection, such employee will be not count against that employer’s loan forgiveness eligibility. Note that employees who reject</p>	

Relief for Businesses				
<u>Subject</u>	<u>Applicable Law and Regulations</u>	<u>General Description of Relief</u>	<u>Conditions of Relief</u>	<u>Effective Dates</u>
			<p>reemployment offers may forfeit eligibility for continued unemployment compensation.</p> <p>The loan forgiveness amount will be reduced if more than 25 percent of the loan proceeds are used for non-payroll costs.</p> <p>Loan forgiveness is only available for costs incurred in the eight weeks following the issuance of the loan.</p> <p>Undocumented loans will not be eligible for loan forgiveness.</p> <p>Employers who take out PPP Loans are not eligible for the Employee Retention Credit under CARES Act Section 2301.</p> <p>Employers whose PPP Loans are forgiven may not take deductions for payroll expenses paid for with funds from the forgiven PPP loan.</p> <p>PPP Loans are limited to entities that either 1) have no more than 500 employees or, 2) meet the applicable SBA size standard for their industry. Because PPP Loans are SBA Loans, borrowers are bound by SBA affiliation rules unless specifically exempted under the CARES Act. SBA affiliation rules include employees of foreign affiliates when calculating a borrower's size.</p> <p>Due to conflicting SBA guidance, borrowers who applied for loans prior to May 5, 2020 and excluded non-U.S. employees from headcount calculations will not be found to be ineligible. Such borrowers will also not be found to have made inaccurate certifications solely on the basis of having excluded non-U.S. employees from headcount numbers.</p>	
Emergency EIDL Grants	<p>CARES Act Sec. 1110</p> <p>PPPHCE Act Secs. 101(b) and (c)</p>	<p>Expands eligibility for loans under section 7(b)(2) of the Small Business Act ("SBA") and provides for emergency advance grant of certain loan amounts prior to a final decision on the full loan application.</p> <p>Advances paid to applicants under this section need not be repaid, even if the applicant is ultimately denied its SBA Section 7(b)(2) loan.</p>	<p>During the covered period, eligibility for loans under Section 7(b)(2) of the SBA is expanded to include "eligible entities" in addition to small business concerns, private nonprofit organizations, and small agricultural cooperatives.</p> <p>Eligible entities are:</p>	<p>Covered Period:</p> <p>Jan. 31, 2020 through Dec. 31, 2020</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<p>15 USC §636(b)(2)</p> <p>15 USC §636(a)</p>	<p>Amounts advanced under this section will reduce the amount of loan forgiveness available for payroll costs under Section 7(a) of the SBA.</p> <p>Applicants who receive advances under this section and then later transfer into or are approved for the loan program under Section 7(a) of the SBA shall have the amount of their loan forgiveness reduced by the amount of their advance under this provision.</p>	<ul style="list-style-type: none"> <li>a) Any business with not more than 500 employees,</li> <li>b) Any individual operating under a sole proprietorship, either with or without employees, or as an independent contractor,</li> <li>c) A cooperative with not more than 500 employees,</li> <li>d) An ESOP as defined in Section 3 of the SBA with not more than 500 employees, or</li> <li>e) A tribal small business concern as defined in Section 31(b)(2)(C) of the SBA.</li> <li>f) An agricultural enterprise as defined in section 18(b) of the SBA with not more than 500 employees</li> </ul> <p>Eligible entities, including small business concerns, private nonprofit organizations, and small agricultural cooperatives, that apply for loans under Section 7(b)(2) of the SBA may request an advance by self-certifying under penalty of perjury that the requesting entity is an eligible entity as defined above. Such advances:</p> <ul style="list-style-type: none"> <li>a) Must be requested within three days after the administrator receives the application,</li> <li>b) May not exceed \$10,000,</li> <li>c) May be used for any allowable purpose under Section 7(b)(2) of the SBA, including               <ul style="list-style-type: none"> <li>a. Providing paid sick leave to employees directly affected by COVID-19,</li> <li>b. Maintaining payroll to retain employees during business disruptions or substantial slowdowns,</li> </ul> </li> </ul>	

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
			<ul style="list-style-type: none"> <li>c. Meeting increased costs to obtain raw materials due to supply chain disruptions,</li> <li>d. Making rent or mortgage payments, and</li> <li>e. Repaying obligations that cannot otherwise be met due to revenue losses.</li> </ul>	
Employee Retention Credit for Employers Subject to Closure Due to COVID-19	<p>CARES Act, Section 2301</p> <p>CARES Act Section 1102</p> <p>FFCRA Sections 7001 and 7003</p> <p>I.R.C. § 45S</p> <p>I.R.C. § 51</p> <p>I.R.C. § 52(a) and (b)</p> <p>I.R.C. § 414(m) and (o)</p> <p>I.R.C. § 448(c)</p> <p>I.R.C. § 501(a) and (c)</p> <p>I.R.C. § 3111(a), (e) and (f)</p> <p>I.R.C. § 3121(a)</p>	<p>Employers may claim a refundable payroll tax credit for 50 percent of the “qualified wages” (i.e., qualified retention wages, maximum \$10,000 for all calendar quarters, including qualified health plan expenses) paid to each employee of such employer for each calendar quarter. The maximum credit with respect to any employee is \$5,000.</p> <p>The credit is available to employers carrying on a “trade or business” (which has the same meaning when used in Code Section 162) in calendar year 2020 whose:</p> <ul style="list-style-type: none"> <li>(1) operations were fully or partially suspended during any calendar quarter due to a Federal, State or local “governmental order”, or</li> <li>(2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year (i.e., a “significant decline in gross receipts”).</li> </ul> <p>“Governmental orders” are orders from an appropriate governmental authority that limit commerce, travel, or group meetings due to COVID-19 in a manner that affects an employer’s operation of its trade or business, including orders that limit hours of operation. Taxpayers should review the IRS FAQs for the Employee Retention Credit which discuss when an employer operating an essential and/or non-essential business is “partially suspended” due to a governmental order. For more information regarding the application of the aggregation rule when determining whether an employer is “partially suspended”, see the “Comparison of the Affiliation &amp; Aggregation Rules” chart discussed below.”</p> <p>For employers satisfying (2) above, eligibility ceases at the end of the calendar quarter in which gross receipts are greater than 80 percent of gross receipts for the same calendar quarter for the prior year. “Gross receipts” for purposes of this credit has the same meaning as when</p>	<p>Taxpayers are advised to review the IRS FAQs for the Employee Retention Credit which, among other things, attempts to clarify issues surrounding employer eligibility. However, the conclusions reached and examples provided by the IRS are less intuitive and contain inconsistencies which are harder to reconcile with CARES Act objectives and policy.</p> <p>Eligible employers may include:</p> <ul style="list-style-type: none"> <li>• Employers where the workplace is closed by a governmental order, but the employer’s workplace remains open for other purposes, or the employer is able to continue certain operations remotely.</li> <li>• Employers that reduce operating hours due to a governmental order.</li> <li>• Employers that operate a trade or business in multiple locations and are subject to State and local governmental orders limiting operations in some, but not all, jurisdictions</li> </ul> <p>Ineligible employers may include:</p> <ul style="list-style-type: none"> <li>• Employers who voluntarily suspend operation of a trade or business or reduce hours and are not subject to any governmental orders that restrict operations.</li> </ul>	<p>Date Relief Granted: March 13, 2020</p> <p>Relief Expiration Date: December 31, 2020</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<p>I.R.C. § 3221(a)</p> <p>I.R.C. § 3231(e)</p> <p>I.R.C. § 3511(d)(2)</p> <p>I.R.C. § 6402(a)</p> <p>I.R.C. § 6413(b)</p> <p>15 U.S.C. § 636(a) Small Business Act § 7(a)</p> <p>31 U.S.C. § 1324</p> <p>IRS Notice 2020-22</p> <p><a href="#">IRS Employee Retention Credit FAQs</a></p> <p>IRS Form 7200, Instructions, and <a href="#">IRS COVID Tax Tip 2020-47</a></p> <p>IRS Form 941</p> <p><a href="#">IRS COVID Tax Tip 2020-58</a></p>	<p>used under Code Section 448(c), and is determined based on the entire aggregated group. For more information regarding the application of the aggregation rule for calculation of a single employer's gross receipts, see the "Comparison of the Affiliation &amp; Aggregation Rules" chart discussed below."</p> <p>"Qualified wages" are:</p> <ul style="list-style-type: none"> <li>For employers with an average of greater than 100 full-time employees, wages paid to employees when they are <b>not providing services</b> (i.e., employees who did not work or were working a reduced schedule but being paid for more hours than they worked) for reasons stated under (1) or (2) above.</li> <li>For employers with an average of 100 or fewer full-time employees, all employee wages whether they worked or not.</li> <li>Qualified wages paid or incurred by an employer with respect to an employee for any period are limited by to the amount the employee would have been paid for working an equivalent duration the 30 days immediately preceding the period.</li> </ul> <p>"Qualified health plan expenses" are amounts paid or incurred by an employer that are properly allocable to employees' qualified wages to provide and maintain a group health plan, but only to the extent that these amounts are excluded from the employees' gross income. The term does not include amounts the employee paid for with after-tax contributions. However, an employer may not treat health plan expenses allocable to the time for which the employees are receiving wages as qualified wages, rather only the portion of health plan expenses allocable to the time that the employees are not providing services are treated as qualified wages. If no wages are paid to an employee, but the employer continues to cover 100 percent of the health plan expenses that are allocable to the time that the employees are not providing services, such health plan expenses are qualified wages.</p>	<ul style="list-style-type: none"> <li>Employers whose workplaces are closed by a governmental order, but who are able to continue comparable operations prior to the closure by requiring employees to telework.</li> <li>Employers operating an essential business as determined by a governmental order. Governmental orders that cause customers of an essential business to stay home do not rise to the level of a governmental order for an essential business. However, an essential business may be an eligible employer if its suppliers are unable to make deliveries of critical goods or materials due to a governmental order that causes the supplier to suspend its operations.</li> </ul> <p>When a governmental order to fully or partially suspend an eligible employer's business operations is subsequently lifted, the employer is considered to only have business operations suspended for the periods during the calendar quarters where the trade or business operations were fully or partially suspended. If the governmental order was effective for a portion of the calendar quarter, then the employer is an eligible employer, but can only claim the credit for wages paid during the period in which the governmental order was in force.</p> <p>The credit is available to tax-exempt organizations described under Code Section 501(c) who are exempt from tax under Code Section 501(a). A tax-exempt organization's operations must have been fully or partially suspending during any calendar quarter due to a government order. The IRS plans to issue future guidance addressing how a tax-exempt organization can determine whether it experiences a "significant decline in gross receipts."</p> <p>Employers in U.S. territories are eligible for this credit. Tribes or tribal entities may be eligible if they operate a trade or business.</p> <p>All persons treated as a single employer under Code Sections 52(a) or (b) or 414(m) or (w) shall be treated as one employer for purposes of this Section 2301. For more information, see the "Comparison of the Affiliation &amp; Aggregation Rules" chart discussed below.</p>	

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
		<p>Employers may elect not to apply this credit for any calendar quarter by not claiming the credit on the employer's employment tax return. If an employer does not claim the credit for one calendar quarter, it is not prohibited from claiming the credit in a subsequent calendar quarter provided it meets the requirements to claim the credit. These credits are treated as a described under Code Section 3511(d)(2).</p> <p>Credits are limited by the applicable employment taxes (and reduced by credits allowed by Code Sections 3111(e) and (f) and FFCRA Sections 7001 and 7003) on the wages paid with respect to the employment of all the employees of the employer for such calendar quarter. "Applicable employment taxes" means the Social Security tax and the "Tier 1" excise tax (relating to the Railroad Retirement Act) imposed under Code Sections 3111(a) and 3221(a), respectively.</p> <p>Excess credits over the employment taxes owed by employers are refundable under Code Sections 6402(a) and 6413(b), and the manner of refund is the same as the credit provisions under 31 U.S.C. § 1324. .</p> <p>If the anticipated credit for Qualified Wages exceeds the employer's required federal employment tax deposits for that calendar quarter, the employer can apply for an advance refund of the remaining balance of the credit for which it does not owe federal employment tax deposits (effectively allowing the employer to immediately receive the benefit of the tax credit). See IRS Form 7200 "Advance Payment of Employer Credits Due to COVID-19," and instructions thereto.</p> <p>Employers may use a third party to report and pay employment taxes to the IRS to get the Employee Retention Credit, and the payroll reporting agent can sign and submit Form 7200 on behalf of the employer. However, the employer and the third party payer will be liable for employment taxes that are due in connection with this credit that are improperly claimed.</p> <p>Alternatively, in anticipation of receiving the credits, an employer may choose to fund Qualified Wages by accessing federal employment taxes, including those previously withheld that are required to be deposited with the IRS. However, the employer must account for the</p>	<p><u>Other Exclusions from Eligibility</u></p> <ul style="list-style-type: none"> <li>• The credit cannot be taken if the employer is allowed a credit under Code Section 51 (work opportunity credits) with respect to such employee for such period.</li> <li>• Any wages taken into account in determining this credit will not be taken into account for purposes of determining the credit allowed under Code Section 45S (effectively denying a double benefit).</li> <li>• Employers who receive a covered (PPP) loan are not eligible for this credit, regardless of whether and when the loan is forgiven. Covered loans are loans guaranteed under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of the CARES Act. The Treasury/SBA FAQs indicate that employers who have applied for a PPP loan, received payment, and repaid the loan by May 18, 2020 will be treated as though they had not received a covered loan, and remain eligible for this credit.</li> <li>• The credit does not apply to the government of the United States, any State or political subdivision thereof, or any agency or instrumentality.</li> <li>• Self-employed individuals are not eligible for this credit for their own self-employment earnings, though they may be able to claim the credit for wages paid to their employees.</li> <li>• Household employers are not considered to operate a trade or business and, therefore, are not eligible for the credit with respect to their household employees.</li> </ul>	

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
		<p>reduction in deposits on Form 941, Employer's Quarterly Federal Tax Return, for the quarter.</p> <p>See also "Penalty Relief for Failure to Deposit Employment Taxes (Qualified Leave and Retention Wages)" discussed below.</p>		
Delay of Payment of Employer Payroll Taxes	<p>CARES Act, Section 2302</p> <p>CARES Act, Section 1102 and 1109</p> <p><a href="#">IRS Employment Tax Deferral FAQ</a></p> <p>I.R.C. § 1401(a)</p> <p>I.R.C. § 3111(a)</p> <p>I.R.C. § 3121(a)</p> <p>I.R.C. § 3221(a)</p> <p>I.R.C. § 6654</p>	<p>Allows employers and self-employed individuals to defer payment of all (in the case of employers) or half (in the case of self-employed) the employer share of the Social Security tax (6.2 percent) otherwise due before January 1, 2021. The deferred taxes are paid over the following two years, with 50 percent of the amount to be paid by December 31, 2021, and the 50 percent by December 31, 2022.</p> <p>If an employer (i) uses a third-party agent who deposits employment taxes on its behalf or (ii) is a customer of a certified professional employer organization ("PEO"), and the employer directs its agent or the PEO to defer the payment of the employer's share of the Social Security tax, the employer (not the agent or PEO) is solely liable for the amount of delayed taxes to be paid by the delayed due dates.</p>	<p>Does not apply to any taxpayer if such taxpayer has had indebtedness forgiven under Section 1106 Loan Forgiveness with respect to a loan or indebtedness forgiven under Section 1109 of the CARES Act (i.e., a PPP Loan).</p> <p>Once a decision from the lender to forgive an employer's PPP loan is received, the employer may no longer defer deposit and payment of its share of Social Security taxes due.</p> <p>But, taxpayers who have received a loan under Section 1102 of the CARES Act (Paycheck Protection Program loans) but whose loan has not yet been forgiven <u>may</u> defer deposit and payment of the employer's share of Social Security tax that would otherwise be required to be made beginning on March 27, 2020, through the date on which the loan is forgiven.</p> <p>Payments deferred prior to loan forgiveness remain deferred and are due on the same terms as any other amounts deferred under this section of the CARES Act (50% of deferred amount due December 31, 2021, 50 percent due December 31, 2022).</p> <p>Deferrals are available to all employers <u>regardless</u> of whether such employers are eligible for paid leave credits or employee retention credits.</p> <p>Employers are entitled to deferrals prior to determining eligibility for paid leave credits under Sections 7001 and 7003 of the FFCRA or eligibility for the employee retention credit under Section 2301 of the CARES Act.</p>	<p>Date Relief Granted: March 27, 2020</p> <p>Relief Expiration Date: December 31, 2020</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
Code Section 6411 Timely Filed - Special Rules for Claiming Quick Refunds for Net Operating Loss Deductions and Prior Year Minimum Tax Liability of Corporations Refund Claims (AMT)	<p>CARES Act Sections 2303 and 2305</p> <p>I.R.C. § 6411(a), (b) and (c)</p> <p><a href="#">Temporary Procedures to Fax Certain Forms 1139 and 1045 due to COVID-19</a></p> <p>IRS Notice 2020-26</p>	<p><u>CARES Act Section 2303</u>: A taxpayer may file (i) an application under Code Section 6411(a) for a tentative refund claim with respect to the carryback of net operating losses (“NOL”) arising in a taxable year beginning before January 1, 2018, and ending after December 31, 2017, and (ii) elect to forgo any carryback of such NOL, reduce any period to which such NOL may be carried back, or revoke any election made under Code Section 172(b) to forgo any carryback of such NOL.</p> <p><u>CARES Act Section 2305</u>: A taxpayer may file an application for a tentative refund claim for tax years beginning after December 31, 2017. Tentative refund claims are verified in the same manner as an application for a tentative carryback adjustment filed under Code Section 6411(a). Within 90 days of filing, the Secretary of the Treasury will review the application, determine the amount of the overpayment, and apply, credit, or refund any overpayment in a manner similar to Code Section 6411(b). For consolidated returns, Code Section 6411(c) shall apply to an adjustment to the same extent and manner as the Secretary of the Treasury may provide.</p> <p>Starting on April 17, 2020 and until further notice, the IRS will accept eligible refund claims Form 1139 submitted via Fax to <b>844-249-6236</b> and eligible refund claims Form 1045 submitted via fax to <b>844-249-6237</b>.</p>	<p>See Conditions for Relief under “NOL Technical Correction for fiscal year filers with an NOL arising in the 2017/2018 straddle year” and “Modification of Prior Year Minimum Tax Credit” below.</p>	<p>Date Relief Granted: March 27, 2020</p> <p>Tentative Refund Claim Application Due Dates:</p> <p>CARES Act Section 2303 - July 27, 2020</p> <p>CARES Act Section 2305 - December 31, 2020</p>
Net Operating Loss Modifications: Five Year Carryback of NOLS for 2018, 2019 and 2020	<p>CARES Act, Section 2303</p> <p>I.R.C. § 172(b)(1)</p> <p>I.R.C. § 172(b)(3)</p> <p>IRS Notice 2020-26</p> <p>Rev. Proc. 2020-24</p> <p><a href="#">Frequently asked questions about carrybacks of</a></p>	<p>NOLs arising in tax years beginning after December 31, 2017, and before January 1, 2021, (i.e., calendar years 2018, 2019, and 2020) may be carried back five years. Taxpayers may elect to forego the entire five-year carryback period with respect to a particular year’s NOL, with the election being irrevocable.</p>	<p>Corporate taxpayers with NOLs arising in tax years 2018, 2019, and 2020.</p> <p>Under Notice 2020-26, taxpayers with an NOL that arose in a taxable year beginning during calendar year 2018 and that ended on or before June 30, 2019 are granted a six-month extension of time to file Form 1045 or 1139. The taxpayer must:</p> <ul style="list-style-type: none"> <li>File the applicable form no later than 18 months after the close of the taxable year in which the NOL arose; and</li> <li>Include on the top of the applicable form “Notice 2020-26, Extension of Time to File Application for Carryback Adjustment.”</li> </ul>	<p>Applies to NOLs arising in taxable years beginning after December 31, 2017, and taxable years before, on, or after such date that such NOLs are carried back.</p> <p>Extension of time deadline for NOLs arising in</p>



Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<a href="#">NOLs for taxpayers who have had Section 965 inclusions</a>  <a href="#">Temporary Procedures to Fax Certain Forms 1139 and 1045 due to COVID-19</a>  <a href="#">Internal Revenue Manual Update (May 6, 2020)</a>		<p>Under Rev. Proc. 2020-24, a taxpayer may elect under Code Section 172(b)(3) to <i>waive the carryback period</i> for an NOL arising in a tax year beginning 2018 or 2019.</p> <ul style="list-style-type: none"> <li>The election must be made no later than the due date (including extensions) for filing the taxpayer's federal income tax return for the first taxable year ending after March 27, 2020.</li> <li>The election is made by attaching a separate statement for each of the taxable years (2018 or 2019) the taxpayer intends to elect to its federal income tax return,</li> <li>The separate statement must state that the taxpayer is election to apply Code Section 172(b)(3) under Rev. Proc. 2020-24 and the taxable year for which the statement applies.</li> </ul> <p>If there is missing information or questions about the filing, taxpayers will be contacted by phone, thus the taxpayer's name and phone number must be accurately reflected on the Form 1139/1045. The person listed will need to be able to provide the missing information and possibly authentication information. The statutory timeframe for processing these forms is 90 days.</p>	tax year 2018: June 30, 2020.
Net Operating Loss Modifications: Suspension of 80 percent Limit for 2018-2020	CARES Act, Section 2303  I.R.C. § 172(a)  <a href="#">Internal Revenue Manual Update (May 6, 2020)</a>	Suspends the 80 percent of taxable income limitation on the use of NOLs arising in tax years beginning after December 31, 2017, and before January 1, 2021. This allows corporate taxpayers to use NOLs to fully offset (instead of an 80 percent offset) taxable income in tax years 2018, 2019, and 2020.	Corporate taxpayers with NOLs arising in tax years 2018, 2019, and 2020.	Applies to taxable years 2018, 2019 and 2020.
Net Operating Loss Modifications: NOL Technical Correction for fiscal year	CARES Act, Section 2303	Corrects the effective date under the Tax Cuts and Jobs Act.	Taxpayers with a tax year straddling December 31, 2017, were unable to carry back losses generated in that straddle year because of tax legislation under the Tax Cuts and Jobs Act generally terminated the ability to carry back NOLs for losses in tax years ending after December 31, 2017.	Date Relief Granted: March 27, 2020

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
filers with an NOL arising in the 2017/2018 straddle year	<p>I.R.C. § 172(b)</p> <p>I.R.C. § 6411(a)</p> <p>Rev. Proc. 2020-24</p> <p><a href="#">Frequently asked questions about carrybacks of NOLs for taxpayers who have had Section 965 inclusions</a></p> <p><a href="#">Temporary Procedures to Fax Certain Forms 1139 and 1045 due to COVID-19</a></p> <p><a href="#">Internal Revenue Manual Update (May 6, 2020)</a></p>	<p>Allows NOLs arising in the 2017/2018 straddle year to be eligible for a two-year carryback period and 20-year carry-forward period.</p>	<p>Taxpayers with a NOL arising during the 2017/2018 straddle year may file an under Code Section 6411(a) on either Form 1045 or Form 1139 for a carryback of that loss. The application will be treated as timely filed if filed no later than July 27, 2020.</p> <p>Taxpayers with a NOL arising during the 2017/2018 straddle year may irrevocably elect to forgo the carryback under Code Section 172(b)(3). The election will be treated as timely filed if filed no later than July 27, 2020.</p> <ul style="list-style-type: none"> <li>The election is made by filing its federal income tax return with “Filed pursuant to Rev. Proc. 2020-24” at the top, to an amended return, Form 1045, or Form 1139 containing only the taxpayer’s name, address, and taxpayer ID number.</li> <li>The election must also include a separate statement indicating the section under which the election is being made, and shall set forth information to identify the election, the period for which it applies, and the taxpayer’s basis and entitlement to make the election.</li> </ul> <p>If there is missing information or questions about the filing, taxpayers will be contacted by phone, thus the taxpayer’s name and phone number must be accurately reflected on the Form 1139/1045. The person listed will need to be able to provide the missing information and possibly authentication information. The statutory timeframe for processing these forms is 90 days.</p>	<p>Relief Expiration Date: July 27, 2020</p>
Net Operating Loss Modifications: REIT Carryback Limitations	<p>CARES Act, Section 2303</p> <p>I.R.C. § 172(b)(1)</p> <p><a href="#">Internal Revenue Manual Update (May 6, 2020)</a></p>	<p>NOLs of a taxpayer may not be carried back to any REIT year in which the taxpayer was a REIT.</p> <p>NOLs of a REIT may not be carried back to any tax year, regardless of whether the taxpayer was a REIT in that tax year.</p>	<p>Taxpayers who are considered to be a real estate investment trust (“REIT”) during any tax year.</p> <p>A REIT year is any taxable year for which the provisions of part II of subchapter M (relating to real estate investment trusts) apply to the taxpayer.</p>	<p>Applies to NOLs arising in taxable years beginning after December 31, 2017.</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
Net Operating Loss Modifications: Modified 80 percent Limit Calculation for 2021+	<p>CARES Act, Section 2303</p> <p>I.R.C. § 172(b)(2)(C)</p> <p>I.R.C. § 172(d)(6)(C)</p> <p>I.R.C. § 860E(a)(3)(B)</p> <p><a href="#">Internal Revenue Manual Update (May 6, 2020)</a></p>	<p>Reinstates the NOL 80 percent of taxable-income limitation for tax years beginning after December 31, 2020.</p> <p>The limitation is based on 80 percent of taxable income, after giving effect to the use of pre-2018 NOLs (i.e., reflects the absorption of pre-Tax Cuts and Jobs Act NOLs). As a result, the 80 percent limitation does not give effect to the deductions for qualified business income, foreign-derived intangible income (“FDII”) and global intangible low-taxed income (“GILTI”) under Code Sections 199A and 250, respectively.</p>	<p>Corporate taxpayers with NOLs arising in tax years beginning January 1, 2021.</p>	<p>Applies to taxable years beginning January 1, 2021.</p>
Net Operating Loss Modifications: Interactions with Section 965 Transition Years	<p>CARES Act, Section 2303</p> <p>I.R.C. § 172(b)(1)</p> <p>Rev. Proc. 2020-24</p> <p><a href="#">Frequently asked questions about carrybacks of NOLs for taxpayers who have had Section 965 inclusions</a></p> <p><a href="#">Temporary Procedures to Fax Certain Forms 1139 and 1045 due to COVID-19</a></p>	<p><b>Automatic 965(h) Election</b> - When a 2018, 2019, or 2020 NOL is carried back to a 965 Inclusion Year, the taxpayer is deemed to have automatically made the Section 965(n) election to “waive off” use of the NOL against the taxpayer’s transition tax inclusion. No opt out is available.</p> <p><b>Waivers of NOL Carrybacks</b> - In lieu of a waiver applying to the entire carryback period, taxpayers may choose a modified method whereby the NOL is carried back, and exclude 965 Inclusion Years.</p>	<p>“965 Inclusion Years” are tax years for which corporate taxpayers with NOL carrybacks included income from its foreign subsidiaries under Code Section 965, and taxpayers with foreign subsidiaries which made the one-month deferral election.</p> <p>After April 9, 2020, a taxpayer may elect under Code Section 172(b)(1)(D)(v)(I) to exclude all 965 Inclusion Years from the carryback period for an NOL arising in a taxable year beginning 2018, 2019, or 2020.</p> <ul style="list-style-type: none"> <li>Elections for tax years 2018 and 2019 must be made by the due date (including extensions) for filing the taxpayer’s return for the first taxable year ending after the March 27, 2020. Election for tax year 2020 must be made no later than the due date, including extensions.</li> <li>The taxpayer must attach an election statement to the earliest filed of: <ul style="list-style-type: none"> <li>the federal income tax return for the taxable year in which the NOL arises;</li> </ul> </li> </ul>	<p>The due date is the due date (including extensions) for filing the taxpayer’s return for the first taxable year ending after March 27, 2020.</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<a href="#">Internal Revenue Manual Update (May 6, 2020)</a>		<ul style="list-style-type: none"> <li>○ the taxpayer’s claim for a tentative carryback adjustment applying the NOL to a taxable year in the carryback period; or</li> <li>○ the amended federal income tax return applying the NOL to the earliest taxable year in the carryback period that is not a Section 965 year.</li> <li>• The election statement must state that the taxpayer is electing to apply Code Section 172(b)(1)(D)(v)(I) under Rev. Proc. 2020-24, the taxable year in which the NOL arose, and the taxpayer’s 965 Inclusion Years.</li> <li>• The election statement above must also be attached to each amended return for taxable years where the taxpayer has claimed a refund or credit as a result of the carryback of the NOL.</li> </ul> <p>If there is missing information or questions about the filing, taxpayers will be contacted by phone, thus the taxpayer’s name and phone number must be accurately reflected on the Form 1139/1045. The person listed will need to be able to provide the missing information and possibly authentication information. The statutory timeframe for processing these forms is 90 days.</p>	
Modification of Loss Limitations for Non-Corporate Taxpayers	CARES Act, Section 2304  I.R.C. § 172  I.R.C. § 199A  I.R.C. § 461(l)(1), (2) and (3)	<p>Section 2304 retroactively postpones the excess business loss limitation under Code Section 461(l) for tax years beginning prior to January 1, 2021 (i.e., calendar years 2018, 2019, and 2020). As a result, excess business losses that would otherwise been disallowed for tax years 2018, 2019 and 2020 are permitted and may be applied to ordinary and capital gain income. Generally, excess business losses are the amount by which the total deductions attributable to all of a taxpayer’s trades or businesses exceed the taxpayer’s total gross income and gains attributable to those trades or businesses, plus \$250,000 (or \$500,000 for joint returns).</p> <p>Amends Code Section 461(l) excess calculation to exclude items that are attributable to the trade or business of performing services as an employee. This includes no longer taking into account NOL deductions</p>	Retroactively postponing application of the excess business loss rules allows non-corporate taxpayers, namely individuals, to submit amended returns and claim refunds for excess business losses that were previously disallowed for tax years 2018, 2019 and 2020.	Applies to taxable years beginning after December 31, 2017.  Excess business loss limitation sunsets: Tax years beginning after January 1, 2021.

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<a href="#">Internal Revenue Manual Update (May 6, 2020)</a>	<p>under Code Section 172 and qualified business income deductions under Code Section 199A when determining excess business losses.</p> <p>Amends Code Section 461(l)(3) such that the Code Section 461(l) limitation no longer takes into account deductions for capital losses, and for purposes of determining the excess business loss limit, net capital gains of the trade or business are includable in gross income.</p>		
Modification of Prior Year Alternative Minimum Tax Credit	<p>CARES Act, Section 2305</p> <p>I.R.C. § 53(e)</p> <p><a href="#">Internal Revenue Manual Update (May 6, 2020)</a></p>	<p>While the Tax Cuts and Jobs Act repealed the corporate alternative minimum tax (“AMT”) beginning after December 31, 2017, corporate taxpayers that have an AMT credit for AMT amounts paid prior to the repeal have been required to use that AMT credit to receive percentage refunds over a four year period from 2018 to 2021.</p> <p>Amendments to Code Section 53(e) allow corporate taxpayers to accelerate the refund of AMT credits by permitting the taxpayer to elect to take the entire refundable AMT credit amount in its 2018 or 2019 tax years.</p>	<p>Corporate taxpayers with an AMT credit in tax year 2018.</p> <p>Affected taxpayers have until December 31, 2020, to file an application under Code Section 6411(a) to claim the AMT refund. See “6411 Timely Filed - Special Rule” above.</p>	<p>Date Relief Granted: March 27, 2020</p> <p>Relief Expiration Date: December 31, 2020</p>
Modification of Business Interest Limitation	<p>CARES Act, Section 2306</p> <p>I.R.C. § 163(j)</p> <p>I.R.C. § 6627</p> <p>Rev. Proc. 2020-22</p> <p>Rev. Proc. 2020-23</p>	<p>Temporarily increases the limitation on the deduction for business interest expense from 30 percent to 50 percent of the taxpayer’s adjusted taxable income (“ATI”) for tax years 2019 and 2020.</p> <p>In the case of a partnership, <u>unless a partner elects to not have the temporary limitation apply</u>, any excess business interest of the partnership for tax year 2019 (which is allocated to the partner) is deductible as follows:</p> <ul style="list-style-type: none"> <li>• 50 percent of such excess business interest shall be treated as business interest paid or accrued by the partner in the partner’s first taxable year beginning in 2020, and</li> <li>• 50 percent of such excess business interest shall be subject to the limitations of Code Section 163(j)(4)(B)(ii) (i.e., treatment of excess business interest allocated to partners) in the same manner as any other excess business interest so allocated.</li> </ul> <p>For taxable years beginning in 2020, the taxpayer may elect to use the taxpayer’s ATI from the last taxable year beginning in 2019 for the taxpayer’s ATI for the current taxable year.</p>	<p>Applies to all taxpayers with business interest expenses in excess of 30 percent of the taxpayer’s ATI for tax years 2019 and 2020.</p> <p>A taxpayer may elect not to have the temporary limitation increase apply to any taxable year. If an election is made, it may only be revoked with consent of the Secretary of the Treasury.</p> <p>In the case of a partnership, any such election must be made by the partnership and may be made only for taxable years beginning in 2020.</p> <p>Rev. Proc. 2020-22 allows taxpayers to make a late election or to withdraw an election under Code Section 163(j)(7)(B) (real property trade or business) or Code Section 163(j)(7)(C) (farming business). Furthermore, it also describes the time and manner in which certain taxpayers can (i) elect out of the 50 percent ATI limitation for tax years 2019 and 2020, (ii) elect out of deducting 50 percent of the business interest expense for tax years beginning in 2020, and (iii) elect to use the taxpayer’s ATI from the</p>	<p>Applies to taxable years beginning after December 31, 2018</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
			<p>last taxable year beginning in 2019 to calculate the taxpayer's Code Section 163(j) limitation for tax year 2020.</p> <p>Rev. Proc. 2020-23 provides that Bipartisan Budget Act of 2015 ("BBA") partnerships the option to file amended returns instead of an administrative adjustment request under Code Section 6227 ("AAR").</p>	
Modification of Qualified Improvement Property	<p>CARES Act, Section 2307</p> <p>I.R.C. § 168</p> <p>I.R.C. § 6627</p> <p>IRS Rev. Proc. 2020-25</p> <p>IRS Form 3115</p>	<p>Corrects the so-called "retail glitch" under the Tax Cuts and Jobs Act, which increased the Qualified Improvement Property ("QIP") depreciation period from 15 to 39.5 years for interior upgrades and other improvements, such as remodeling and installation of energy efficient equipment.</p> <p>QIP was added to the definition of "15-year property" under Code Section 168(e)(3)(E), which allows taxpayers to immediately deduct the costs associated with QIP, and retroactively to QIP placed in service after December 31, 2017.</p>	<p>Taxpayers with QIP with a prior depreciation period of 39.5 years can change the QIP's depreciation method by filing an automatic accounting method change or correct it with an amended return.</p> <p>Rev. Proc. 2020-25 permits taxpayers to change their depreciation under Code Section 168 for QIP placed into service after December 31, 2017. For tax years 2018, 2019 and 2020, a taxpayer is allowed to make a late election or to revoke or withdraw an election under:</p> <ul style="list-style-type: none"> <li>• Code Section 168(g)(7) - Election to depreciate any class of property under the alternative depreciation system.</li> <li>• Code Section 168(k)(5) - Election for farming businesses to apply special additional depreciation rules to one or more plants.</li> <li>• Code Section 168(k)(7) - Election out of bonus depreciation for any class of qualified property placed in service during the taxable year.</li> <li>• Code Section 168(k)(10) - Election to claim 50 percent instead of 100 percent bonus depreciation for the tax year that includes September 27, 2017.</li> </ul> <p>As such, the taxpayer may also use a Form 3115, Change of Accounting Method, to change the elections described above, with one exception that Code Section 168(g)(7) may only be revoked with an amended return or an AAR.</p>	<p>Retroactively effective for QIP placed in service in 2018</p> <p>Relief Expiration Date: N/A</p> <p>Full bonus depreciation is phased down by 20 percent each year for property placed into service after December 31, 2022, and before January 1, 2027.</p>
Excise Tax Exemption for Alcohol used in Production of Hand Sanitizer	CARES Act, Section 2308	Temporary one-year exception on any distilled spirits (i.e., alcohol) used for or contained in hand sanitizer that is produced and distributed in a manner consistent with guidance issued by the U.S. Food and Drug Administration from the federal excise tax under Code Section 5214(a).	Distilled spirits must be used for or contained in hand sanitizer that is produced and distributed in a manner consistent with guidance issued by the U.S. Food and Drug Administration that is related to	Effective for distilled spirits for such specified use

Relief for Businesses				
<u>Subject</u>	<u>Applicable Law and Regulations</u>	<u>General Description of Relief</u>	<u>Conditions of Relief</u>	<u>Effective Dates</u>
	I.R.C. § 5214(a)	Certain labeling and bulk sales requirements and penalties do not apply during the temporary exception.	the outbreak of virus SARS-CoV-2 or coronavirus disease 2019 ("COVID-19").	after December 31, 2019  Relief Expiration Date: December 31, 2020
Increase FMLA Limitation	CARES Act, Section 3601  FFCRA 7003	Creates a limitation stating that an employer shall not be required to pay more than \$200 per day and \$10,000 in the aggregate for each employee with respect to the qualified family leave wages. See "Tax Credit for Paid Family Leave" discussed in the chart above.	See Conditions for Relief under "Tax Credit for Paid Family Leave" above.	Date Relief Granted: March 27, 2020, but otherwise effective April 1, 2020  Relief Expiration Date: December 31, 2020
Emergency Paid Sick Leave	CARES Act, Section 3602  FFCRA Section 5102	Creates a limitation stating that an employer shall not be required to pay more than \$511 per day and \$5,110 in the aggregate for sick leave or more than \$200 per day and \$2,000 in the aggregate to care for a quarantined individual or child for each employee with respect to qualified sick leave wages. See "Paid Sick Leave Requirement" discussed in the chart above.	See Conditions for Relief under "Paid Sick Leave Requirement" above.	Date Relief Granted: March 27, 2020, but otherwise effective April 1, 2020  Relief Expiration Date: December 31, 2020
Advanced Refunds of Payroll Credit for Paid Sick Leave and Paid Family Leave	CARES Act, Section 3606  FFCRA Sections 7001 and 7003  I.R.C. § 3111(a)	Allows employers to receive an advance payroll tax credit for paid sick leave under FFCRA Section 7001 and paid family leave under FFCRA Section 7003 from the Department of the Treasury. The advanced refund is calculated through the end of the most recent payroll period in the quarter.  Alternatively, an employer can also fund qualified sick and family leave wages (plus the allocable qualified health plan expenses and the employer's share of Medicare taxes) by accessing federal employment taxes (including those of which are currently being withheld) that are	See Conditions for Relief under "Tax Credits for Paid Sick Leave" and "Tax Credit for Paid Family Leave" above.  Employers may choose to receive an advance payment of employer credits by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19.	Date Relief Granted: March 27, 2020, but otherwise effective April 1, 2020

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<p>I.R.C. § 3221(a)</p> <p>I.R.C. § 6656</p> <p>IRS Notice 2020-22</p> <p><a href="#">COVID-19-Related Tax Credits: How to Claim the Credits FAQs</a></p>	<p>required to be deposited with the IRS, for other wage payments made during the same quarter as the qualified leave wages.</p> <p>The Secretary of the Treasury shall waive penalties under Code Section 6656 for any failure to make a deposit Social Security taxes if the Secretary determines that such failure was due to the anticipation of the credit allowed. See IRS Notice 2020-22 below.</p>		<p>Relief Expiration Date: December 31, 2020</p>
Single Employer Plan Funding Rule Changes	<p>CARES Act, Section 3608</p> <p>I.R.C. § 430(a) and (j)</p> <p>I.R.C. § 436</p> <p>29 U.S.C. 1083(a) and (j)</p> <p>29 U.S.C. 1056(g)</p>	<p>Delays the due date for single employer pension plan companies, who are required to meet their funding obligations by making minimum required contributions (as determined by Code Section 430(a) and 29 U.S.C 1083(a)), for contributions otherwise due during calendar year 2020 until January 1, 2020.</p> <p>However, interest will continue to accrue on the amount of minimum required contribution for the period between the original due date and the payment date.</p> <p>A plan sponsor may elect to treat the plan's adjusted funding target attainment percentage for the last plan year ending before January 1, 2020, as the plan's adjusted funding target attainment percentage for calendar 2020 year.</p>	Applies to single-employer pension plans	<p>Date Relief Granted: March 27, 2020</p> <p>Relief Expiration Date: January 1, 2021</p>
Application of Co-Op and Small Employer Charity Pension Rules to Charitable Employers Whose Primary Exempt Purpose is to	<p>CARES Act, Section 3609</p> <p>I.R.C. § 414(y)(1)</p>	<p>Expands the definition of Cooperative and Small Employer Charity Pension Plans ("CSEC") under Code Section 414(y)(1) and ERISA §1060(f)(1) to include a provision that covers charitable employers whose primary exempt purpose is to provide services to mothers and children. Effective for plan years beginning after December 31, 2018.</p>	<p>A defined benefit plan (other than a multiemployer plan) is a CSEC plan if, as of January 1, 2000, the plan sponsored by the employer:</p> <ol style="list-style-type: none"> <li>(1) is exempt from taxation under Code Section 501(c)(3);</li> <li>(2) has been in existence since 1938;</li> <li>(3) conducts medical research directly or indirectly through grant making; and</li> </ol>	<p>Effective for plan years beginning after December 31, 2018.</p>



Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
Provide Services to Mothers and Children	29 U.S.C. 1060(f)(1)		(4) whose primary exempt purpose is to provide services with respect to mothers and children.	
Suspension of Certain Aviation Excise Taxes	CARES Act, Section 4007  I.R.C. § 4041  I.R.C. § 4081  I.R.C. § 4261  I.R.C. § 4271  I.R.C. § 6427(l)  <a href="#">FAQs: Aviation Excise Tax Holiday under the CARES Act</a>	Provides an “excise tax holiday” for federal excise taxes imposed under Code Sections 4261 and 4271 for amounts paid for transportation by air of persons (i.e., ticket tax) and property (i.e., cargo tax), including amounts paid for the right to award free or reduced rate air transportation. More specifically, the air transportation excise taxes included are: (i) the 7.5% tax on amounts paid for transportation of persons by air; (ii) the domestic segment tax; (iii) the international travel facilities tax; (iv) amounts paid for the right to award free or reduced rate air transportation (mileage awards); and (v) the 6.25% tax on amounts paid for transportation of property by air.  Provides an “excise tax holiday” for federal excise taxes imposed by Code Sections 4041 and 4081 for kerosene used in commercial aviation (i.e., aviation fuel), except the Leaking Underground Storage Tank tax under Code Section 6427(l). “Commercial aviation” is, generally speaking, any use of an aircraft in the business of transporting persons or property by air for compensation or hire.  These exceptions are effective upon enactment through December 31, 2020, and do not apply to payments made on or before the date of enactment.	Applies to businesses engaged in the business commercial aviation involving the transportation by air of persons or property.  Federal excise taxes imposed on airline tickets: The taxes imposed on airline tickets purchased before the excise tax holiday for travel during or after the excise tax holiday are nonrefundable. No tax is imposed on the purchase of an airline ticket during the excise tax holiday, even if the travel would occur after the excise tax holiday.  Federal excise taxes on kerosene used in commercial aviation: Taxpayers make a claim for payment on its tax return by claiming a nontaxable use, specifically use No. 15, “in an aircraft or vehicle owned by an aircraft museum”, and attaching a statement explaining the claim is for relief granted for the excise tax holiday period. The IRS intends to update the form instructions to reflect this process.  The claim cannot be made with respect to kerosene purchased during the excise tax holiday that is not put into the fuel tank of an aircraft during the excise tax holiday. No claim can be made with respect to kerosene not used in commercial aviation.  Taxpayers continue to be required to make deposits for the semimonthly period which generally must be at least 95% of the net tax liability for that period unless the safe harbor applies.	Date Relief Granted: March 28, 2020  Relief Expiration Date: December 31, 2020
Effective Date for Employment Tax Credits Under the FFCRA	IRS Notice 2020-21  FFCRA Sections 7001 and 7003  <a href="#">COVID-19-Related Tax Credits: How to</a>	Establishes that tax credits for qualified sick and family leave required to be paid under the FFCRA will apply to wages paid from April 1, 2020 through December 31, 2020.  Establishes that dates between April 1, 2020 and December 31, 2020 are taken into account for qualified sick and family leave equivalent amounts for certain self-employed taxpayers. See “Tax Credit for Paid	See Conditions for Relief under “Tax Credits for Paid Sick Leave” and “Tax Credit for Paid Family Leave” above.	Published: April 1, 2020

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<a href="#">Substantiate Eligibility and Periods of Time for Which Credits are Available FAQs</a>	<p>Sick Leave” and “Tax Credit for Paid Family Leave” discussed in the chart above.</p> <p>Accordingly, the refundable tax credits for employers will apply qualified sick and family leave wages paid for the period beginning on April 1, 2020, and ending on December 31, 2020.</p>		
Penalty Relief for Failure to Deposit Employment Taxes (Qualified Leave and Retention Wages)	<p>IRS Notice 2020-22</p> <p>FFCRA Sections 7001 and 7003</p> <p>CARES Act, Section 2301</p>	<p>As stated in the notice, an employer will not be subject to the failure to deposit penalty under Code Section 6656 for failing to deposit employment taxes related to <u>qualified leave wages</u> in a calendar quarter if:</p> <ul style="list-style-type: none"> <li>the employer paid qualified leave wages to its employees in the calendar quarter prior to the time of the required deposit;</li> <li>the amount of employment taxes that the employer does not timely deposit is less than or equal to the amount of the employer’s anticipated credits under FFCRA Sections 7001 and 7003 for the calendar quarter as of the time of the required deposit; and</li> <li>the employer did not seek payment of an advanced credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19, with respect to the anticipated credits it relied upon to reduce its deposits.</li> </ul> <p>An employer will not be subject to the failure to deposit penalty under Code Section 6656 for failing to deposit employment taxes related to <u>qualified retention wages</u> in a calendar quarter if:</p> <ul style="list-style-type: none"> <li>the employer paid qualified retention wages to its employees in the calendar quarter prior to the time of the required deposit;</li> <li>the amount of employment taxes that the employer does not timely deposit, <u>reduced by the amount of employment taxes not deposited in anticipation of the credits claimed</u> for qualified leave wages, qualified health plan expenses, and the employer’s share of</li> </ul>	See Conditions for Relief under “Tax Credits for Paid Sick Leave,” “Tax Credit for Paid Family Leave,” and “Employee Retention Credit for Employers Subject to Closure Due to COVID-19” above.	Published: March 27, 2020

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
		<p>Medicare tax on the qualified leave wages under FFCRA 7001 and 7003, is less than or equal to the amount of the employer's anticipated credits under CARES Act Section 2301 for the calendar quarter as of the time of the required deposit; and</p> <ul style="list-style-type: none"> <li>the employer did not seek payment of an advanced credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19, with respect to the anticipated credits it relied upon to reduce its deposits.</li> </ul>		

Relief for Individuals				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
Tax Credits for Certain Self-Employed Individuals	<p>FFCRA Sec. 7002</p> <p>31 USC §1324(b)(2)</p> <p>IRC §3111(a)</p> <p>IRC §3221(a)</p> <p>Ch. 2 of the Code (cross-referenced for defined terms)</p> <p>Ch. 1, Subchapter A, part IV, Subpart C of the Code (cross-referenced for categorization)</p>	<p>Self-employed individuals are allowed a credit against taxes imposed by IRC §§ 3111(a) or 3221(a) equal to the amount of qualified sick leave wages for which they would have been eligible had they been employed by an individual other than themselves.</p> <p>The amount of the credit is equal to:</p> <p>a) The number of days during the taxable year (but not more than the excess, if any, of 10 days over the number of days taken in all preceding taxable years) the individual was unable to work for the individual's self-employed business for reasons that would have qualified them for emergency paid sick leave, multiplied by:</p> <p>b) The lesser of:</p> <p>a. \$200 (\$511 if the inability to work is due to a federal, state, or local quarantine order for COVID-19, has been medically advised to self-isolate as a result of a COVID-19</p>	<p>An eligible self-employed individual is an individual who:</p> <p>a) Regularly carries on a trade or business, and</p> <p>b) Would be eligible to receive paid sick leave under the Emergency Paid Sick Leave Act if the individual were an employee of someone other than themselves.</p> <p>Individuals must maintain documentation establishing their self-employed status.</p> <p>Individuals who also receive wages or compensation from an employer under the Emergency Paid Sick Leave Act will have their credit reduced under this section if the amount received from the employer exceeds \$2,000 (or \$5,110 if the inability to work is due to a federal, state, or local quarantine order for COVID-19, has been medically advised to self-isolate as a result of a COVID-19 diagnosis, or is experiencing COVID-19 symptoms and is seeking a diagnosis).</p>	<p>Signed into Law: March 18, 2020</p> <p>Credits available for period: April 1, 2020 – December 31, 2020</p>

Relief for Individuals				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<p>of credit as refundable)</p> <p><a href="#">IRS Paid Leave FAQ</a></p>	<p>diagnosis, or is experiencing COVID-19 symptoms and is seeking a diagnosis), or</p> <p>b. Sixty-seven percent (100 percent in the same cases as would trigger the \$511 amount above) of the individual's <i>average daily self-employment income</i>.</p> <p><i>Average daily self-employment income</i> is yearly net self-employment income divided by 260.</p> <p>Credits determined under this section shall be treated as refundable credits allowed under the Code.</p> <p>Unlike employer credits, these credits cannot be advanced and are claimed on the self-employed individual's 2020 federal income tax return.</p> <p>Special rules provide that a similar credit shall be available for U.S. possessions.</p>		
Tax Credit for Self-Employed Family Leave	<p>FFCRA Sec. 7004</p> <p>31 USC §1324(b)(2)</p> <p>Ch. 2 of the Code (cross-referenced for defined terms)</p> <p>Ch. 1, Subchapter A, part IV, Subpart C of the Code (cross-referenced for categorization of credit as refundable)</p>	<p>Self-employed individuals are allowed a credit against their federal income tax equal to the amount of qualified family leave for which they would have been eligible had they been employed by an individual other than themselves.</p> <p>The amount of the credit is equal to:</p> <p>a) The number of days (up to 50) during the taxable year the individual was unable to work for the individual's self-employed business for reasons that would have qualified them for emergency paid family leave as described above, multiplied by:</p> <p>b) The lesser of:</p> <p>a. \$200, or</p>	<p>An eligible self-employed individual is an individual who:</p> <p>a) Regularly carries on a trade or business, and</p> <p>b) Would be eligible to receive paid leave under the Emergency Family and Medical Leave Expansion Act if the individual were an employee of someone other than themselves.</p> <p>Individuals must maintain documentation establishing their self-employed status.</p> <p>Individuals who receive wages or compensation from an employer under the Emergency Family and Medical Leave Expansion Act will have their qualified family leave credit reduced if the amount described by this section exceeds \$10,000.</p>	<p>Signed into Law: Mar. 18, 2020</p> <p>Credits available for period: April 1, 2020 – December 31, 2020</p>

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	<a href="#">IRS Paid Leave FAQ</a>	<p>b. Sixty-seven percent of the individual's <i>average daily self-employment income</i></p> <p><i>Average daily self-employment income</i> is yearly net self-employment income divided by 260.</p> <p>Credits determined under this section shall be treated as refundable credits allowed under subpart C of part IV of subchapter A of chapter 1 of the I.R.C.</p> <p>Unlike employer credits, these credits cannot be advanced and are claimed on the self-employed individual's 2020 federal income tax return.</p> <p>Special rules provide that a similar credit shall be available for U.S. possessions.</p>		
2020 Individual Recovery Rebates	<p>CARES Act Sec. 2201</p> <p>New IRC §6428</p> <p><a href="#">IRS Economic Impact Payment FAQs</a></p> <p>IRC §24(c)</p> <p><a href="#">Rev. Proc. 2020-28 "Procedures for Individuals who are not Required to File Income Tax Returns to Receive Economic Impact Payment"</a></p> <p><a href="#">IRS Economic Impact Payment</a></p>	<p>Provides a new credit on individuals' 2020 federal income tax return and for immediate advance payments of such credit based on taxpayers' 2019 federal income tax returns, or, if a 2019 federal income tax return has not been filed, on taxpayers' 2018 federal income tax returns.</p> <p>If the amount of credit calculated on an individual's 2020 federal income tax return exceeds the advance payments received by the individual, the taxpayer will be allowed to claim the excess credit on their 2020 federal income tax return.</p> <p>If the amount of refundable credit calculated on an individual's 2020 federal income tax return is less than the advance payments actually received, the individual will <u>not</u> be required to repay the excess credit amounts previously advanced.</p> <p>Refunds or credits of overpayments attributable to this provision are directed to be made "as rapidly as possible" but no refund shall be made or allowed after December 31, 2020.</p>	<p>Eligible individuals are allowed a credits against their 2020 federal income tax in the amount of:</p> <ul style="list-style-type: none"> <li>a) \$1,200 (\$2,400 if Married Filing Jointly), plus</li> <li>b) \$500 multiplied by the number of qualifying children (as defined by Code Section 24(c)) of the taxpayer who are under the age of 17.</li> </ul> <p>The credit is reduced (but not below zero) by five percent of the amount of the eligible individual's income exceeds:</p> <ul style="list-style-type: none"> <li>a) \$150,000 if Married Filing Jointly,</li> <li>b) \$112,500 if head of household, and</li> <li>c) \$75,000 if neither Married Filing Jointly nor head of household</li> </ul> <p>Eligible individuals are any individual <u>except</u>:</p>	First taxable year beginning in 2020

Relief for Individuals				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<p><a href="#">Web Page</a> (For Filers to confirm payment type and/or enter bank details and for Non-Filers to enter payment information)</p>	<p>Payments may be made electronically to any account authorized by the payee on or after January 1, 2018, to accept a refund of federal income taxes or of a federal payment as defined in 31 USC §3332.</p> <p>No interest is allowed on any overpayment attributable to this section.</p> <p>Eligible individuals will have their credit amounts automatically calculated based on their 2019 federal income tax return or, if a 2019 federal income tax return has not been filed, on their 2018 federal income tax return or their 2019 Form SSA-1099 or 2019 Form RRB-1099.</p> <p>Eligible individuals receiving Social Security Retirement Disability (“SSDI”) and Supplemental Security Income (“SSI”), along with eligible individuals receiving Veterans Affairs (“VA”) or Railroad Retirement and Survivor benefits will automatically receive payment, but may need to update information to obtain full credit for qualifying children.</p> <p>Eligible individuals not receiving SSDI, SSI, VA, or Railroad Retirement and Survivor benefits will need to enter their information using the IRS Economic Impact Payment web page.</p> <p>Note that the IRS Economic Impact Payment website links to two separate information entry pages:</p> <ul style="list-style-type: none"> <li>Filers page where individuals who have filed a 2018 or 2019 federal income tax return can update their preferred payment type (direct deposit or physical check) and confirm or edit their banking details.</li> <li>Non-Filers page for individuals who were not required to file in 2018 or 2019 but are eligible to claim the Individual Recovery Rebate <u>and</u> individuals who are receiving SSI or VA payments and need to update information to include dependents.</li> </ul>	<p>a) Nonresident aliens,</p> <p>b) Any individual who may be claimed as a dependent by another taxpayer, and</p> <p>c) An estate or trust</p> <p>The amount of this credit that may be claimed by an eligible individual on their 2020 federal income tax return will be reduced (but not below zero) by the amount of any advance payment based on the calculations described above.</p> <p>Eligible Individuals must have a valid Social Security number as defined in Code Section 24(h)(7); qualifying children may have taxpayer identification numbers if such children are adopted or placed for adoption.</p> <p>Individuals who are allowed a credit against taxes imposed by a possession of the United States, regardless of whether that possession has a mirror code tax system, are <u>not</u> allowed any credit against United States income taxes under this section.</p>	
Temporary Suspension of Retirement Plan Early Withdrawal Penalty	CARES Act Sec. 2202	Allows distributions of up to \$100,000 for COVID-19-related expenses from eligible retirement plans without triggering an early withdrawal penalty and increases the maximum allowed loan from such retirement plans to \$100,000 from \$50,000 while allowing a one-year delay in	“Coronavirus-related distributions” of up to \$100,000 from an individual’s eligible retirement plan (as defined under Code	First taxable year beginning in 2020

Relief for Individuals				
<u>Subject</u>	<u>Applicable Law and Regulations</u>	<u>General Description of Relief</u>	<u>Conditions of Relief</u>	<u>Effective Dates</u>
	IRC §72(t)	<p>repayment for any loan from a retirement plan that comes due between March 27, 2020, and December 31, 2020.</p> <p>Distributions still represent taxable income to the recipient, but COVID-19-related distributions are taxed ratably over a three-year period beginning with the tax year in which the COVID-19-related distribution occurs.</p> <p>Corresponding changes were made to the laws governing qualified plans.</p>	<p>Section 402(c)(8)(B)) will not be considered early withdrawals subject to penalties.</p> <p>“Coronavirus-related distributions” are distributions from eligible retirement plans that are made:</p> <ul style="list-style-type: none"> <li>a) On or after January 1, 2020, and before December 31, 2020,</li> <li>b) To an individual: <ul style="list-style-type: none"> <li>a. Diagnosed with COVID-19 by a CDC-approved test,</li> <li>b. With a spouse or dependent diagnosed with COVID-19, or</li> <li>c. Who experiences adverse financial consequences as a result of: <ul style="list-style-type: none"> <li>i. Being quarantined, furloughed, laid off, or having reduced work hours due to COVID-19;</li> <li>ii. Being unable to work due to lack of child care as a result of COVID-19;</li> <li>iii. Closing or reducing hours of a business owned by said individual as a result of COVID-19; or</li> <li>iv. Other factors as determined by the Secretary of the Treasury.</li> </ul> </li> </ul> </li> </ul>	
Temporary Required Minimum Distribution (“RMD”) Waiver	CARES Act Sec. 2203	Removes mandatory minimum distributions from certain retirement plans in calendar year 2020.	Code Section 401(a)(9) is amended to suspend required payments in calendar year 2020 for:	First taxable year beginning in 2020

Relief for Individuals				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	IRC §410(a)(9)		<ul style="list-style-type: none"> <li>a) Defined contribution plans described in Section 401 or in sections 403(a) or 403(b),</li> <li>b) Defined contribution plans described section 457(b) <u>only if</u> such plan is maintained by an employer described in section 457(e)(1)(A), or</li> <li>c) An individual retirement plan.</li> </ul>	
Partial Above the Line Charitable Deduction	Section 2204 IRC §170(b)(1)(A) New IRC §62(a)	A new “above the line” charitable contribution deduction of up to \$300 for individuals who do not itemize their deductions.	Contributions must be made in cash during the 2020 calendar year to an organization described in Section 170(b)(1)(A). Contributions made to a supporting organization or a donor-advised fund do not qualify for the above the line deduction. Deduction is only available to contributions made in 2020 (i.e. carryover of prior year excess contributions is prohibited).	Date Relief Granted: March 27, 2020 Effective for tax years beginning after December 31, 2019. Relief Expiration Date: December 31, 2024
Modified Charitable Contribution Limits for Individuals	Section 2205 IRC §170(b)(1)(A)	Individuals may deduct qualified contributions up to 100 percent of their adjusted gross income for 2020. If the individual's contributions exceed the 100 percent limitation, the excess contributions may be carried over for the next five tax years.	Contributions must be made in cash during the 2020 calendar year to an organization described in Section 170(b)(1)(A). Contributions to a supporting organization or donor-advised fund do not qualify for the increased limits.	Date Relief Granted: March 27, 2020
Exclusion of Certain Employer Student Loan Payments from Income	CARES Act Sec. 2206 IRC §127(a) IRC §221(d)(1)	Temporarily adds employer payments on qualified education loans to payments eligible for exclusion from an employee’s income under Code Section 127(a).	Payments made by an employer of principal or interest on qualified education loans as defined in Code Section 221(d)(1) are excludable from an employee’s gross income under Code Section 127(a). The maximum amount of aggregate excludable payments under Code Section 127(a)(2) <u>remains</u> \$5,250.	March 27, 2020 through December 31, 2020



Relief for Individuals				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
Ability of HDHPs to offer telehealth services with no deductible	CARES Act Sec. 3701  IRC §223(c)	Permits High Deductible Health Plans (“HDHPs”) to offer telehealth services with no deductibles for plan years beginning on or before Dec. 31, 2021 by adding a safe harbor to Code Section 223(c).  <b>NOTE:</b> Unlike many provisions in the FFCRA and CARES Act, this provision extends through the end of 2021 and <u>not</u> 2020.	No special eligibility requirements.	Plan years beginning on or before December 31, 2021
Use of HSA Accounts to pay for Certain OTC Medication	CARES Act Sec. 3702  IRC §223(d)(2)	Expands the definition of qualified medical expenses that may be paid for with Health Savings Accounts (“HSAs”), Flexible Spending Accounts (“FSAs”), and Health Reimbursement Arrangements to include menstrual care products by amending Code Section 223(d)(2). Menstrual care products are defined as “a tampon, pad, liner, sponge, or similar product used by individuals with respect to menstruation or other genital-tract secretions.”  <b>NOTE:</b> Unlike many provisions in the FFCRA and CARES Act, this provision does <u>not</u> sunset.	No special eligibility requirements.	Amounts paid after December 31, 2019
Postponement of Generation-Skipping Transfer Tax Filing and Payment Deadlines	IRS Notice 2020-20	Provides a three-month postponement for federal gift and generation skipping-transfer tax payments that would otherwise be due on April 15, 2020.  Any person (as defined in Code Section 7701(a)(1)) with a federal gift or generation-skipping transfer tax payment due or a requirement to file Form 709 on April 15, 2020 will have the due date for such payments or filing requirements automatically extended to July 15, 2020 with no requirement to file Form 8892.  Affected taxpayers may still voluntarily file Form 8892 to obtain an extension of time to <u>file</u> Form 709 on October 15, 2020. Postponed payments <u>will remain due on July 15, 2020.</u>	Automatic, no election required.	Tax returns originally due on April 15, 2020
Postponement of April 15 <sup>th</sup> Filing Deadlines	IRS Notice 2020-18  IRC §7508A(a)	Provides a three-month postponement for federal income tax returns and associated payments that would otherwise be due on April 15, 2020.  Restates and supersedes Notice 2020-17, providing additional clarification.	Affected Taxpayers are defined as any person with a federal income tax payment due on April 15, 2020.  This relief is available solely for federal income tax payments (including payments of self-employment tax) due on April 15, 2020, in respect of the Affected Taxpayer’s 2019 taxable year, and federal estimated income tax payments (including payments of	Tax returns originally due on April 15, 2020

Relief for Individuals				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	IRC §165(i)(5)(A)  Treas. Reg. 1.1502-1	Affected Taxpayers may postpone federal income tax payments in aggregate up to the Applicable Postponed Payment Amount until July 15, 2020.  Applicable Postponed Payment Amount is defined in Notice 2020-17 as \$10,000,000 for each consolidated group (as defined in Treas. Reg. 1.1502-1) or for each C-corporation that does not join in filing a consolidated return. For all other Affected Taxpayers, the Applicable Postponed Payment Amount is \$1,000,000 <u>regardless of filing status</u> .	self-employment tax) due on April 15, 2020, in respect of the Affected Taxpayer's 2020 taxable year.  The period beginning on April 15, 2020, and ending on July 15, 2020, will be disregarded in the calculation of any interest, penalty, or addition to tax for failure to file the federal income tax returns or to pay the federal income tax returns postponed by Notice 2020-18. Interest, penalties, and additions to tax with respect to postponed filings and payments will begin to accrue on July 16, 2020.	
Further Expansion of Postponement Federal Tax Filing Deadlines	IRS Notice 2020-23	Amplifies Notices 2020-18 and 2020-16, expanding the postponement of filing and paying through July 15, 2020 for the following if they would otherwise be due to be performed on or after April 1, 2020 and before July 15, 2020: <ul style="list-style-type: none"> <li>Individual Income Tax payments and filings on Forms 1040, 1040-SR, 1040-NR, 1040-NR-EZ, 1040-PR, or 1040-SS</li> <li>Calendar year or fiscal year corporate income tax payments and filings on Forms 1120, 1120-C, 1120-F, 1120-FSC, 1120-H, 1120-L, 1120-ND, 1120-PC, 1120-POL, 1120-REIT, 1120-RIC, 1120-S, or 1120-SF</li> <li>Calendar year or fiscal year partnership return filings on Forms 1065 or 1066</li> <li>Estate and trust income tax payments and filings on Forms 1041, 1041-N, or 1041-QFT</li> <li>Estate and Generation-Skipping Transfer Tax payments and return filings on Forms 706, 706-NA, 706-A, 706-QDT, 706-GS(T), 706-GS(D), or 706-GS(D-1)</li> <li>Estate and Generation-Skipping Transfer Tax extensions</li> <li>Beneficiary information reporting on Form 8971</li> </ul>	Automatic, no election required.	Tax return filings and payments originally due on or after April 1, 2020 and before July 15, 2020.

Relief for Individuals				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
		<ul style="list-style-type: none"> <li>• Gift and Generation-Skipping Transfer Tax payments and filings on Form 709 that are due on the date an estate is required to file Form 706 or 706-NA</li> <li>• Estate tax payments of principal or interest as a result of an election made under sections 6166, 6161, or 6163</li> <li>• Estate tax annual recertification requirements under section 6166</li> <li>• Exempt organization business income tax and other payments and return filings on Form 990-T</li> <li>• Excise tax payments on investment income and return filings on Form 990-PF</li> <li>• Quarterly estimated income tax payments calculated on or submitted with Forms 990-W, 1040-ES, 1040-ES (NR), 1040-ES (PR), 1041-ES, or 1120-W</li> </ul>		
Allowance for HDHPs to Provide COVID-19 Benefits with \$0 Deductible	IRS Notice 2020-15  IRC §223(c)(2)(A)  IRC §223(c)(1)	Provides guidance stating that a health plan that otherwise satisfies the requirements of an HDHP under Code Section 223(c)(2)(A) will not fail to be an HDHP merely because the plan provides medical care services and items purchased related to testing for and treatment of COVID-19 prior to the satisfaction of the applicable minimum deductible.  As a result, individuals covered by such plans will remain eligible individuals under Code Section 223(c)(1).	No special eligibility requirements.	No Expiration Date
Exclusion from Substantial Presence Test	<a href="#">Rev. Proc. 2020-20</a>  IRC §7701(b)(3)  Treas. Reg. §301.7701(b)-3(c)	Eligible Individuals may exclude their COVID-19 Emergency Period for purposes of applying the substantial presence test. The COVID-19 Emergency will be treated as a non-preexisting medical condition under Treas. Reg. §301.7701(b)-3(c) that prevented the individual from leaving the United States.  Days of presence within the United States during an Eligible Individual's COVID-19 Emergency Period will not be counted for purposes of determining the Eligible Individual's eligibility for treaty benefits with	Eligible Individuals who have a requirement to file a Form 1040-NR for 2020 must claim this exclusion by attaching Form 8843, "Statement for Exempt Individuals and Individuals with a Medical Condition" to their Form 1040-NR and timely filing such Forms.  Eligible individuals may <b>not</b> :	A period of up to 60 days starting on or after February 1, 2020 and on or before April 1, 2020

Relief for Individuals				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
		<p>respect to income from employment or the performance of other dependent personal services with the United States.</p> <p>Eligible Individuals are presumed to have intended to leave the United States on any day of their COVID-19 Emergency Period unless they have applied or otherwise taken steps to become a lawful permanent resident of the United States.</p> <p>Eligible Individuals are presumed unable to leave the United States on any day during the individual's COVID-19 Emergency Period.</p> <p>Eligible Individuals claiming treaty benefits are presumed unable to leave the United States on any day during their COVID-19 Emergency Period.</p> <p><b>Eligible Individual:</b> Any individual who 1) was not a U.S. resident at the close of the 2019 tax year, 2) is not a lawful permanent resident at any point during 2020, 3) is present in the United States on each of the days of the individual's COVID-19 Emergency Period, and 4) does not become a U.S. resident in 2020 due to days of presence outside of the individual's COVID-19 Emergency Period.</p> <p><b>COVID-19 Emergency Period:</b> A single period of up to 60 consecutive calendar days starting on or after February 1, 2020 and on or before April 1, 2020, during which the Eligible Individual was physically present in the United States on each day.</p> <p><b>COVID-19 Emergency:</b> The global outbreak of the COVID-19 virus.</p>	<ul style="list-style-type: none"> <li>• Have applied or otherwise taken steps to become a lawful permanent resident of the United States.</li> <li>• Become a lawful permanent resident of the United States at any point during 2020.</li> <li>• Become a U.S. resident due to days of presence in the United States that fall outside of the individual's COVID-19 Emergency Period.</li> </ul> <p>Have been a U.S. resident at the close of the 2019 tax year.</p>	
Foreign Earned Income Exclusion	<p><a href="#">Rev. Proc. 2020-27</a></p> <p>IRC § 911(d)</p>	<p>Establishes that the COVID-19 Emergency is an adverse condition precluding the normal conduct of business for purposes of the foreign earned income exclusion under IRC § 911(d)(4) for the following countries and periods:</p> <ul style="list-style-type: none"> <li>• China (excluding Hong Kong and Macau): December 1, 2019 through July 15, 2020</li> <li>• Globally: February 1, 2020 through July 15, 2020</li> </ul>	<p>Individuals must have established residency, or been physically present, in the foreign country on or before the applicable start dates (December 1, 2019 for China, February 1, 2020 globally) to take advantage of the exclusion.</p> <p>Individuals may use any 12-month period to meet the qualified individual requirement.</p>	

Relief for Individuals				
<u>Subject</u>	<u>Applicable Law and Regulations</u>	<u>General Description of Relief</u>	<u>Conditions of Relief</u>	<u>Effective Dates</u>
		Individuals who left the above areas on or after the start date, but on or before the end date, will be treated as qualified individuals for purposes of the foreign earned income exclusion with respect to the period during which they were present in, or a bona fide resident of, such areas, so long as the individuals establish a reasonable expectation that they would have met the requirements of Section 911(d)(1) but for the COVID-19 emergency.		

The following chart outlines the affiliation and aggregation rules contained in the CARES Act, and certain related guidance, notices and FAQs issued by the IRS, Treasury, and SBA. The chart is intended to help a business determine how such affiliation and aggregation rules may impact their eligibility and the overall implementation of the Paycheck Protection Program and Employee Retention Credit when such a business functions and/or operates with affiliated entities. Businesses should be aware that receiving a PPP loan will disqualify the business from using the ERC and limit the deferral of employment tax deposits up to the point of loan forgiveness.

<b>Comparison of the Affiliation &amp; Aggregation Rules</b>	
<i>Paycheck Protection Program</i>	<i>Employee Retention Credit</i>
<p><b>Overview:</b> Through the PPP, the SBA provides 100% federally backed loans to help eligible businesses pay wages and other operational costs. If a business satisfies certain conditions, portions of the loan are forgivable. Eligibility for a PPP loan depends in part on the number of employees of the applicant, and affiliation rules apply for this purpose. The affiliation language is contained in the section of the CARES Act dealing with the requirements for <i>obtaining</i> a PPP Loan. The CARES Act section dealing with PPP Loan <i>forgiveness</i> is silent regarding affiliation – presumably because the affiliation rules related to obtaining the loan are a sufficient gatekeeper.</p>	<p><b>Overview:</b> An eligible employer may claim a refundable payroll tax credit for 50 percent of the “qualified wages” (i.e., qualified retention wages, up to \$10,000, including health benefits) paid to each employee of the employer for each calendar quarter. The maximum credit with respect to any employee is \$5,000. See discussion of ERC above. Aggregation rules apply when determining the eligibility and implementation of the ERC to a single employer by including or excluding certain affiliated entities based on the employer’s status and voting control.</p>
<p><b>Affiliation Rule - Statutory Language:</b> CARES Act Sec. 1102(a)(2)</p> <p>Affiliation rules under the PPP program are derived from existing SBA provisions. In general the affiliation rules under the SBA are broader and more likely to sweep in multiple entities as “affiliated” compared to the IRS rules governing the ERC. These rules focus mostly on the <i>power</i> to control or influence rather than on the <i>actual exercise</i> of control.</p> <p>The Interim Final Rule (“IFR”) on Affiliation rules (dated April 15, 2020) notes that although the CARES Act statutory text refers to 13 CFR 121.103 as determining affiliation for purposes of PPP Loan issuance, the affiliation standards in 121.103 do not apply to PPP Loans because section 121.103(a)(8) provides that the SBA’s Business Loan Programs (which includes PPP Loans) are <b>subject to the affiliation rules delineated in 13 CFR 121.301 instead</b> (unless the affiliation rules are waived under section 636(a)(36)(D)(iv) or expanded under section 636(a)(36)(D)(vi)).</p> <p>The SBA has outlined the affiliation rules under 13 CFR 121.301 in follow-on guidance, and provides at a high level that they are:</p> <ol style="list-style-type: none"> <li>1. <b>Affiliation based on ownership</b> – either majority owner, board or other person controlling the concern, or minority members with ability to block proposed entity actions.</li> <li>2. <b>Affiliation arising from stock options, convertible securities, and agreements to merge</b> – SBA considers stock options, convertible securities, and agreements to merge, including agreements in principle, to have present effect on the power to control a firm.</li> <li>3. <b>Affiliation based on management</b> – where the same person or group of persons control the management of multiple firms.</li> </ol>	<p><b>Aggregation Rule - Statutory Language:</b> CARES Act Section 2301</p> <p>Aggregation rules under the ERC are derived from existing Internal Revenue Code provisions. In general, the affiliation rules under the ERC are more form-driven than those of the SBA and are focused on employer status and voting control to determine whether the business is a single employer.</p> <p><u>Aggregation Rule (§2301(d))</u>            “All persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986, or subsection (m) or (o) of section 414 of such Code, shall be treated as one employer for purposes of this section.”</p> <p><i>Corporations</i>            Code Section 52(a) states that all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. A “controlled group of corporations” generally means more than 50 percent of the total combined voting power of all classes of stock entitled to vote within a parent-subsidiary controlled group.</p> <p><i>Partnerships &amp; Proprietorships</i>            Code Section 52(b) states that all employees of trades or business (whether or not incorporated) which are under common control, shall be treated as employed by a single employer.</p> <p><i>Affiliated Service Group</i></p>

4. **Affiliation based on identity of interest** – rebuttable presumption that “close relatives” (as defined in 13 CFR 120.10) with substantially identical business or economic interests are affiliated; can be rebutted by showing that the interests are separate.  
See Treasury Guidance (dated April 3, 2020) “Affiliation Rules Applicable to U.S. Small Business Administration Paycheck Protection Program.”

**15 USC 636(a)(36)(D)(iv):**

*Waiver of affiliation rules.* — During the covered period, the provisions applicable to affiliations under section 121.103 of title 13, Code of Federal Regulations, or any successor regulation, are waived with respect to eligibility for a covered loan for—

- (I) any business concern with not more than 500 employees that, as of the date on which the covered loan is disbursed, is assigned a North American Industry Classification System code beginning with 72;
- (II) any business concern operating as a franchise that is assigned a franchise identifier code by the Administration; and
- (III) any business concern that receives financial assistance from a company licensed under section 681 of this title.

**15 USC 636(a)(36)(D)(vi):**

*Affiliation.* — The provisions applicable to affiliations under section 121.103 of title 13, Code of Federal Regulations, or any successor thereto, shall apply with respect to a nonprofit organization and a veterans organization in the same manner as with respect to a small business concern.

**Additional Guidance from the FAQs/IFR:**

The IFR on the Affiliate Rules (dated April 15, 2020) also notes that **faith-based organizations** are exempt from the SBA’s affiliation rules, including those under 13 CFR part 121, if:

1. They are otherwise qualified to receive PPP loans, and
2. Application of the affiliation rules would substantially burden the organization’s religious exercise.

The IFR on Paycheck Protection Program Requirements for Corporate Groups (dated May 4, 2020) states that PPP loans are limited to an aggregate maximum of \$20,000,000 per corporate group. **For purposes of this limitation, businesses are part of a single corporate group if they are majority owned, directly or indirectly, by a common parent** (where “common parent” is not defined). This appears to be a narrower standard than the affiliation rules previously outlined by the SBA in its published summary “Affiliation Rules Applicable to U.S. Small Business Administration Paycheck Protection Program” (dated April 3, 2020), as it would not include minority owners with certain control rights. Note that the SBA affiliation rules which relate to an applicant’s eligibility for PPP loan, and any waiver of those rules under the CARES Act continue to apply independent of this specific affiliation limitation. Businesses are subject to this limitation even if the businesses are eligible for the waiver-of affiliation provision under the CARES Act or are otherwise not considered to be affiliates under SBA’s affiliation rules. See businesses described above under 15 USC 636(a)(36)(D)(iv) *Waiver of Affiliation Rules*.

Code Section 414(m) states that all employees of the members of an affiliated service group shall be treated as employed by a single employer. “Affiliated service group” means a group consisting of a service organization (referred to as the “first organization” under this paragraph) and one or more of the following:

- (A) Any service organization which
  - i. is a shareholder or partner in the first organization, AND
  - ii. regularly performs services for the first organization or is regularly associated with the first organization in performing services for third persons; and
- (B) Any other organization if
  - i. a significant portion of the business of such organization is the performance of services (for the first organization, for organizations described in subparagraph (A), or both) of a type historically performed in such service field by employees, AND
  - ii. 10 percent or more of the interests in such organization is held by persons who are highly compensated employees of the first organization or an organization described in subparagraph (A).

**Additional Guidance from the FAQs/IFR:**

On April 29, 2020, the IRS published FAQs for taxpayers determining which entities are considered a single employer under the aggregation rules. However, these FAQs were not included in the Internal Revenue Bulletin and therefore may not be relied upon as legal authority.

Generally, the IRS FAQs (last updated April 29, 2020) confirmed the aggregation rule under CARES Act Section 2301(d) that all entities that are members of a **controlled group of corporations** or a **group of entities under common control** (Code Sections 52(a) and (b) respectively), **members of an affiliated service group** (Code Section 414(m)), or **otherwise aggregated under Code Section 414(o)** are considered a single employer for purposes of the ERC.

The eligible employer must report its ERC on its own employment tax return without regard to its aggregation with other entities as a single employer. The amount of the ERC must be apportioned among the members of the aggregated group on the basis of each member’s proportionate share of the qualified wages giving rise to the credit.

The IRS FAQs further clarified the application of the aggregation rule to other provisions of the ERC including:

The \$20,000,000 limitation is immediately effective with respect to any loan that has not yet been fully disbursed as of April 30, 2020. It is the responsibility of the applicant to notify the lender if they have received an amount in excess of the amount permitted by this IFR and the applicant must withdraw or request cancellation of any pending PPP loan application or approved PPP loan. Failure to do so will deem the use of PPP funds for unauthorized purposes, and the loan will not be eligible for forgiveness. It is not clear whether the lack of forgiveness is intended to be the exclusive consequence for being over the cap.

The Treasury/SBA FAQs (last updated May 13, 2020) provide additional guidance for taxpayers including:

- Extension of the affiliation rules for purposes of the PPP’s 500 or fewer employee size standard. Every applicant to a PPP loan is required to count all of its employees and the employees of its U.S. and foreign affiliates, absent a waiver or an exception to the affiliation rules.
- How the SBA reviews borrowers’ required good-faith certification concerning the necessity of their loan request. Importantly, any borrower, together with its affiliates, who receives a PPP loan with an original principal amount of less than \$2 million will be deemed to have made the required good-faith certification. For purposes of this safe harbor, a borrower must include its affiliates to the extent required under the IFR on Affiliate Rules (dated April 15, 2020).

The IFR on treatment of entities with foreign affiliates (dated May 18, 2020) clarifies that for purposes of the PPP’s 500 or fewer employee size standard, **a PPP applicant must calculate the number of employees of an entity by counting all employees of its U.S. and foreign affiliates**, absent a waiver of exception to the affiliation rules. Any entity that does not meet the 500 or fewer employee size standard is ineligible for a PPP loan. However, the SBA will allow PPP applicants (i) who applied prior to May 5, 2020, and (ii) who had no more than 500 employees whose “principal place of residence is in the United States” to remain eligible for a PPP loan.

**Sources**

[Small Business Administration: Paycheck Protection Program](#): Provides a high-level overview of the Paycheck Protection Program.

[Dept. of the Treasury: The CARES Act Provides Assistance to Small Businesses](#): Overview of the Paycheck Protection Program with links to IFRs, the most up-to-date FAQ, and other information for borrowers and lenders.

[Dept. of the Treasury: Affiliation Rules Applicable to U.S. Small Business Administration Paycheck Protection Program \(dated April 3, 2020\)](#): Official summary of applicable affiliation rules used in evaluation of PPP applications.

- Determining whether the employer has a trade or business that was fully or partially suspended due to governmental orders related to COVID-19;
- Determining whether the employer has a significant decline in gross receipts;
- Calculating whether the employer has more than 100 full time employees for purposes of determining “Qualified Wages”; and
- Determining whether the employer is precluded from claiming the ERC if any member of its aggregated group receives a PPP loan.

Determining Full or Partial Suspension due to Governmental Orders

If a trade or business is operated by multiple members of an aggregated group and if the operations of one member of the aggregated group are suspended by a governmental order, then all members of the aggregated group are considered to have their operations partially suspended, even if another member of the group is in a different jurisdiction.

Determining a Significant Decline in Gross Receipts

To be an eligible employer on the basis of a significant decline of gross receipts, the employer must take into account the gross receipts of all members of the aggregated group. If the aggregated group does not experience a significant decline in gross receipts, then no member of the group may claim the ERC (unless the full or partial suspension requirements are met).

Calculating the Average Number of Full Time Employees for Purposes of Determining “Qualified Wages”

All aggregated entities are considered by a single employer for purposes of determining the employer’s average number of employees.

Aggregation Rules and Single Employer Members Receiving a PPP Loan

A single employer under the aggregation rules may not claim the ERC if any member of the employer’s aggregated group receives a PPP loan

**Sources**

[COVID-19-Related Employee Retention Credits: Determining Which Entities are Considered a Single Employer Under the Aggregation Rules FAQs \(last updated April 29, 2020\)](#): Discusses how related entities may be aggregated and treated as a single employer for purposes of the ERC, how the aggregation rules are applied on other provisions of the ERC, and how the ERC may be allocated to members of an aggregated group.

[COVID-19-Related Employee Retention Credits: Determining When an Employer’s Trade or Business Operations are Considered to be Fully or Partially Suspended Due to a Governmental Order FAQs \(last updated April 29, 2020\)](#): Discusses the aggregation rule and its application in determining whether a single employer is eligible for the ERC if one member of the aggregated group is suspended by a governmental order.



[Small Business Administration: IFR on Affiliate Rules, "Business Loan Program Temporary Changes: Paycheck Protection Program" \(85 FR 20817, dated April 15, 2020\)](#): Provides guidance on SBA interpretation of affiliation rules and exemption from affiliation rules for religious organizations under certain circumstances.

[13 CFR §121.301](#): Version of 13 CFR §121.301 immediately prior to the February 10, 2020 IFR rescinded by CARES Act §1102(e) – These are the affiliation rules that are currently in effect.

[Small Business Administration: IFR on "Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders" \(85 FR 26324, dated May 4, 2020\)](#): Provides a \$20 million maximum cap on the amount of PPP loans a corporate group can borrow, and applies a separate aggregation rule for purposes of the cap.

[Federal Reserve Board: Main Street Lending Program Frequently Asked Questions \(effective April 30, 2020\)](#): The Federal Reserve Board provides a Main Street Lending Program and a Primary Market Corporate Credit Facility ("Main Street Loans") in order to assist companies of different sizes to provide liquidity during COVID-19. According to the FAQs, these loans can be obtained and received in addition to PPP loans. Eligibility for Main Street Loans include aggregation rules for calculating employees and revenues of its affiliated entities similar to the SBA's procedures for PPP loans. See 13 CFR 121.301.

[Dept. of the Treasury: Paycheck Protection Program Loans – Frequently Asked Questions \(last updated May 13, 2020\)](#): Provides general overview of PPP loan requirements and program rules. FAQ #44 states for purposes of the PPP's 500 or fewer employee size standard, applicants must count all employees of its U.S. and foreign affiliates (absent a waiver of or exception to the affiliation rules). See 13 CFR 121.301(f)(6). FAQ #46 and 47 provides a safe harbor from the good-faith certification requirement for borrowers (together with its affiliates) who receive a PPP loan of less than \$2 million. The SBA's believes this approach will enable it to conserve its finite audit resources and focus its reviews on larger loans. The SBA also extends its PPP loan repayment date to May 18, 2020, to give borrowers the opportunity to review and consider the safe harbor.

[Small Business Administration: IFR on "Business Loan Program Temporary Changes: Paycheck Protection Program - Treatment of Entities with Foreign Affiliates" \(dated May 18, 2020\)](#): Clarifies under SBA's affiliation rules that employees of foreign affiliates are required to be counted for purposes of PPP eligibility.

[COVID-19-Related Employee Retention Credits: Determining When an Employer is Considered to have a Significant Decline in Gross Receipts and Maximum Amount of an Eligible Employer's Employee Retention Credit FAQs \(last updated April 29, 2020\)](#): Discusses how the aggregation rule is applied for purposes of calculating a "significant decline in gross receipts" to determine whether an employer is eligible for the ERC.

[COVID-19-Related Employee Retention Credits: Determining Qualified Wages FAQs \(last updated April 29, 2020\)](#): Discusses how the aggregation rule is applied for purposes of calculating the average number of full-time employees under the definition of "Qualified Wages."

[COVID-19-Related Employee Retention Credits: How to Claim the Employee Retention Credit FAQs \(last updated May 7, 2020\)](#): Discusses how employers with multiple entities aggregated and treated as a single employer must report the ERC on their employment tax returns.

[COVID-19-Related Employee Retention Credits: Interaction with Other Credit and Relief Provisions FAQs \(last updated May 7, 2020\)](#): Discusses how the aggregation rule may limit an employer's eligibility for the ERC if one of its entities has received a PPP loan.

[COVID-19-Related Employee Retention Credits: Interaction with Other Credit and Relief Provisions FAQs \(last updated May 7, 2020\)](#): Adds a new question 80 which allows an employer who applied for a PPP loan, received payment and repaid the loan by May 7, 2020 to be treated as though the employer had not received a covered loan under the PPP (and would be eligible to claim the ERC). However, this safe harbor has been extended to May 18, 2020 pursuant to the May 13, 2020 update. See [Treasury/SBA FAQs \(Questions 45 & 47\)](#).

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