Meltzer Lippe

CLIENT ALERT

March 30, 2020

ATTORNEYS AT LAW

Meltzer, Lippe, Goldstein & Breitstone, LLP

PRACTICE GROUPS

- Business & Real Estate Taxation
- Construction
- Corporate/Business
- Environmental
- Government Strategies
- Labor & Employment
- Litigation
- Private Wealth & Taxation
- Real Estate
- Social Media, Software & Privacy
- Tax Exempt Organizations
- Trust & Estate Litigation
- Trusts & Estates

Meltzer Lippe
190 Willis Avenue
Mineola, NY 11501

P:516.747.0300
www.meltzerlippe.com

Provisions of the CARES Act that Primarily Impact US Federal Income Tax Consequences of Taxpayers

This is one in a series of Client Alerts prepared by the lawyers at Meltzer Lippe that address various aspects of The Coronavirus Aid, Relief, and Economic Security Act (the "Act"), the stimulus act meant to address the effect of the COVID-19 pandemic. This client alert focuses on provisions of the Act that primarily impact US federal income tax consequences of taxpayers.

Individuals

• Cash Payments. Cash payments will be made to eligible individuals in the form of an immediately refundable tax credit equal to $1,200 ($2,400 for married taxpayers filing jointly) and $500 per child. For single taxpayers, the credit begins to phase out at $75,000 ($112,500 for heads of households and $150,000 for married taxpayers filing jointly) of income and is unavailable if income exceeds $99,000 ($136,500 for heads of households and $198,000 for married taxpayers filing jointly).

• Waiver of 10% Early Withdrawal Penalty. The 10% penalty for early withdrawals from certain retirement accounts and plans in connection with the COVID-19 pandemic will be waived for amounts up to $100,000 in 2020. Any income from the withdrawal will be taxed over a three-year period or alternatively the withdrawn amount can be recontributed over the three-year period regardless of annual contribution caps.

• Waiver of Required Minimum Distributions. Required minimum distributions for 2020 for certain retirement accounts and plans are temporarily waived.

• Charitable Contributions. Taxpayers that don't itemize their deductions will be permitted a deduction up to $300 for eligible charitable contributions in 2020. For taxpayers that do itemize their deductions in 2020, the 60% adjusted gross income limitation applicable to individuals making cash contributions is increased to 100%. For corporations in 2020, the annual limit is increased from 10% to 25% of taxable income.

• Student Loans. Payments or reimbursements made by an employer for an employee's qualified student loan up to $5,250 before January 1, 2021 will be tax-free to the employee.

Businesses

• Tax Credit for Employee Retention. The Act provides that 50% of eligible wages paid by an employer to employees from March 13, 2020 to December 31, 2020, subject to a cap of $10,000 (including health benefits) per employee, will be eligible for a refundable payroll tax credit against the employer's portion of Social Security taxes (i.e., 6.2% withholding). The tax credit is available to an employer for any calendar quarter (i) that had its operations at least partially suspended by a governmental authority because of the COVID-19 pandemic or (ii) that is the first calendar quarter in 2020 in which the employer's gross receipts declined by more than 50% when compared to the same calendar quarter in 2019 and ending with the 2020 calendar quarter following the calendar quarter in which the employer's gross receipts are in excess of 80% of the gross receipts when compared to the same calendar quarter in 2019. Eligible wages for employers with (i) more than 100 full time employees in 2019 include only wages paid to employees that are not providing services because of the above circumstances and (ii) 100 or less full time employees in 2019 includes wages paid to all employees (regardless of whether the employees are working or are furloughed). Employers cannot take this credit if they take a loan under the Paycheck Protection Program (described in another Client Alert).

• Delayed Employer Payroll Tax Payments**.** Employers (and self-employed individuals) can defer the employer portion of Social Security taxes (i.e., 6.2% withholding for employers) due from the date of the Act through the end of 2020. Any deferred taxes must be paid over the following two years, with half required to be paid by December 31, 2021 and the remaining amount to be paid by December 31, 2022.

• Net Operating Losses ("NOLs"). Pursuant to the Tax Cuts and Jobs Act ("TCJA"), NOL carrybacks are generally not allowed. However, under the Act, NOLs for 2018, 2019 and 2020 can be carried back up to five years from each such loss year. In addition, for 2018, 2019 and 2020, the Act removes the 80% taxable income limitation. Special rules apply to REITs and carrybacks to years to which taxpayers have an inclusion under the Code Section 965 transition tax. In light of the retroactive application to 2018, taxpayers should consider whether refunds may be immediately available.

• Excess Business Loss Limitation (EBL). The Act removes for 2018, 2019 and 2020 the limitation on excess business losses under Code Section 461(l) introduced under the TCJA. In light of the retroactive application to 2018, taxpayers should consider whether refunds may be immediately available.

• Corporate Alternative Minimum Tax ("AMT"). The Act allows corporate taxpayers to utilize AMT tax credits over 2018 and 2019, or entirely in 2018 upon the election of the taxpayer, whereas under the TCJA they could be used over four years starting in 2018.

• Business Interest. Under the TCJA, deductible business interest expense is generally limited to 30% of adjusted taxable income. For 2019 and 2020, the Act increases the amount of interest expense that can be deducted to 50% (except in the case of partnerships, for which the increase only applies in 2020). In addition, the calculation for 2020 can be based on 2019 adjusted taxable income. Special rules apply for partners of partnerships for 2019.

• Qualified Improvement Property. This is a long-awaited fix to what many people saw as a glitch in the TCJA. This provision, retroactive to the enactment of the TCJA, will allow businesses, especially in the hospitality industry, to immediately expense costs associated with improving their facilities rather than depreciating them over 39 years. In light of the retroactive application to 2018, taxpayers should consider whether refunds may be immediately available.

Please reach out to your usual Meltzer Lippe contact if you have any questions on the above or if we can help you with anything else during these changing and challenging times.