Coronavirus Aid, Relief and Economic Security Act (CARES Act)

Real Estate Tax Solutions

March 30, 2020

CARES Act Timeline and Summary

On March 27, the President signed into law the CARES Act, designed to provide financial relief to those impacted by the COVID-19 pandemic. The Act contains both tax and financial relief provisions intended to address the strains placed on individuals and businesses, both large and small, from the coronavirus impact.

March 25th: Senate votes 96-0 to approve → March 27th: House approves by voice vote → March 27th: President signs → March 27th: CARES Act becomes Law

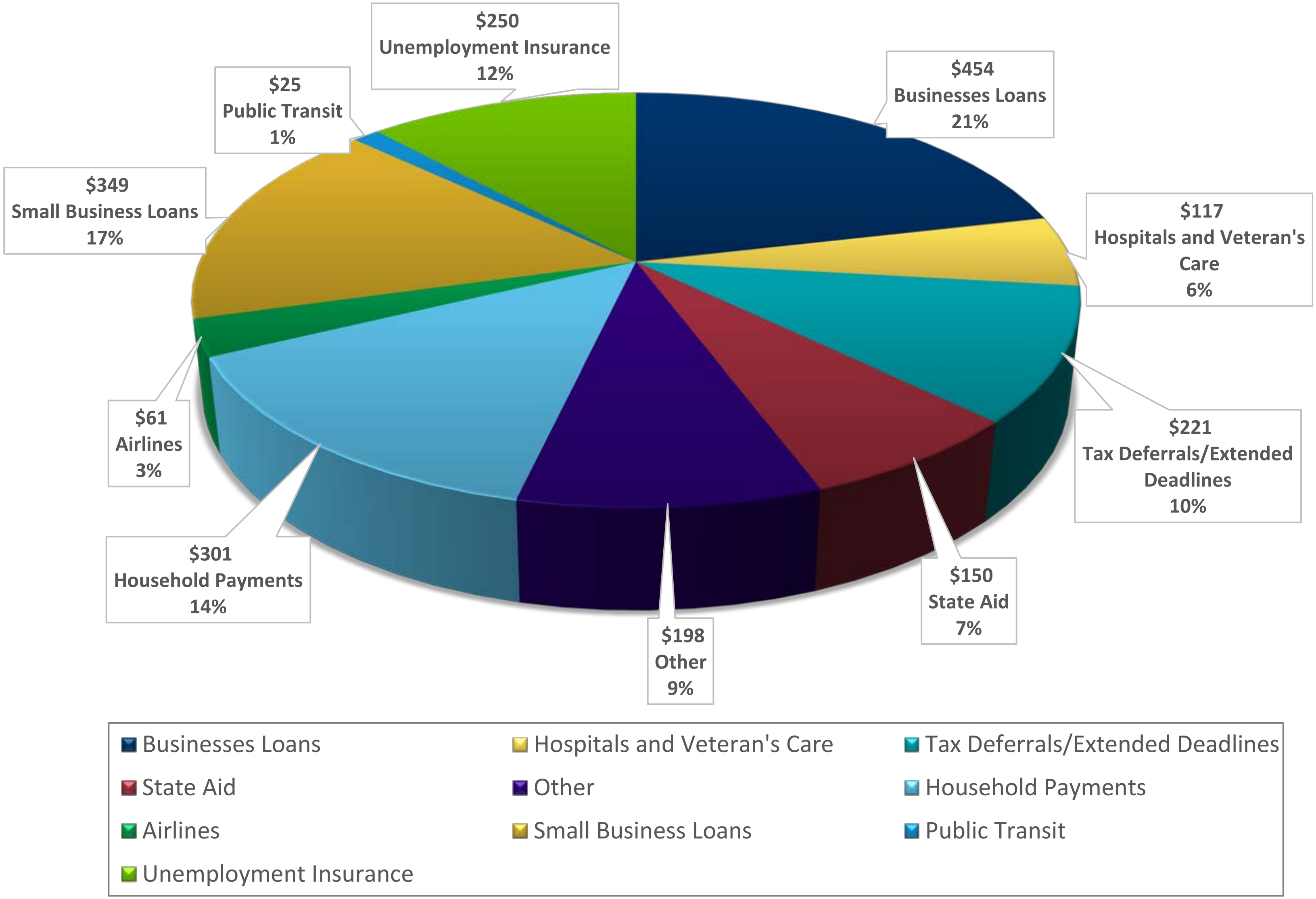
FTI Note: This summary addresses the Federal impacts of the CARES Act as it relates to federal income tax for the real estate industry. Careful analysis should also be performed on a state by state basis. Consult your FTI Tax Advisor.

Real Estate – Executive Summary

The most prominent aspects of the CARES Act as it relates to real estate owners and operators are as follows:

- Qualified Improvement Property life fixed to reflect 15 years and now eligible for bonus depreciation.
  - Most REITs do not take bonus as it doesn't apply for earnings & profits.
  - Absent further guidance, entities that elected out of 163(j) will not be eligible for bonus on QIP.
- NOLs from 2018, 2019 and 2020 can be carried back 5 years for corporations (e.g. Taxable REIT Subsidiaries).
  - This provision will allow corporations to obtain a refund of taxes paid at the 35% tax rate for years prior to 2018.
  - In addition, the NOL carryforward limitation of 80% is removed for 2019 and 2020. This would apply to 2018 NOLs carried forward.
- Forgivable small business loans available for those financially impacted by COVID-19, such as landlords and tenants.
- Payroll tax credits to retain employees and enhance cash flows.
- Interest expense allowed up to 50% of Adjusted Taxable Income; many real estate companies already elected out of 163(j) as an electing real property trade or business (RPTOB).
- Elimination of the $500,000 excess business loss limitation rule for joint tax filers.

Where is the $2.1 Trillion Going?



Data above provided by the Wall Street Journal, amounts in billions

CARES Act - Business Tax Provisions

Delay of Payroll Tax Payments	Employee Retention Credit	NOLs – Corporations	Business Interest Expense Limitation
Deferral of 6.2% Social Security payroll tax and Railroad Retirement Tax Act paid by employers and self-employed individuals	Credit is 50% of qualified wages against employment taxes – 6.2% Social Security payroll tax and Railroad Retirement Tax Act [Cannot be taken if Employer receives Small Business Interruption Loan]	Losses arising in 2018, 2019 and 2020 can be carried back to the 5 prior tax years -Doesn't apply to REITs	Interest expense previously limited to 30% of adjusted taxable income (roughly equal to EBITDA) now raised to 50% (see separate 163(j) rules pertaining to partnerships below)
Will not apply if taxpayer had Section 7(a) loans forgiven.	<u>Limited to:</u> 50% of $10,000 of wages per employee. Taken as a credit against employment taxes and any excess is then refundable.	Eliminated the 80% limitation to allow the full offset of taxable income for tax years 2018 to 2020	Companies can elect to use 2019 adjusted taxable income (assuming higher) in 2020 to determine the 50% test
When: Applicable for wages paid from March 27 to December 31, 2020	When: Applicable for wages paid after March 12, 2020 through December 31, 2020	When: Operating Losses in 2018, 2019 and 2020 eligible	When: Applicable for 2019 and 2020 (reverts back to 30% limitation in 2021-2025)
Payment now due 50% on December 31, 2021 and 50% on December 31, 2022	<u>Eligible Employer:</u> i) carrying on a trade or business in 2020, and either ii) or iii) applies, ii) operation is fully or partially suspended due to governmental authority limiting commerce, travel or group meetings, or iii) had decline in gross receipts (defined as gross receipts for the applicable quarter which are 50% less than same quarter prior year (i.e. Q1 2020 is 50% lower than Q1 2019)) -ALL 501(c) organizations are eligible employers regardless of i) and ii) The provision includes a related party employer aggregation rule.	Note: Carrying back NOLs to tax years prior to 2018 could result in a significant refund of taxes paid (including refund of 35% rate taxes).	Special 163(j) rules for partnerships: 2019: Partnership's interest expense continues to be limited to 30% of Adjusted Taxable Income Excess business interest expense from 2019 is now split and carried forward to 2020 as follows: - 50% treated as paid in 2020, deductible by partner 100% in 2020 - Remaining 50% subject to existing rules
	Qualified Wages (including health plan expenses): More than 100 employees – applies to wages paid during furlough as a result of the COVID-19 virus Less than 100 employees – all wages during period above regardless of furlough or actively working	Also consider the impact of US international provisions (e.g. income inclusions and foreign tax credit effect) for multinational corporations from NOL carrybacks.	An irrevocable election out of the CARES Act change can be made for 2019 and 2020. Note: Some entities already made the irrevocable real property (RPTOB) election in 2018.

CARES Act – Business Tax Provisions (cont.)

Qualified Improvement Property (QIP)	SBA 7(a) Loans	AMT Credit
QIP is now considered 15 year property eligible for bonus depreciation (100% write off) QIP Alternative Depreciation System (ADS) life is 20 years (which is now the life for E&P purposes) Bonus only available when the property is placed in service by the taxpayer	Expands existing loan program	Allows corporations to take AMT credits carried forward from years prior to 2018 over tax years 2018 and 2019
Effective: Retroactive to 2018 Prior Year Tax Return Amendment Opportunities Corporations – Yes Partnerships – If in centralized partnership audit regime, requires an Administrative Adjustment Request (AAR); deduction taken in the year the AAR requested	Certain loan amounts may be forgiven on a tax-free basis - Amounts forgiven on a tax free basis are loan amounts expended on certain payroll, mortgage interest, rent, and utilities during the 8 week period beginning on the date of the loan	The History: Tax Cuts and Jobs Act (TCJA) repealed the AMT tax for corporations commencing in 2018 and allowed corps to utilize the unused AMT tax credits against regular tax over 4 years ending in 2021 (and any unused credit at end of 4 years was refundable in 2021)
OR: File 3115 to change method, 1 year Section 481 (“catch-up”) favorable deduction It is hoped the IRS will provide further guidance on implementing this change. The History: TCJA increased bonus from 50% to 100% for assets that are 20 years or less, but QIP was left as 39 years due to a drafting error (“the glitch”). - Many companies elected out of 163(j) and are now depreciating over ADS lives. Query: Will IRS provide relief for those who elected?	Loans are up to 2x average monthly payroll, with a max of $10mm Favorable applicability to restaurants and hotels	**When**: Must file application for refund before December 31, 2020 2018 Refundable AMT credit = 100% of excess of minimum tax credit carryforward amount from 2017 tax return Options are to either amend 2018 or push 100% of the remaining credit and take as Refundable AMT credit in 2019
Definition of QIP “any improvement to an interior portion of a building which is non-residential real property” if placed in service after the building was placed in service NOT: an enlargement, elevator/escalator or internal structural framework	Max interest rate of 4% Eligibility: Fewer than 500 employees	

CARES Act – Individual Tax Provisions

Excess Business Losses & NOLs	Direct Cash Rebate $$$	Access to Retirement Plan Dollars	Charitable Deductions	Student Loan Interest
Excess Business Losses: The TCJA limitation on the use of excess business losses in the amount of $250,000 ($500,000 for joint filers) is suspended from 2018 through 2020. **Note**: Clients with excess business losses can amend their 2018 tax return **When**: Effective for tax years 2018 to 2020	Rebate Checks as Follows: $1,200 – single $2,400 – married $500 – per child	Waives the 10% penalty (not the tax) for early withdrawal up to $100,000 for coronavirus related expenses prior to December 31, 2020 (i.e. diagnosed with COVID 19, care for spouse or dependent, financial hardship from quarantine, layoff, furlough, a business closing etc.)	$300 deduction above the line for non-itemizers	Employer can pay an employee's student loan interest on a tax free basis before January 1, 2021
NOLS: Noncorporate NOL carryback allowed without the 80% of taxable income limitation For tax years after 2020, the 80% limitation returns and applies before taking 199A deduction and after pre-2018 NOLs. **When**: Losses arising in 2018, 2019 and 2020 can be carried back to the 5 prior tax years	Phase out with AGI (adjusted gross income) between $75,000 – 99,000, single $150,000 – 198,000, married **When**: AGI is based on 2019 tax return, if filed, or 2018 tax return, if 2019 not filed yet	Loan availability increased from $50,000 to $100,000 Those subject to minimum distribution requirements for IRAs, 401(K), 403(b), etc. have no minimum distribution for 2020 (to avoid drawing funds after market impact) Any tax on income from drawing down retirement funds allowed to be paid over a 3 year period	Removed 50% limitation on deductions for charitable contributions, now 100% deduction of charitable contributions	Maximum exclusion is $5,250 per year

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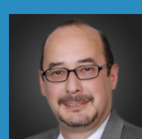

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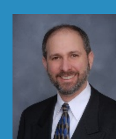

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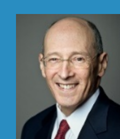

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