

The CARES Act: What's In it for You and Your Taxes?

Key changes to the Tax Code after COVID-19

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Side by Side Comparison of COVID-19 Programs

| Program Name | SBA's Coronavirus (COVID-19) Economic Injury Disaster Loan Program (EIDL) | SBA's "Regular" Loan Program | Paycheck Protection Program Loan (PPP) |
|----------------------|---|--|---|
| Application Process | Online via the SBA's website. Details here: https://disasterloan.sba.gov/ela/Information/Index Application process is online through the SBA's website. Requires applicant to submit a signed and dated IRS Form 4506-T as part of the application. | Generally, through a bank or other SBA loan facility such a community organization, or other lending partner qualified by the SBA (like mortgage processors, but different). | Submitted through a participating bank qualified by the SBA, subject to ongoing changes including the implementation of online application process. The Treasury Department is working on an online vendor system to facilitate loan applications, but it is not yet operational. |
| Dollars Available | Up to \$2 Million. Amount calculation based on company's actual economic injury and financial need. | \$500 to \$5.5 Million Typically, the business must have applied to other sources and been unable to secure financing. | Lesser of (i) 2.5 times monthly payroll costs based on prior year, or (ii) \$10 million; |
| Application Deadline | December 31, 2020 | | June 30, 2020 |

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| Eligible Uses | To meet financial obligations and operating expenses that the company would otherwise have been able to meet had the disaster not occurred <ul style="list-style-type: none">SBA states that the loan is limited to "working capital" | Can be used for just about any typical business need, including fixed assets and operating capital | Payroll, health insurance, rent, utilities and mortgage interest, but excludes employee compensation over \$100k |
| Interest Rates | 3.75% fixed interest rate to for-profit companies; 2.75% for non-profits | Variable | Maximum 4.0% |

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| Loan Repayment | <p>Small businesses must:</p> <ul style="list-style-type: none">(a) be located in a declared disaster area;(b) be a small business, small agricultural cooperative, or a non-profit organization(c) have suffered substantial economic injury, i.e. the business is unable to meet its obligations and pay its ordinary and necessary operating expenses. | Must qualify under SBA definitions, which include size requirements, industry category, and | <p>Small business, non-profits, some veteran organizations and tribal businesses, all subject to a cap of 500 employees.</p> <p>Affiliates of a business count toward 500 employee cap unless in the hospitality and/or restaurant (NAICS Code 72). If you fall under this category, the affiliation rules do not apply and the business can apply the 500 employee cap per physical location.</p> <p>Business must certify that the loan is necessary because of COVID-19 and will use the proceeds for payroll, lease, and utility payments and that the business is not receiving duplicative funds</p> |

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| Guaranty/ Collateral | Generally, a business MAY apply for a disaster relief loan AND a regular SBA loan. There is no requirement that the business choose between one loan vehicle or another, or that the business is prohibited from applying from the disaster relief loan if the business already has "regular" SBA loan, but the loan proceeds may not be used for the same purpose. | May be a faster route for businesses needing immediate funding. CARES Act also established program for deferment for existing SBA 7(a) loans and 504 loans for six months, with the SBA paying the principal and interest during that period. The deferment also applies to new 7(a) loans and 504 loans made during the six month period following enactment of the CARES Act. | A portion of the loan may be forgiven equal to 8 weeks of payroll, rent, utilities, and mortgage interest, subject to limitations and requirements that you maintain the same payroll as prior year. Forgiveness of any indebtedness will not be taxable to the business. Must apply for forgiveness and provide detailed documentation of applicable expenses. May apply for a disaster relief loan and a PPP loan, but cannot use proceeds on same expenses. Detailed record keeping of use of funds is required. If already received an EIDL, the business can refinance into a PPP loan in order to take advantage of loan forgiveness aspect. |

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| Other Comments/Info | <p>Generally, a business MAY apply for a disaster relief loan AND a regular SBA loan. There is no requirement that the business choose between one loan vehicle or another, or that the business is prohibited from applying from the disaster relief loan if the business already has "regular" SBA loan, but the loan proceeds may not be used for the same purpose.</p> <p>Anecdotally, there has been considerable speculation on how the SBA will manage the volume of loan applications it may / is likely to receive. No disaster loan initiatives of this potential size have been undertaken by the SBA before, so it is unclear how this will work. The SBA and Treasury Department are continuing to monitor and change the application process.</p> | <p>May be a faster route for businesses needing immediate funding. CARES Act also established program for deferment for existing SBA 7(a) loans and 504 loans for six months, with the SBA paying the principal and interest during that period. The deferment also applies to new 7(a) loans and 504 loans made during the six month period following enactment of the CARES Act.</p> | <p>A portion of the loan may be forgiven equal to 8 weeks of payroll, rent, utilities, and mortgage interest, subject to limitations and requirements that you maintain the same payroll as prior year. Forgiveness of any indebtedness will not be taxable to the business. Must apply for forgiveness and provide detailed documentation of applicable expenses.</p> <p>May apply for a disaster relief loan and a PPP loan, but cannot use proceeds on same expenses. Detailed record keeping of use of funds is required. If already received an EIDL, the business can refinance into a PPP loan in order to take advantage of loan forgiveness aspect.</p> |

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| Disaster Relief Grant | Also eligible to receive \$10,000 advance within three (3) days after application. You must the \$10,000 grant when you complete the EIDL application, but it is not repaid under any circumstances | | |

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Tax Issues Under the CARES Act

- Everything depends upon who's who and what's what.
- Critical to distinguish between various types of entities
 - C Corporations are corporations subject to U.S. federal income tax at the corporate level
 - Partnerships, LLC's and S-Corporations are pass-through entities which calculate their taxable income and allocate it to their owners who are, in turn, subject to U.S. federal income tax on their allocable shares of the passthrough's income
 - Disregarded LLC's and sole proprietorships return their income on their owners' tax return

Tax Issues Under the CARES Act

- Who employs and pays the employees is the *key* for determining eligibility and calculation for various benefits
 - The SBA rules on affiliation in calculating employee totals are very complex
- There are special Rules for Independent Contractors and other non-W2 workers

Direct Corporate Tax Benefits for Charitable Contributions

- The **CARES Act** made significant changes for charitable contributions by companies in two areas:
 - a) Cash Payments
 - b) Food Inventory

Charitable Contributions made in Cash

- ***Pre-CARES:***
 - Cash contributions were limited to up to **10% of taxable income**
- ***Post-CARES:***
 - Cash contributions are increased up to **25% of taxable income**; and
 - Any excess contributions can be **carried forward** for a period of **5 years**

Charitable Contributions made in Food Inventory

- ***Pre-CARES:***
 - Food inventory contributions were limited to up to **15% of taxable income** for C corporations **or aggregate net income** from all trades or businesses
- ***Post-CARES:***
 - Food inventory contributions are increased up to **25% of taxable income** for **all businesses**

Employee Retention Credit

- The **CARES Act** created a refundable credit against employment taxes on qualified wages for eligible companies, including those that are tax-exempt (non-profits)
- Obviously, the goal of this credit is to encourage companies to retain employees during the height of the crisis, and thereby, keep those employees from filing unemployment claims with state agencies

Employee Retention Credit

- ***Who is an eligible employer?***
 - Taxpayers operating a trade or business during calendar year 2020
 - During any calendar quarter:
 - *Clause I:* Operations are fully or partially suspended due to an official order limiting business because of COVID-19; OR
 - *Clause II:* The company suffered a significant decline in gross receipts
 - beginning the 1st quarter after 12/31/2019, during which gross receipts are less than 50% of gross receipts at the same time the prior calendar year, and
 - ending with the calendar quarter in which gross receipts are greater than 80% of gross receipts at the same time for the prior year
 - Only applies to wages paid after March 12, 2020, and before January 1, 2021

Employer Retention Credit

- ***What criteria disqualifies a taxpayer from claiming this credit?***
 - The taxpayer cannot claim this credit if it obtains an SBA loan under the Economic Disaster Loan Program.
 - The taxpayer cannot claim this credit if it has any loan debt forgiven under the PPP.
- So, **NO DOUBLE DIPPING!**
 - If a taxpayer uses the retention credits, it is locked out from loan forgiveness under the PPP or the Economic Disaster Loan Program

Employee Retention Credit

- ***How does the Credit work?***

- The retention credit applies to the employer portion of the Social Security Tax of ***6.2% on qualified wages***.
- Qualified wages limited to ***\$10,000 per employee***.
- The credit includes health plan expenses, but **NOT**
 - Wages for paid sick leave and family leave provided by the Families First Coronavirus Response Act (FFCRA);
 - Wages for section § 45S employer credit for paid family and medical leave; OR
 - Wages taken into account for the Work Opportunity Credit under § 51

Eligible employers can advance the benefit of the credit, by reducing the amount of their ***current payroll tax deposits*** (which includes federal income tax withholding, SSN and Medicare) by the amount of the credit they are entitled to in a calendar year.

Employee Retention Credit

- ***Calculating the Credit***
 - Different results based on the number of employees: >/< 100
 - The business has >100 Employees
 - *Clause I* (governmental order) all wages beginning on date of order.
 - *Clause II* (decrease in revenue) wages during the Clause II Period Wages limited to the amount such employee would have been paid for working an equivalent duration during the 30 days immediately preceding such period. § 2301(c)(3)(B)
 - Under both *Clause I & II*, qualified wages limited to the amount such employee would have been paid for working an equivalent duration during the 30 days immediately preceding such period. “§ 2301(c)(3)(B) limitation.”
 - The business has < 100 Employees
 - *Clause I*: All wages during period of reduced revenues due to government order
 - *Clause II*: Same as >100 employees, but not subject to § 2301(c)(3)(B) limitation.
 - Only applies to wages paid after March 12, 2020, and before January 1, 2021

Deadlines for Employer Payroll Taxes Are Extended

- The **CARES Act** permits companies and self-employed individuals to defer paying the employer portion of Social Security Taxes that are normally due March 27, 2020 to **December 31, 2020**
 - 50% of the deferred amount is now due **December 31, 2020**;
 - the remaining 50% of the deferred amount is now due **December 31, 2021**.
- Estimated payments for self-employment taxes have been delayed until **July 15, 2020**, just like estimated income taxes.

Net Operating Losses

- The **CARES Act** makes some pretty dramatic changes to Net operating losses for **C Corporations**
- **Pre-CARES:**
 - Net operating losses could not be carried back, with a few exceptions, and the limitation on net carryforwards was limited to 80% of taxable income.
- **Post-CARES:**
 - Carrybacks *are now allowed* for tax years 2018, 2019 and 2020 to each of the 5 taxable years preceding the Net Operating Loss.
 - Taxpayers may elect to forego the entire 5 year carryback period with respect to a particular year's Net Operating Loss.

The Impact of Net Operating Losses for Future Tax Years

- For any year before Tax Year 2021, *there is no limitation* on the aggregate amount of Net Operating Losses carrybacks or carryforwards to applied on taxable income.
- *Beginning with Tax Year 2021*, any carryforwards of Net Operating Losses *will again be subject* to the 80% taxable income limitation.

Amending Tax Returns for Prior Years

- **C Corporations** may elect to amend their tax returns for years taxed at a higher rate and carry back Net Operating Losses from 2018, 2019 and 2020 *as a method for generating tax refunds and possibly additional cash flow* to ease the impact of COVID-19.
- Any amendments to carry back Net Operating Losses for 2018 and 2019 *must be made by the due date* (including extensions of time) for filing returns for the first taxable year ending after the date of passing the **CARES Act**.

Deducting Excess Business Losses

- **Excess Business Losses** are those amounts where a non-C Corporation taxpayers aggregate trade or business deductions exceed the sum of the gross income and gain plus \$250K (or \$500K for a joint return).
- The **CARES Act** temporarily suspends any limitation to deduct these losses for tax years 2018 through 2020. That limitation arose from the 2017 Tax Cuts and Jobs Act (“TCJA”).

Alternative Minimum Tax Credits (AMTs)

- The **CARES Act** accelerates a *C Corporation's* ability to unlock its refundable AMT credit as a source of cash flow.
- The **CARES Act** makes *100% of the AMT credit refundable in tax year 2019* and allows a taxpayer to elect to recover the full credit in 2018 and to file a tentative refund claim no later than 12/31/2020.

Deductible Business Interest

- The **CARES Act** now *increases* the adjustable taxable income limit for deductible business interest expense from *30% to 50%* for tax years 2019 and 2020.
- The amendment also allows a taxpayer to elect to use *its 2019 adjusted taxable income* to determine *its 2020 business interest deduction*.

Deductible Business Interest

- For partnerships, LLC's and independent contractors, the increase *does not apply* to the partnership until the 2020 tax year.
- For tax year 2019, *50% of the excess business interest* allocated to a partner, member or independent contractor will be treated *as paid in 2020* and *not subject to the business interest deduction limitation*.
- The *remaining 50%* will continue *to be subject to the 30% limit but carried forward*.

Bonus Depreciation for Qualified Improvement Property

- **Qualified Improvement Property** consists of interior, nonstructural improvements to a nonresidential building.
- The **CARES Act** assigns *a 15-year depreciable life* to QIP, allowing it to be characterized as eligible for bonus depreciation.
- This fixes the “*retail glitch*” and is effective retroactively.
- Companies *may amend their prior year tax returns* and claim bonus depreciation on QIP.
- **Note:** QIP improvements must be *constructed by the taxpayer*, versus those *purchased by the taxpayer*.

Disclaimer

Information contained in this document is not intended to provide legal, tax, or other advice as to any specific matter or factual situation, and should not be relied upon without consultation with qualified professional advisors.

Any tax advice contained in this document is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed under applicable tax laws, or (ii) promoting, marketing, or recommending to another party any transaction or tax-related matter.

Latest News on Additional Disaster Funding

- Late on 4/21/2020, the U.S. Senate approved \$484 billion to replenish economic recovery relief to address COVID-19. The U.S. House is expected to approve the measure on 4/23/2020, which the President says he will sign.
- ***What's in the extension?***
 - The agreement would provide \$320 billion to replenish the Paycheck Protection Program, which offers guarantees for forgivable loans to small businesses if a majority of the money is used to retain employees.
 - About a fifth of the funding for the small-business loan program, \$60 billion, would be set aside for smaller lenders, in line with Democrats' request to steer resources to businesses that typically have trouble accessing loans.
 - The bill would also add \$60 billion for the Small Business Administration's disaster relief fund — divided into \$50 billion in loans and \$10 billion in grants — and farms and other agriculture enterprises would be made eligible.

Source: "Senate passes the \$484 billion relief package," *New York Times*, April 21, 2020

Best Practices for Securing COVID-19 Funding

Here are some great recommendations from local bankers about securing funding if you were unable to get through the first time.

- Submit an application with *your current bank*, since most banks are prioritizing applications for their existing customers.
- Make sure to *include an Excel spreadsheet* with the application that easily documents how the total eligible costs were calculated. Banks are spending a lot of unnecessary time trying to reconcile how applicants calculated eligible costs.
- *Remember* that the PPP excludes payroll costs in excess of \$10,000 for any individual employee whose total compensation exceeds \$100,000. This calculation should be clearly identified.
- A name and social security number is required *for all owners with more than 20% equity* in the business. If no one owns more than 20%, at least one owner's name and SSN must be included along with their ownership percentage.
- For non-profits, the SSN of the Executive Director or Managing Member is required. In the ownership percentage block, the applicant should indicate "N/A."

Best Practices for Securing COVID-19 Funding

- *Attend the online workshops* for education and/or information about the PPP/EIDL. These are offered through the SBA, the local SBDC and the various Chambers. They are very informative and will provide clarification.
- When applying, it is imperative to *have all of the required supporting documents available* to upload to the bank's loan portal.
- *Double check* the information that you enter on your forms **BEFORE** submitting the application. Check your math.
- Complete **EVERY** form that is required for the application. Missing information only creates a delay that might cost your place in line.
- **DO NOT** submit an application without the supporting documents. The loan could possibly be delayed until those items are received and could slow down the process.

Alternative COVID-19 Recovery Funding Sources

If you are unsuccessful obtaining government funding, there are multiple sources of alternative interim capital for small businesses:

- **GoFundMe's Small Business Relief Initiative:** GoFundMe has partnered with Yelp, Intuit QuickBooks, GoDaddy, and Bill.com to provide small business owners with the financial support and resources needed to continue running their businesses during and after the coronavirus crisis.
<https://www.gofundme.com/c/small-business-relief-initiative-and-fund-faqs>
- **FaceBook's Small Business Grants Program:** Up to 30,000 eligible small businesses in more than 30 countries where it operates will be able to receive the grant.
<https://www.facebook.com/business/boost/grants>
- **Salesforce Care Small Business Grants:** As part of Salesforce's commitment to small businesses and giving back to the community, Salesforce is partnering with Ureeka to offer eligible small businesses the opportunity to receive a \$10,000 grant to help them through the COVID-19 outbreak.
<https://grants.ureeka.biz/salesforce>

Alternative COVID-19 Recovery Funding Sources

- **MBDA Business Center: Enterprising Women of Color Grant Competition:** The Enterprising Women of Color program is a part of MBDA's focus to promote the growth and global competitiveness of minority business enterprises. The agency program will promote women of color entrepreneurs as engines of economic growth in their communities. MBDA is seeking proposals to fund three Enterprising Women of Color business centers in any U.S. State or U.S. Territory.
<https://www.grants.gov/web/grants/search-grants.html?keywords=mbda>
- **Goldman Sachs and LiftFund Commit to \$50 Million in Loans For Texas Small Businesses:** Goldman Sachs and the LiftFund, along with other community development financial institutions (CDFIs), are partnering to provide \$50 million in loans to small businesses in Texas that have been affected by COVID-19 as part of the Goldman Sachs 10,000 Small Businesses program. These loans, made through the U.S. Small Business Administration's (SBA) Paycheck Protection Program (PPP), will primarily be used for payroll so that employees can continue to receive paychecks and small businesses can retain their employees and will be partially or wholly forgiven. <https://www.liftfund.com/covid-19-loan/>
- **PayPal, Intuit and Square** have all been approved to participate in the U.S. Small Business Administration's (SBA) Paycheck Protection Program, which provides aid in the form of forgivable loans for small businesses that keep all employees on their payroll for at least eight weeks. **PayPal** (<https://www.loanbuilder.com/ppp-loan-support>); **Intuit** (<https://aidassist.intuit.com/app/home#/home>); **Square** (Square Capital said it would notify sellers through Square Dashboard when their application is available, starting with employers whose application data can be verified automatically)

Questions or Comments

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