



The Real Estate Roundtable

Coronavirus Aid, Relief, and Economic Security (CARES) Act and Implications for U.S. Real Estate

Tax Policy





SUMMARY OF MAJOR TAX PROVISIONS IN THE CARES ACT

This summary is based on The Real Estate Roundtable's preliminary analysis of the CARES Act. It is subject to change.

EMPLOYEE RETENTION TAX CREDIT (SEC. 2301)

- The CARES Act includes a refundable tax credit of up to \$5,000 per employee for businesses that continue to pay employees between March 13 and December 31, 2020. Unlike the emergency loans for small employers, the credit is not limited to businesses with 500 or fewer employees. An employer can qualify if its business is fully or partially suspended due to orders from a governmental authority related to COVID-19 or the gross receipts of the business in a calendar quarter are less than 50% of receipts in the same quarter in the prior year.
- In the case of businesses with more than 100 employees, the credit is limited to wages paid to employees who are not able to provide services due to the qualifying circumstances. The language would appear to allow an employer to claim the credit for wages paid to employees that are providing partial services. For example, in addition to applying to wages paid to a furloughed employee, the credit would apply if an employer continues to pay a full-time salary to an employee that is working part-time due to the business interruption.
- The credit equals 50% of wages and health benefits, up to \$10,000. The credit applies to the employer's share of quarterly payroll taxes, and any excess credit amount is fully refundable.

NET OPERATING LOSSES (SEC. 2303)

- The CARES Act allows businesses to carry back net operating losses from 2018, 2019, and 2020 for five years and temporarily removes the TCJA rule limiting losses to 80% of taxable income. The provision will facilitate the ability of real estate businesses to "monetize" recent and current loss carryforwards by filing amended returns for prior years and generating tax refunds that can be used for business needs.



QUALIFIED IMPROVEMENT PROPERTY (SEC. 2307)

- The CARES Act includes a technical correction to TCJA that will allow real estate businesses to immediately expense or accelerate the depreciation of their interior improvements to nonresidential property, including leasehold improvements. Due to a TCJA drafting error, these expenditures are currently subject to a 39-year recovery period. Under the CARES Act, the improvements will be depreciated over zero, 15, or 20 years (depending on elections made by the taxpayer).

LIMITATION ON BUSINESS INTEREST (SEC. 2306)

- The CARES Act liberalizes the limitation on the deductibility of business interest in 2019 and 2020. TCJA limited the amount of business interest deductible for tax purposes to no more than 30% of EBITDA. TCJA allows real estate businesses to elect out of the limitation. However, some real estate businesses continue to operate under the 30% limitation because the real estate exception lengthens the cost recovery period for real property (especially multifamily property) and property improvements. For these businesses, the CARES Act increases the limitation on deductible business interest to 50% of EBITDA in 2019 and 2020. In addition, the CARES Act allows businesses to elect to use earnings from 2019 for purposes of calculating their limitation in 2020.

EMPLOYER PAYROLL TAX DEFERRAL (SEC. 2302)

- The CARES Act permits employers and self-employed individuals to defer the employer-share of Social Security payroll taxes (6.2%) from the date of enactment until the end of 2022. The deferred amount must be repaid in 2021 (50%) and 2022 (50%). The provision effectively offers the equivalent of an interest-free loan to employers, independent contractors, and sole proprietors.

CANCELLATION OF INDEBTEDNESS INCOME (SEC. 1106(J))

- Any loan forgiveness under the \$350 billion small business emergency loan program is excluded from income for tax purposes.

TAX TREATMENT OF ECONOMIC STABILIZATION INVESTMENTS (SEC. 4003(H))

- The CARES Act directs Treasury to issue guidance clarifying that any warrants, stock options, preferred or common stock, or other equity does not result in an ownership change for tax purposes (sec. 382).