

## TAX & WEALTH ADVISOR ALERT: INDIVIDUAL TAX RELIEF AND RETIREMENT PLAN ACCESS PROVISIONS IN THE CARES ACT

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) in response to the coronavirus pandemic. This article summarizes the tax relief provisions for individuals and the retirement plan access provisions that are contained in the CARES Act. A summary of tax relief provisions for business can be found [here](#).

### **Economic Impact Payments (Recovery Rebates) for Individuals**

To help individuals during this time of economic uncertainty, the IRS will send payments of up to \$1,200 to eligible individual taxpayers and \$2,400 for eligible married couples filing joint returns. Parents will get an additional \$500 for each qualifying child dependent under age 17 (using the qualification rules under the Child Tax Credit). Thus, the payment for a married couple with two children under 17 will be \$3,400.

U.S. citizens and residents are eligible for a full payment if their adjusted gross income (AGI) is under \$75,000 (single or married filing separately), \$122,500 (head of household), and \$150,000 (joint filer). The individual must not be the dependent of another taxpayer and must have a social security number that authorizes employment in the United States. Estates and trusts are not eligible to receive an economic impact payment.

For eligible individuals whose AGI exceeds the above thresholds, the payment amount is phased out at the rate of \$5 for each \$100 of income. Thus, the payment is completely phased out for single filers with AGI over \$99,000 and for joint filers with no children with AGI over \$198,000. For a married couple with two children, the payment will be completely phased out if their AGI exceeds \$218,000.

Most eligible individuals will not have to take any action to receive a payment. The IRS will automatically calculate and send the payment to those who are eligible. If the individual has already filed his or her 2019 tax return, the IRS will use the AGI and dependents from that return to calculate the payment amount. If the individual has not filed for 2019 yet, information from the taxpayer's 2018 return will be used. If no 2018 return has been filed,

the IRS will use information from 2019 provided in the taxpayer's Form SSA-1099, Social Security Benefit Statement, or Form RRB-1099, Social Security Equivalent Benefit Statement. Individuals who are not otherwise required to file a tax return and do not receive a Form SSA-1099 or RRB-1099, will need to file a simple return to receive an economic impact payment. The IRS will soon provide instructions on how to do this.

The IRS will deposit the payment directly into the bank account reflected on the return. For those that did not provide bank account information on their return, the IRS plans to develop a web-based portal for individuals to provide banking information to IRS, so that payments can be received as a direct deposit rather than by a check sent in the mail. Additionally, no later than 15 days after distributing an economic impact payment, the IRS must mail a notice to the individual's last known address indicating how the payment was made, the amount of the payment, and a phone number for reporting any failure to receive payment to the IRS.

Economic impact payments are nontaxable, and they will not be included in the recipient's income for tax purposes; however, these payments will be considered "advance rebate payments" of a 2020 credit based on a 2019 tax return. Therefore, there will be a "true-up" on the 2020 tax return—the amount of the credit that is allowable on an individual's 2020 tax return must be reduced (but not below zero) by the aggregate advance rebates made or allowed to the taxpayer during 2020. This means that if an individual received an advance payment that was less than the credit to which the individual is entitled to for 2020, the individual will be able to claim the credit or the balance of the credit when filing the 2020 tax return. For instance, while eligible individuals who had a child in 2020 will not receive an advanced payment for this child, they will receive a \$500 credit for that child when they file their 2020 tax return. Moreover, individual who weren't an eligible individual for 2019 and received no advance payment but became an eligible individual in 2020 (e.g., the individual was a dependent for 2019 but not 2020) will be able to claim the credit when filing their 2020 tax return. If, on the other hand, the advance payment received was greater than the credit to which the individual is entitled, the individual will not have to pay back the excess because the 2020 credit cannot be reduced below zero.

### **Waiver of 10% Early Withdrawal Penalty for COVID-19 Related Retirement Plan Hardship Distributions**

Typically, an early, hardship-related distribution from a qualified retirement plan (such as a 401(k), profit-sharing, 403(b), 457(b) plan, or an IRA) is subject to a 10% additional tax (an "early withdrawal penalty") unless the distribution meets an exception under Code Section 72(t). However, the CARES Act waives this early withdrawal penalty for certain early distributions by a "qualified individual." A qualified individual is an individual:

(1) who is diagnosed with the virus SARS-CoV-2 or with COVID-19 by a test approved by the Centers for Disease Control and Prevention (CDC);

(2) whose spouse or dependent (as defined in Code Sec. 152) is diagnosed with such virus or disease by such a test; or

(3) who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off, or having work hours reduced due to such virus or disease; being unable to work due to lack of child care due to such virus or disease; closing or reducing hours of a business owned or operated by the individual due to such virus or disease; or other factors as determined by the Secretary of the Treasury.

Any “coronavirus-related” distribution of up to \$100,000 made on or after January 1, 2020, and before December 31, 2020, from a qualified retirement account taken by a qualifying individual will not be subject to the 10% early withdrawal penalty. Qualifying individuals will still be subject to income tax on the distribution, but a retroactive tax credit will be made available if the individual repays the amount as a rollover contribution to any eligible retirement plan within three years following the date of the distribution. In the alternative, if the individual elects not to repay the distribution amount, the distribution will be subject to federal income tax ratably over the three tax years following the distribution (rather than in the year of distribution) unless the participant elects not to prorate the taxation. For distributions to a qualifying individual, the CARES Act also removes the employer’s obligation to withhold 20% percent of the distribution for the payment of income tax on behalf of the individual.

Under existing rules, nonqualified individuals may still be able to take a hardship distribution of up to \$100,00, with a three-year repayment period, if their state of residence qualifies for individual assistance under a federal disaster declaration. However, in this case, all income taxes will be owed on the amount of the distribution in the first year, and the 10% early withdrawal penalty is not waived.

Note that not all qualified retirement plans permit an early distribution, by their terms. If you have questions regarding whether your plan permits an early withdrawal or hardship distribution, contact your plan administrator or legal counsel, or, in the case of an IRA, your account custodian. An employer is permitted, but not required, to now amend a qualified retirement plan to allow plan participants to access a distribution under the access rules as expanded under the CARES Act.

### **Expansion of Permitted Retirement Plan Loans**

The CARES Act provides for expanded retirement plan loan flexibility under plans whose terms permit (or are amended to permit plan loans). Specifically, during the 180-day period beginning on March 27, 2020, and ending on September 23, 2020, a plan participant who satisfies the requirements to be a qualified individual, as defined above, may take a plan loan in an amount not to exceed the lesser of \$100,000 or 100% of their vested plan account

balance. These limits exceed the typically applicable plan loan limits.

For individuals who held outstanding or pending retirement plan loans as of March 27, 2020, where the loan was due to be repaid by December 31, 2020, the Act extends the repayment due date by one year. Additionally, for all plan loans, the period from March 27 through December 2020 will be disregarded in calculating either the five-year maximum repayment period, or the period over which interest on the loan must be amortized.

### **Waiver of Required Minimum Distribution Rules**

In general, tax law requires a qualified retirement plan or IRA owner to take required minimum distributions (RMDs) annually once the owner reaches age 72. The CARES Act provides that the otherwise applicable requirement to take an RMD from a retirement plan or IRA in 2020 is waived. Also included in the waiver are distributions that would have been required by April 1, 2020, due to the account owner's having turned age 70 1/2 in 2019. This provides great relief to those whose required minimum distribution amount for 2020 was calculated based on the value of the market at December 31, 2019. The CARES Act does, however, also permit an individual who still wishes to take a 2020 RMD to do so.

### **Expansion of Charitable Contribution Deduction**

The CARES Act makes two significant liberalizations to the rules (see [here](#) for a summary of the rules) governing individual charitable deductions:

First, individuals will be able to claim a \$300 above-the-line deduction for cash contributions made to public charities in 2020. This rule effectively allows a limited charitable deduction to taxpayers claiming the standard deduction (previously only allowed for those who itemized deductions).

Second, individuals are generally allowed a deduction for cash contributions to certain charitable organizations up to 60% of their contribution base (typically, AGI). Any cash contributions to charities for the tax year that exceed 60% of the individual's contribution base can be carried forward for five years.

Under the CARES Act, the 60% of contribution base limitation on charitable contribution deductions for individuals is increased to 100% of the contribution base for cash contributions made to public charities in 2020 (qualifying contributions). No connection between the contributions and COVID-19 activities is required. However, contributions to a Code Sec. 509(a)(3) supporting organization or a donor advised fund are not qualified contributions. Additionally, the taxpayer must elect to apply this provision with respect to the contribution and in the case of partnership or S corporation, each partner or shareholder must separately make an election.

## **Student Loan Repayments**

Generally, an employee's gross income does not include up to \$5,250 per year of employer payments, in cash or kind, made under an educational assistance program for the employee's education (but not the education of spouses or dependents). The CARES Act adds eligible student loan repayments made before January 1, 2021 to the types of educational payments that are excluded from employee gross income. Therefore, student loan repayments made by an employer, whether paid to the employee or a lender, of principle or interest on any qualified higher education loan for the education of the employee (but not of a spouse or dependent) are excluded from the employee's income up to \$5,250 per year.

Implementation of the provisions of the CARES Act is continuing to develop, and O'Neil, Cannon, Hollman, DeJong & Laing remains open and ready to help you. For questions or further information relating to the CARES Act, please contact attorney [Britany E. Morrison](#).