

## COVINGTON

# Summary of Tax Provisions in the Coronavirus Aid, Relief, and Economic Security ("CARES") Act

March 26, 2020

Tax

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Late last night, the Senate passed (96-0) the Coronavirus Aid, Relief, and Economic Security ("CARES") Act that was introduced by several Senate Republicans last Thursday. This follows a number of days of whirlwind negotiations, beginning with the Senate where, on Sunday night, a procedural vote failed to garner the 60 votes necessary to move the legislation forward. In the interim, House Speaker Nancy Pelosi (D-Calif.) introduced the Take Responsibility for Workers and Families Act, her own version of a coronavirus stimulus bill. Early today, the Senate announced that an agreement had been reached among Senate Republicans, Senate Democrats, and the Trump Administration, culminating in the late-night vote. This alert provides a summary of the tax-related provisions included in the Senate-passed bill (the "Bill"), including business tax provisions, business and individual tax provisions, and individual tax provisions in the Bill, as well as select provisions deleted in the final version. The Bill next heads to the House, which is expected to pass the measure later this week.

## Business Tax Provisions

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### Section 1106

#### Forgiveness of SBA Loans

The bill significantly expands the Small Business Administration (SBA) Section 7(a) loan program to include \$349 billion for a new Paycheck Protection Program ("PPP"). The PPP will generally provide loans for payroll costs for businesses with 500 or fewer employees (full-time, part-time, or other status), other traditionally defined small businesses, self-employed individuals, and independent contractors. Payroll costs include salaries/wages/tips; paid sick or medical leave; health benefits and insurance premiums; mortgage, rent, and utility payments; and interest payments on any other debt obligations that were incurred before February 15, 2020. The maximum aggregate loan amount is increased to \$10 million, with a maximum interest rate of 4.00%, which is intended to provide 2.5 months of average payroll costs.

The new PPP is intended to open access to SBA loans for businesses who would often otherwise be precluded based on revenue restrictions but that need assistance to stay in operation in light of COVID-19. For example, the bill provides specific eligibility pathways for entities in the hospitality industry with more than one physical location, but 500 or fewer employees at each location, and those entities registered as franchises. However, there is still some ambiguity in the bill as to whether affiliates of businesses with fewer than 500 employees

will be considered in connection with the business's eligibility for the loan. Regulations are anticipated within 15 days of enactment that will more clearly define guidelines and clarify eligibility determinations.

The PPP provides loan forgiveness for loans made from February 15, 2020 to June 30, 2020, not to exceed the loan principal for payments the borrower made during that covered period for payroll costs, payment of mortgage interest, rent, and utilities. There is a \$100,000 annualized rate of pay threshold for forgiveness of employee forgiveness, and additional wages paid to tipped employees can also be forgiven. The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25 percent of their prior year compensation. However, if borrowers re-hire workers who were laid off between February 15 and 30 days after the enactment of the bill by June 30, then borrowers will not be penalized for having a reduced payroll during that time. The amount forgiven will be treated as canceled indebtedness. Any loan balance remaining after forgiveness will continue to be guaranteed by the SBA and will have a maximum maturity of 10 years from the date that the borrower applied for loan forgiveness.

Emergency loans up to \$2 million available with new terms provided in the Phase 3 Stimulus. Applicants are generally eligible if they have 500 or fewer employees and must also either be located in a federally designated disaster area affected by COVID-19 or can qualify if the President makes an emergency declaration under Section 501(b) of the Stafford Act. An applicant's affiliates are considered when calculating its total number of employees, subject to limited exceptions. Applicants may request and receive an advance of \$10,000 prior to the determination of whether the applicant is eligible for the full EIDL, which may be used to provide paid sick leave to employees who are unable to work due to COVID-19, to maintain payroll to retain employees during business disruptions or substantial slowdowns, or certain other purposes. The advance does not need to be repaid even if the EIDL application is subsequently denied. Creditworthiness may be determined based solely on credit score, rather than in prior iterations of the EIDL program that required prior year federal tax information. Borrowers may receive both an EIDL and a PPPL, however they may not use the loans for duplicative purposes—PPPLs are specifically tailored for payroll costs identified above. Amounts received as EIDLs offset the maximum amount of any PPPL accordingly. In addition, if a borrower does receive an EIDL advance as well as a PPPL, then the advance reduces the amount of the PPPL that is ultimately forgiven.

Section 1106(i) of the Bill specifies that the forgiven debt would not be treated as cancellation of indebtedness income for purposes of the Internal Revenue Code (the "Code").

## **Section 2301**

### Employee Retention Credit

Section 2301 of the Bill would provide an employee retention credit to eligible private employers equal to 50 percent of qualified wages. This credit applies to the employer portion of social security taxes or, if applicable, taxes owed with respect to Tier 1 railroad retirement benefits, and applies to wages (as defined in Section 3121(a)) paid after March 12, 2020, and before January 1, 2021. The amount of qualified wages which may be taken into account with respect to the employee retention credit is limited to \$10,000 per employee for all calendar quarters. If this credit exceeds applicable employment taxes, such excess shall be refunded to the employer, and employers are permitted to reduce their employment tax deposits in anticipation of the credit.

To take advantage of the employee retention credit, the employer must be one carrying on a trade or business during calendar year 2020, the operation of which is fully or partially suspended under orders from an appropriate governmental authority limiting commerce, travel, or group meetings due to COVID-19. Organizations exempt from tax under Section 501(c) are treated as satisfying this requirement. An employer may also claim the employee retention credit if the employer experiences a significant decline in gross receipts in any calendar quarter beginning after December 31, 2019, meaning gross receipts are less than 50 percent of gross receipts in the same calendar quarter in the prior year. This period ends with the calendar quarter following the first calendar quarter in which gross receipts exceed 80 percent of the same calendar quarter in the prior year.

In calculating qualified wages for purposes of determining the amount of the employee retention credit, employers with more than 100 full-time (within the meaning of Section 4980H) employees should take into account wages paid by the employer with respect to which an employee is not providing services as a result of COVID-19 or due to a significant decline in the gross receipts of the employer. For employers with 100 or fewer full-time employees, qualified wages include all wages paid, even if the employee provides services during this period. Applicable wages include the amount of qualified health plan expenses allocable to wages otherwise eligible for the credit. However, amounts paid for required sick and FMLA leave under the Families First Coronavirus Response Act (“FFCRA”) for which the employer received an FFCRA credit cannot be taken into account.

Any employer that receives a small business interruption loan, as set forth in Section 1102 of the bill, is not eligible for the employee retention credit. Further, governmental entities, including the federal government and the government of any state or political subdivision thereof may not take advantage of the employee retention credit.

## **Section 2302**

### Delay of Employer Payroll Tax Deposits

Section 2302 of the Bill would delay required deposits of the employer share of social security tax. The Bill would similarly delay required deposits of railroad retirement tax up to the amount of tax equivalent to the social security tax.

In general, employers are required to deposit 6.2% of the amount of wages up to the social security wage base (\$137,700 for 2020) relatively quickly after making a wage payment. This amount is in addition to any federal income tax withholding, Medicare taxes, and the employee share of social security tax. The timing varies from once per month for very small employers to twice weekly. In addition, employers generally must deposit taxes on the next business day any time that the accumulated taxes exceed \$100,000.

Under the legislation, the deadline for depositing the employer share of social security taxes would be significantly deferred. All employer social security taxes otherwise required to be deposited between the date of enactment and December 31, 2020, would not be required to be deposited on the normal deposit schedule. Instead, half of such taxes would be required to be deposited by December 31, 2021. The remaining deferred employment taxes would be required to be deposited by December 31, 2022. This deferral would potentially require revisions to Form 941 to account for the deferred tax deposits. Moreover, employers would need to be mindful that wage payments late in 2020 might trigger a deposit requirement on the usual schedule because the deferral is not triggered by the liability date but instead by the deposit deadline. Accordingly, the deadline for depositing the employer share of social security tax for wage

payments made in late December 2020 is not deferred if the deposit deadline occurs in early 2021.

The section includes similar provisions relating to estimated tax payments by self-employed individuals intended to approximate a similar deferral.

### **Section 2303**

#### Changes to NOL Treatment

Section 2303 of the Bill would toll the 80 percent taxable income limitations on net operating losses (“NOLs”) for taxable years beginning before January 1, 2021, and would allow NOLs arising in taxable years beginning after December 31, 2017, and before January 1, 2021, to be carried back five years.

The 2017 Tax Cuts and Jobs Act (the “TCJA”) limited the use of NOLs to reduce taxable income to 80 percent of taxable income. The Bill would repeal this limitation for taxable years beginning before January 1, 2021. For taxable years beginning after December 31, 2020, taxable income would first be reduced by NOLs arising in taxable years beginning before January 1, 2018. Taxable income would be further reduced by the lesser of (i) the aggregate amount of NOLs arising in taxable years beginning after December 31, 2017, or (ii) 80% of taxable income determined after reduction for pre-January 1, 2018, NOLs. The Bill would disregard the Section 250 and 199A deductions for purposes of computing the 80 percent taxable income limitation. These changes would be effective for taxable years beginning after December 31, 2017, and taxable years beginning on or before December 31, 2017, to which NOLs arising in taxable years beginning after December 31, 2017 are carried.

The TCJA also repealed carrybacks for NOLs arising in post-2017 taxable years. The Bill would allow NOLs arising in any taxable years beginning after December 31, 2017, and before January 1, 2021, to be carried back to the preceding five years. A five-year carryback would also be available for farming losses and NOLs of insurance companies, which can be carried back only for two years under current Section 172(b). The Bill would provide a special rule for insurance companies treating an NOL carryback as an operations loss carryback (as defined in Section 810 before its repeal). However, the Bill would allow a REIT’s NOLs arising in a non-REIT year to be carried back to only a preceding non-REIT year; NOLs arising in a REIT year would not be eligible for carryback. Finally, if a loss is carried back under the proposal to a taxable year in which the Section 965 transition tax is imposed, a special rule would treat the taxpayer as having made the election under Section 965(n) to not take in account the amount of the NOL carried back to that taxable year when determining the amount of the inclusion under Section 965(a). Furthermore, a taxpayer can elect to exclude all taxable years in which Section 965(a) applies from the five-year carryback period. The Bill would allow a taxpayer to elect out of the five-year carryback treatment under current Section 172(b)(3).

These amendments to Section 172 by the Bill would apply to NOLs arising in taxable years beginning after December 31, 2017, and would provide liquidity for companies that have accumulated NOLs by allowing them to carry them back to earlier taxable years in which they had taxable income to generate refunds. Given the current economic environment, those refunds could represent an important lifeline for companies that find themselves suddenly struggling.

Section 2303 also provides certain technical corrections to the TCJA amendments. The Bill would clarify that the TCJA amendments to Section 172(a) and (d)(2) would be effective for taxable years beginning on or before December 31, 2017, to which the NOL arising in taxable years beginning after December 31, 2017, and beginning before, on or after such date to which such NOLs are carried, and that pre-2018 NOLs can only be carried forward 20 years. The technical amendments would take effect as if included in the provisions of the TCJA to which they relate.

## **Section 2304**

### Modification of Limitation of Losses to Taxpayers other than Corporations

Section 2304 of the Bill would delay the application of a limitation on business losses for non-corporate taxpayers. Section 461(l) was enacted as part of TCJA to limit the amount of “excess business losses” available in a taxable year. For an individual taxpayer, an excess business loss is the excess, if any, of aggregate deductions for the taxable year from the taxpayer’s trades or businesses over the sum of (i) the aggregate gross income from trades or business and (ii) \$250,000. Under Section 461(l), an excess business loss must be carried forward to the next taxable year. Section 461(l) took effect for taxable years beginning after December 31, 2017, though the IRS has provided limited guidance on its application. The Bill would delay the application of 461(l), giving it effect only for taxable years beginning after December 31, 2020.

Section 2304 would also change the calculation of the Section 461(l) limitation. The Bill would exclude losses from the sale of capital assets when calculating the limitation amount, which would decrease the burden of Section 461(l) on taxpayers with losses from capital assets related to a trade or business. The Bill would exclude from the calculation of the limitation gross income, deduction, and gain attributable to “any trade or business of performing services as an employee.” These calculation changes would be made effective as if enacted as part of the TCJA.

## **Section 2305**

### Modification of Credit for Prior Year Minimum Tax Liability of Corporations

Section 2305 of the Bill would increase the amount of a tax credit available for minimum tax (“AMT”) paid in a prior year. Under Section 53, taxpayers who pay the AMT generally receive a tax credit equal to the excess of the amount of AMT due over the tax that would have been due absent the AMT. The corporate alternative minimum tax was repealed as part of the TCJA, so corporations no longer generate new AMT tax credits. Under current law, Section 53(e) makes 50% of remaining AMT tax credits held by corporations refundable for taxable years beginning in 2018 through 2020,<sup>1</sup> and makes the AMT tax credit fully refundable in taxable years beginning in 2021. Section 2305 would accelerate the refund of the AMT tax credit, allowing corporations to elect to treat their Section 53 tax credit as 100% refundable in the taxpayer’s first taxable year beginning after December 31, 2017.

This change would allow corporations with Section 53(e) credits to receive a refund on an accelerated timetable. A corporation making this election must file a tentative refund application

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<sup>1</sup> Any refundable amount is first reduced by the amount of credit allowable to offset regular tax liability.

before December 31, 2020, and Treasury would have 90 days to review the application and refund any overpayment.

## **Section 2306**

### Modification of Limitation on Business Interest

Section 2306 of the Bill would increase the amount of business interest expense that a taxpayer is allowed to deduct for taxable years beginning in 2019 or 2020. Section 163(j) limited the amount of interest deductible for most taxpayers to 30 percent of adjusted taxable income, which is a modified version of earnings before interest, tax, depreciation, and amortization (“EBITDA”).<sup>2</sup> The Bill generally would increase the limitation to 50 percent for any taxable years beginning in 2019 or 2020.

This increase would not apply to partnerships. Instead, the provision provides that partners who are allocated excess business interest for any taxable year beginning in 2019 may treat 50 percent of such excess business interest as deductible business interest not subject to the limits of Section 163(j) for the partner’s first taxable year beginning in 2020.

Taxpayers would be able to elect out of these provisions, though a partnership electing out of this special treatment may only do so with respect to taxable years beginning after December 31, 2019.

The Bill also would allow taxpayers to elect to use their adjusted taxable income from their last taxable year beginning in 2019 when calculating their Section 163(j) business interest limitation for any taxable year beginning in 2020.

## **Section 2307**

### Technical Amendments Regarding Qualified Improvement Property

Section 2307 of the Bill would fix what is known as the “Retail Glitch” by treating qualified improvement property, which typically means improvements to the interior of a building, as property eligible for bonus depreciation. TCJA provides that certain types of property are eligible for bonus depreciation. Due to a drafting error, qualified improvement property is currently treated as 39-year property and not eligible for bonus depreciation. Section 2307 would fix this error as to property placed in service after December 31, 2017 (the effective date of the TCJA’s revisions to Section 168).

## **Section 2308**

### Excise Tax on Distilled Spirits used for Hand Sanitizer

Section 2308 of the Bill would waive the federal excise tax on any distilled spirits withdrawn from bonded premises during calendar year 2020 that is used for or contained in hand sanitizer that is produced and distributed in a manner consistent with guidance issued by the Food and Drug Administration related to the outbreak of SARS-CoV-2 or COVID-19.

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<sup>2</sup> Adjusted taxable income is similar to earnings before interest and tax, instead of EBITDA, for taxable years beginning on January 1, 2022 and thereafter.



## **Section 3606**

### Advance Refunding of Paid Leave Credits

Section 3606 of the Bill would permit small employers who are obligated to provide leave under the recently enacted FFCRA to receive advance credits of the tax credits included under the legislation to fund the paid leave required to be provided to employees. Small employers (500 or fewer employees) whose employees take paid leave mandated by FFCRA are entitled to payroll tax credits intended to cover the full cost of providing the paid leave. The IRS announced last week that it would allow employers to reduce their deposits of federal income tax withholding and employer and employee FICA taxes in anticipation of the credits. The IRS also announced that it would adopt an accelerated payment procedure under which employers whose payroll tax deposits are less than the amount of paid leave provided can submit a request for an advance credit to the IRS, which the IRS expects to process in less than two weeks.

## **Section 3608**

### Single-Employer Pension Plan Funding Relief

Section 3608 of the Bill would provide pension funding relief to sponsors of single-employer defined benefit plans. The changes would be made through two off-Code provisions that apply for purposes of the pension funding rules applicable to these plans. Section 3608(a) of the Bill would delay until January 1, 2021, the due date of any minimum required contributions, including quarterly contributions, that otherwise would be due during calendar year 2020 under Section 430 and its parallel provision in the Employee Retirement Income Security Act of 1974 (“ERISA”). The amount of the minimum required contribution(s) would be increased by interest (at the effective rate of interest for the plan) for the period between the original due date and the actual date of contribution. Section 3608(b) of the Bill would permit the sponsor of a single-employer defined benefit pension plan to elect to treat the plan’s adjusted funding target attainment percentage (“AFTAP”) for the last plan year ending before January 1, 2020, as the AFTAP for plan years which include calendar year 2020. This election would apply for purposes of Section 436 and its parallel provision in ERISA and would allow the plan to avoid being subject to restrictions on benefit payments and accruals that would otherwise be required under those sections for such plan years as a result of intervening changes in circumstances, including market declines related to COVID-19.

## **Provisions Affecting Both Individuals and Businesses**

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## **Section 2202**

### Coronavirus-Related Retirement Plan Distributions and Loans

Under Section 2202 of the Bill, an individual would be permitted to withdraw up to \$100,000 in the aggregate from eligible retirement plans as a coronavirus-related distribution without incurring the 10% penalty that would otherwise apply to early withdrawals.

The Bill would define a “coronavirus-related distribution” to mean funds distributed to an individual (1) who is diagnosed with the virus SARS-CoV-2 or with COVID-19 by a test approved by the CDC, (2) whose spouse or dependent is diagnosed with such virus or disease by such a test or (3) who experiences adverse financial consequences due to such virus or disease, including as a result of being quarantined, being furloughed or laid off or having work hours reduced, being unable to work due to lack of child care, closing or reducing hours of

business owned or operated by the individual, or other factors as determined by the Secretary of the Treasury. To determine whether an individual is eligible to take a coronavirus-related distribution, the plan administrator would be permitted to rely on an employee's certification that he or she satisfies one of these conditions.

The Bill would require an individual to take such a distribution from an eligible retirement plan, which includes an IRA, a qualified plan under Code sections 401(a) or 403(a), a Section 403(b) plan, or a governmental 457(b) plan, on or after January 1, 2020, and before December 31, 2020. If an individual were to choose to take a coronavirus-related distribution, it may be ratably included in income over the 3-taxable year period beginning with the year in which the distribution is taken. Section 2202 of the Bill further provides that an individual that chooses to take a coronavirus-related distribution would be permitted to recontribute the amount of the distribution to an eligible retirement plan within three years.

In addition to withdrawals, Section 2202 of the Bill would also relax some of the plan loan requirements for individuals who would otherwise be eligible to take a coronavirus-related distribution. Such individuals would be permitted to take a loan generally equal to the lesser of \$100,000 or their nonforfeitable accrued benefit under the plan. Such a loan would be taken within the 180-day period running from enactment of the Bill. The Bill also permits these individuals to generally delay repayment of outstanding plan loans by one year.

Under the Bill, plan sponsors would have until the last day of the first plan year beginning on or after January 1, 2022, to amend their plans to provide for these coronavirus-related withdrawals and loans, which are optional. Sponsors of governmental plans would have two additional years to amend.

### **Section 2203**

#### Suspension of Required Minimum Distributions for 2020

Section 2203 of the Bill would waive the requirement that individuals take required minimum distributions in calendar year 2020 for certain plans. Specifically, this rule would apply to defined contribution plans that are qualified under Code Sections 401(a), 403(a) or 403(b), to governmental 457(b) plans and to IRAs. If an account holder is deceased, distributions from these plans need not be made in calendar year 2020 to that individual's beneficiaries. Further, under Section 2203, to the extent any distribution taken in calendar year 2020 would have otherwise been treated as a required minimum distribution, that distribution is eligible for rollover.

If a plan sponsor chooses to amend its plan to reflect this relief from the required minimum distribution rules, the plan must be amended by the last day of the first plan year beginning on or after January 1, 2022. Sponsors of governmental plans would have two additional years to amend.

### **Section 2205**

#### Suspension of Limitation on Charitable Contributions

Section 2205 of the Bill would suspend the limitations on certain cash contributions made by individual and corporate taxpayers, and will increase the limit on contributions of food inventory. Cash contributions made by individual taxpayers in 2020 to public charities and private foundations described under Section 170(b)(1)(A) would be allowed up to the excess of the



individual taxpayer's adjusted gross income over other allowed contributions, instead of the 50 percent adjusted gross income limitation currently provided under Section 170. Similarly, cash contributions made by corporations to those entities would be allowed up to the excess of 25 percent of the corporation's taxable income over other allowed contributions. However, the increased limitations would not apply to cash contributions made to supporting organizations or for the establishment of a new, or maintenance of an existing, donor advised fund. Excess contributions can be carried forward under the current provisions of Section 170.

The limitation for contribution of food inventory during 2020 would be increased from 15 percent to 25 percent of a corporate taxpayer's taxable income and a non-corporate taxpayer's aggregate net income, whichever applicable.

### **Section 2206**

#### Employer Payments of Employee Student Loan Debt

Section 2206 of the Bill would amend Section 127 to permit employers to make tax-free payments of up to \$5,250 to or on behalf of employees for student loan debt. Payments of principal and interest, whether made to a lender or an employee, on a qualified education loan (as defined in Section 221(d)) before January 1, 2021, would be excluded from the employee's income and not subject to employment taxes.

### **Section 3701**

#### Health Savings Accounts for Telehealth Services

Section 3701 of the Bill would permit a high-deductible health plan ("HDHP") with a health savings account ("HSA") to cover telehealth services without cost-sharing prior to a participant reaching the deductible for plan years beginning on or before December 31, 2021, regardless of whether the services result in a participant receiving a COVID-19 test (or an order for the test). In contrast, the FFCRA requires high deductible health plans to cover the full cost of telemedicine visits that result in an order for, or administration of, COVID-19 testing.

### **Section 3702**

#### Pre-tax Purchases of Over-the-Counter Medical Products

Section 3702 of the Bill would allow funds in HSAs, Archer MSAs (as defined in Section 220) and health flexible spending accounts to be used for the purchase of over-the-counter medicines and drugs without a prescription from a physician and for the purchase of menstrual products. Since the enactment of the Patient Protection and Affordable Care Act, funds in these accounts could not be used to reimburse over-the-counter medicines or drugs unless medicine or drug is prescribed. The Bill would repeal this restriction effective for expenses incurred after December 31, 2019.

### **Section 4007**

#### Aviation Excise Tax Holiday

Section 4007 of the Bill includes multiple provisions intended to provide temporary assistance to the airlines. Consistent with that intent, Section 3201 of the Bill would generally eliminate the 7.5% excise tax imposed on a payment for domestic passenger transportation, the 6.25% excise tax on domestic air cargo transportation, and certain excise taxes on kerosene used in

commercial aviation. As temporary relief, this excise tax holiday begins after the date of the enactment and ends on December 31, 2020.

## Individual Tax Provisions

### Section 2201

#### 2020 Recovery Rebates for Individuals

Section 2201 of the Bill would permit a \$1200 tax credit (\$2400 for joint returns) for an eligible individual's taxable year beginning in 2020, with certain income limitations, under new Code Section 6428. An eligible taxpayer also would receive a \$500 credit per qualifying child, as defined under the rules for the child tax credit in Section 24.

The Bill contains a mechanism that would allow taxpayers to receive the tax credit currently as an "advance refund." Under new Section 6428(f), a taxpayer is treated as having made a payment in the amount of the credit for his or her taxable year beginning in 2019 (or 2018 if the taxpayer has not filed his or her 2019 return), and advance refunds of the credit amount are to be distributed by the Treasury Secretary "as rapidly as possible" and before December 31, 2020. Payments may be disbursed into an account that the taxpayer authorized for the delivery of federal taxes. Amounts that are received as an advance refund now would not otherwise reduce the taxpayer's 2020 tax liability.

- **Eligible Individual:** An eligible individual means an individual that is not: (1) a nonresident alien individual, (2) an individual for which another taxpayer may claim a personal exemption under section 151 during the same taxable year, and (3) an estate or trust. Credits would be only allowed to eligible individuals that include a valid identification number--generally a social security number--on his or her tax return. (And valid identification numbers for any joint filers or claimed children.)
- **Income Limitation:** The amount of the credit allowed would be phased out as follows:

	Phase Out Start	Credit During Phase Out	Phase Out Complete	
			No Qualifying Children	Two Qualifying Children
<b>Individual</b>	\$75,000	Adjusted Credit = Maximum Credit - 5% * (Adjusted Gross Income - Phase Out Start Income)	\$99,000	\$119,000
<b>Head of Household</b>	\$112,500		\$136,500	\$156,500
<b>Joint Return</b>	\$150,000		\$198,000	\$218,000

As an example, assume an eligible individual with one qualifying child has adjusted gross income of \$80,000. The individual would calculate his or her credit during the phase out as follows:

- Determine the maximum credit available to an individual with one child: \$1,200 (individual) + \$500 (child) = \$1,700
- Apply phase out formula: Adjusted credit = \$1,700 - (.05\*(\$80,000 - \$75,000)) = \$1,450

Due to the income limitation, the individual would be eligible for a \$1,450 credit instead of the maximum potential \$1,700 credit.

The amount of the section 6428 credit would not be subject to reduction or offset for certain federal and state debts.

## **Section 2204**

### Above-the-Line Deduction for Charitable Contributions

Section 2204 of the Bill would allow individual taxpayers who claim the standard deduction to take an above-the-line deduction for up to \$300 cash contributions made in 2020. To qualify for the deduction, the cash contribution would have to be made to public charities or private foundations described under Section 170(b)(1)(A), but not to certain supporting organizations, or for the establishment of a new, or maintenance of an existing, donor advised fund. Taxpayers may not claim this deduction for an excess contribution carryover from previous years.

## **Select Deleted Provisions**

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### **Delay of Corporate Estimated Tax Provisions**

The originally introduced Senate Republican legislation would have expanded the deferral relief granted in Notice 2020-17, 2020-15 IRB 1 and further expanded by Notice 2020-18. Notice 2020-18 allows a corporation to defer the 2019 tax payment and the 2020 estimated income tax payment installment due on April 15, 2020, until July 15, 2020. In contrast, the original Senate Republican bill would have allowed corporations to defer the estimated income tax payment installments due after the date of enactment and before October 15, 2020, until October 15, 2020. The expanded deferral relief provided in Notice 2020-18 continues to be available.

### **Delay of Corporate and Individual Tax Return and Tax Payment Deadline**

The initial draft of the Senate Republican bill would have expanded on the delayed tax filing and payment deadline already announced by the IRS. In Notice 2020-17, the IRS delayed the tax payment deadline from April 15 to July 15, but did not delay the tax filing deadline. Subsequently, the IRS announced, in IR-2020-58 and Notice 2020-18, that the deadline for filing tax returns for taxable year 2019 would also be moved to July 15. The original version of the legislation would have codified the delays announced by the IRS in its exercise of authority under Section 7508A by specifying that for 2019 Section 6072(a) shall be applied by substituting July for April and “seventh month” for “fourth month” for all returns required to be filed for taxable year 2019. The change would also have delayed the due date for 2019 tax payments because the deadline for such payments under Section 6151(a) is the due date for filing the return. The expanded deferral relief provided in Notice 2020-18 continues to be available.

### **Delay of Individual Estimated Tax Payments**

The initial draft of the legislation would also have deferred the deadline for making estimated tax payments until later in the year. Estimated tax payments that were due on April 15, June 15, and September 15, of 2020 would have been required to be paid on or before October 15, 2020.

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In an exercise of its authority under Section 7508A, the IRS has issued Notice 2020-18 delaying the estimated tax payment due on April 15 to July 15, 2020, and further administrative delays are possible. This deferral benefit continues to be available.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Tax practice:

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