



COVID-19 Legislation:  
What Businesses  
Should Know

# Disclosure

- *The following information was presented on May 13, 2020.*
- *This PowerPoint reflects our views at the time of the presentation and should be used as a reference only. We recommend that you talk to your Warren Averett advisor and also to consult with your lender regarding your situation. Please note that Warren Averett is not an Agent under the Paycheck Protection Program loan program (“PPP”). Warren Averett does not provide loan packaging services or guarantee qualification under the PPP or any loan administered by the U.S. Small Business Administration 7(a) loan program.*

# Agenda

- Employee Retention Tax Credit (ERTC)
- Payroll Taxes
- Other Business Provisions
- Retirement Plans

# Employee Retention Tax Credit (“ERTC”) for Employers

- Provides a refundable payroll tax credit for 50% of qualified wages paid by employers to employees during the COVID-19 crisis. Applies to qualified wages paid after March 12, 2020 and before January 1, 2021.
- Qualified wages are limited to \$10,000 per employee, which means the maximum credit for any employee is \$5,000 (50% of \$10,000).

STOP, you aren't eligible for the ERTC if you accept a Payroll Protection Program (PPP) loan. Further, there is no “double dipping” if you receive tax credits under the Families First Coronavirus Response Act (FFCRA) (i.e. you may not use the same wages for the tax credit base.) There could be better news in this regard in the future..... stay tuned.

- Who is eligible? Employers that carry on a trade or business during 2020 and tax-exempt organizations (governmental employers are not eligible) that either:
  - 1) fully or partially suspended operations during any 2020 calendar quarter, due to a COVID-19-related shut-down order from an appropriate governmental authority, or
  - 2) experience a “significant decline” of calendar quarter gross receipts defined by a decline of more than 50 percent when compared to the same calendar quarter of 2019.

# Employee Retention Credit for Employers

- When is the operation of a trade or business partially suspended for the purpose of the ERTC? The example provided by the IRS is exactly what has happened recently with the FL governor issuing an executive order to close or limit the operation of certain businesses (restaurants, dental offices, etc.).
- “Significant decline” - When quarterly gross receipts drop below 50%, this represents the first quarter in which the credit can be taken under this rule (Again, be mindful the credit applies to wages paid after March 12<sup>th</sup>, 2020, so the first quarter is limited).
- The “significant decline” period ends the calendar quarter after the employers' 2020 gross revenues rises back above 80% of 2019 revenues, measured quarterly (for instance, if receipts rise back above 80% of 2019 in the third quarter of 2020, the significant decline period would end in the 4th quarter of 2020).

# Employee Retention Credit for Employers

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The credit is based on qualified wages paid to the employee.

For employers with >100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to COVID-19.

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For employers with <100 full-time employees, all wages qualify for the credit (whether open for business or subject to a shut-down order).

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Point of note: The IRS reversed itself on May 8, 2020 and eligible employers ARE allowed to use health benefits paid on behalf of furloughed, unpaid employees as qualifying wages for purposes of the ERTC.

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# How do I claim my refundable credit?

- Eligible employers will report their total qualified wages and the related credits for each calendar quarter on their payroll tax forms (Form 941)
  - In anticipation of these credits, eligible employers can access federal employment taxes, including withheld taxes that are normally required to be deposited with the IRS or by requesting an advance of the credit from the IRS
  - Requests for advance payment of the ERTC will be filed on the new Form 7200. [www.irs.gov/pub/irs-pdf/f7200.pdf](http://www.irs.gov/pub/irs-pdf/f7200.pdf)
  - Form 7200 should not be used if all credits can be obtained by reducing required deposits for federal employment taxes

# New Developments in Congress?

(Change is the new normal, so remain diligent.)

- A bipartisan group in Congress is pushing to expand the benefits of the ERTC. Proposals include:
  - Increasing the credit to 80% of qualified wages;
  - Increasing the maximum credit per employee from \$5,000 for 2020, to \$12,000 per quarter for 2020;
  - Phasing in the credit to allow for lower drops in sales (say 20% from 2019);
  - Potential removal of employee limits to ease qualifying for the credit; and
  - Improving coordination between the ERTC and the Paycheck Protection Program (PPP) so employers can gain eligibility for both with “guardrails” to prevent double dipping.

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# Payroll Taxes

# Delay of Payment of Employer Payroll Taxes

- Allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax (6.2%) through the end of 2020.
- The deferred employment tax is to be paid over the following two years, with half due by December 31, 2021 and the other half due by December 31, 2022.

**\*Employers share of Social Security taxes can be deferred up until a decision on PPP loan forgiveness has been received from the lender.**

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# Business Provisions

# CARES Act – Business Tax Provisions

- Modification for NOLs
- Modification of Limitation on Losses for Taxpayers Other than Corporations
- Modification of Credit for Prior Year Minimum Tax Liability of Corporations
- Modification of Limitation on Business Interest
- Technical Amendment Regarding Qualified Improvement Property

# Modifications for Net Operating Losses

Prior Rule: Net Operating Losses (NOL) can be carried forward indefinitely and can offset 80% of future taxable income in any future year

- The Act provides that an NOL arising in the 2018, 2019 or 2020 tax years can be carried back five years.
- The Act also temporarily removes the taxable income limitation to allow an NOL to fully offset income.
- Applies to corporations and individuals.

# Modification of Limitation on Losses for Taxpayers Other than Corporations

Prior Rule: An individual can only use \$500,000 of business losses to offset other income.

- The Act temporarily removes the loss limitation for 2018, 2019 and 2020 tax years.

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

Prior Rule: The corporate alternative minimum tax (AMT) was repealed as part of the Tax Cuts and Jobs Act, but corporate AMT credits were made available as refundable credits over several years, ending in 2021.

- The Act accelerates the refund of the alternative minimum tax credits to allow a full refund of any remaining credit amount in taxable years beginning in 2019.

# Modification of Limitation on Business Interest

- The provision temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30% limitation to 50% of taxable income (with adjustments) for 2019 and 2020.
- Different application to corporations and partnerships

# Technical Amendment Regarding Qualified Improvement Property (QIP)

- The provision enables businesses, especially in the retail and restaurant industries, to write off immediately costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building. THIS IS HUGE! With QIP treatment, property has a 15-year life and is eligible for bonus depreciation, with some restrictions.
- The provision, which corrects an error in the Tax Cuts and Jobs Act known as the “retail glitch” and is retroactive to 1/1/2018.



# Postponement of Tax Payment and Form Filing Due Dates to July 15, 2020



- Individuals, trusts, estates, corporations or any unincorporated business entity is eligible for relief.
- Taxpayers do not have to be directly impacted by COVID-19 to qualify for relief.

## Exceptions:

- This does **not** apply to payroll taxes and excise taxes.
- This does **not** apply to some information returns.

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# Paycheck Protection Program

# What's new on PPP?

- IRS rules that expenses paid for with forgiven PPP funds are not deductible.
- More guidance is needed for the forgiveness portion of the loan.
- PPP loans in excess of \$2,000,000 will receive additional scrutiny from SBA. The exact nature of this review is still uncertain.
- Taking an unnecessary PPP loan may result in criminal consequences and or penalties. May 14, 2020 is the deadline to return PPP funds with no consequences.
  - Review SBA Q&A questions #31 and #37 and seek the advice of an attorney

# Warren Averett Coronavirus Resources Page



**COVID-19 RESOURCES**

## Visit Our Coronavirus Resource Center

Warren Averett is acutely monitoring the rapidly-changing coronavirus (COVID-19) situations.

[LEARN MORE](#)

<https://warrenaverett.com/coronavirus>

# Questions?



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**Thank You!**