

Josh Reiner

From: PCA Government Affairs
Sent: Friday, April 3, 2020 8:04 AM
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Subject: CARES Act Tax Provisions

To: Government Affairs Council, Tax Task Force
From: Josh Reiner
Date: April 3, 2020
RE: CARES Act Tax Provisions

President Trump signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, H.R. 748, on March 27. The CARES Act is a broad, multi-trillion-dollar, rescue package for the households and businesses harmed by the COVID-19 virus. The CARES Act contains broad tax measures designed to spur liquidity for businesses and preserve as many workers on their payroll as possible. An expanded summary of those noteworthy provisions impacting the cement and concrete industry is below. The text of the bill is available [here](#) for reference.

Payroll Taxes Holiday

As part of the Federal Insurance Contributions Act (FICA), employers contribute 6.2% of an employee's salary for Social Security and 1.45% for Medicare taxes. The CARES Act allows for all employers to delay these payments for the Social Security Tax portion for 2020. If delayed, the tax must be paid over two years, with half due by December 31, 2021, and the balance by December 31, 2022. The Social Security Trust Fund will receive funds from the Federal Government's general fund to mitigate harm. It should be noted that any company whose Small Business Act loans are forgiven by the CARES Act are not allowed to defer their payroll taxes. (CARES Act Section 2302; Tax Code Sections 3111(a) and 1401(a))

Retention Tax Credit:

The CARES Act creates a refundable payroll tax credit for 50% of wages paid by employers to employees during the COVID-19 crisis. To qualify for the credit, an employer must have had their (1) operations fully or partially suspended, due to a COVID-19-related shut-down order, or (2) gross receipts decline by more than 50 percent when compared to the same quarter in the prior year.

For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is capped at \$10,000/quarter per employee, including health benefits paid. Lastly, the credit is provided for wages paid or incurred from 3/13/2020 through 12/31/2020. The Internal Revenue Service (IRS) has additional information about the credit [here](#). (CARES Act Section 2301)

Five-year Carryback of Net Operating Losses (NOL)

The CARES Act will permit companies with losses in 2018-2020, and that paid taxes within one or more of the five preceding years, to submit for a refund of the taxes paid within those years. Before the passage of the Tax

Cuts and Jobs Act (TCJA) in 2017, companies could carry back their loss from that year to the prior two years. The TCJA stopped companies from being able to carry back losses at all. It should be noted that Congress allowed for a five-year carryback during the 2008-2009 recession before returning to a two-year carryback. PCA will advocate for continued and increased carryback flexibility in future tax legislation. (CARES Act Section 2303; Tax Code Section 172)

Accelerated recovery of AMT Credits

The Alternative Minimum Tax (AMT) was repealed as part of the TCJA in 2017. Prior to its repeal, businesses would calculate both its normal corporate income tax and an AMT income tax; they would then pay the higher of the two. Under certain circumstances, a company could generate “minimum tax credits” (MTCs) to use in future years against their tax liability. The TCJA created transition rules for utilizing these remaining MTCs, but the CARES Act will accelerate them. Companies will now allow for a 50% credit for 2018 and a 100% credit for 2019-2021. Further, a company may take 100% of the refundable credit for 2018. Certain companies may be eligible for an accelerated refund of these credits, but an application with the IRS must be filed before December 31, 2020.

(CARES Act Section 2305; Tax Code Section 53(e))

Interest Deductibility Increase

Businesses, following the passage of the CARES Act, will now be allowed to deduct the interest it pays on its loans up to 50% of its adjusted taxable income (ATI). A business’s ATI is earnings before interest, taxes, depreciation, and amortization (EBITDA). A company may elect to use its 2019 ATI. This increase is an improvement from the 30% limit imposed by the TCJA. PCA advocated against limits on interest deductibility during debate on tax reform for the reason it is now being raised, companies may need to leverage funds, and that should not be treated differently than any other business expense. PCA will continue to advocate for improved interest deductibility limits as additional tax measures are discussed.

(CARES Act Section 2306; Tax Code Section 163(j))

Lastly, the IRS [has postponed](#) the tax federal income tax filing from April 15 to July 15. The agency is posting its tax notices and other information related to COVID-19 [here](#). Should you have any questions or comments, please contact Josh Reiner (jreiner@cement.org). Thank you.

Josh Reiner

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