

# Rödl & Partner

## ACHIEVE TOGETHER

COVID-19 TAX RESPONSE  
ATLANTA, GA – APRIL 1, 2020

Rödl National Tax  
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# AGENDA

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# DISCLAIMER

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## Overview

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# CORONAVIRUS IN THE U.S.

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## Overview

- Over 163,000 cases in the U.S.
- Thirty-Two states and various localities under stay at home orders.
- 80% of Americans under these orders
- March 6, 2020, \$8.3 billion bill to fight the coronavirus outbreak signed which was primarily aimed at funding for vaccines, medical supplies, the Centers for Disease Control and Prevention (CDC), state and local preparedness, response efforts, global disease detection and response, global health programs, humanitarian and health assistance, state department operations, and economic support
- March 18, 2020 Families First Coronavirus Response Act (H.R. 6201) signed into law
- March 20, 2020, Notice 2020-18 was issued, postponing certain federal tax deadlines and payments
- March 27, 2020 Coronavirus Aid, Relief, and Economic Security Act (“CARES Act” or the “Act”) into law

# NOTICE 2020-18

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## **Postponement of federal tax deadlines and payments**

- On March 20, 2020, Notice 2020-18 was issued, postponing certain federal tax deadlines and payments
- Payment or income tax return due April 15, 2020 is an “Affected Taxpayer”
- Includes an individual, trust, estate, partnership, association, company or corporation
- Due date is automatically postponed to July 15, 2020
- Affected Taxpayers do not have to file Forms 4868 or 7004
- No limitation on the amount of the payment that may be postponed
- Relief is available solely with respect to Federal income tax payments
- No extension is provided for any other type of Federal tax or filing of any Federal information return
- IRS has released FAQs available here: <https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers>
- What about states?

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

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## Overview

- Families First Coronavirus Response Act (H.R. 6201) signed into law on March 18, 2020
- Provides affected individuals with **paid** sick and family leave (FMLA is unpaid)
- Creates tax credits for affected employers
- Expands food and nutrition services
- Allows for emergency state unemployment insurance grants
- Increases Medicaid funding to states
- Health provisions
- Budgetary effects
- Effective April 1, 2020 per DOL
- Sunsets on December 31, 2020

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

## Modifications to the Family and Medical Leave Act

- The Family and Medical Leave Act of 1993 (the "FMLA") is amended to create a new category of benefits for a qualifying need related to a public health emergency
- A qualified need means generally "unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency."
- Employer threshold "fewer than 500 employees"
- Potential exclusions for certain health care providers and emergency responders and businesses with fewer than 50 employees if the viability of the business is jeopardized
- Applies to "covered employers" - A person engaged in commerce or in any industry or activity affecting commerce with fewer than 500 employees

FMLA:  
Employers with 50 or more  
employees



Amended FMLA:  
Employers with less than 500  
employees

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- Revised employee definition

## FMLA:

FMLA: Employee has worked at least 1,250 hours during the prior 12 month period AND at a worksite with 50 employees in a 75 miles radius.



## Amended FMLA:

Employee has to be employed for at least 30 calendar days

- 30-day good faith implementation period
- FAQs by the U.S. Department of Labor dealing with when to begin counting, who to include, etc.
  - <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>
  - <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>
  - <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

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## **Emergency Family and Medical Leave**

- Provide 12 weeks of job-protected leave to employees to care for a child whose school or place of care is closed
- Does not increase leave
- The first 10 days can be unpaid, although a worker could choose to use other accrued leave
- Employer may not require the employee to substitute paid leave
- Employers are required to pay employees two-thirds of their wages
  - Not to exceed \$200 per day and \$10,000 in total

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

## Emergency Sick Leave

- Private sector employers with fewer than 500 workers and government entities have to provide to employees up to 80 hours (or the equivalent for part-time employees) of paid sick time because the individual is unable to work due to specific needs of the employee related to COVID-19 including:
  1. Is subject to a federal, state, or local quarantine or isolation order relating to COVID-19
  2. Has been advised by a health care provider to self-quarantine due to concerns relating to COVID-19
  3. Is experiencing symptoms of COVID-19 and is seeking a medical diagnosis
- Sick leave is paid at 100% of the regular rate but limited to \$511 per day and \$5,110 in total
- Sick leave is in addition to any regularly-provided annual sick leave

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

## Emergency Sick Leave

4. Is caring for an individual who is subject to an order described in the first category above or has been advised by a health care provider as described in the second category above
5. Is caring for a son or daughter of such employee if the school or place of care of the child is closed or the child's care provider is unavailable due to COVID-19 precautions, or
6. Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Treasury and Labor

– For the above reasons, sick leave is paid at 2/3 of the regular rate but limited to \$200 per day and \$2,000 in total

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

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## Tax Credits

- Must be a “covered employer” to get credit
- 100% credit / reimbursement of the qualified sick leave wages
- Generally available for wages of up to either \$511 or \$200
- Costs to maintain health insurance coverage for the eligible employee during the leave period are included
- Eligible employers can retain an amount of the payroll taxes equal to the amount of qualifying sick and childcare leave that they paid
- Taxes available for retention include federal income taxes and the employee and employer share of Social Security and Medicare taxes
- Expedited refund of taxes can be requested if wages are more than the taxes withheld

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

## Tax Credits – Example

Example 1	Example 2
<ul style="list-style-type: none"><li>– Employer pays \$5,000 in sick leave and withholds \$8,000 in payroll taxes</li><li>– Employer must deposit \$3,000 on its next regular deposit date</li></ul>	<ul style="list-style-type: none"><li>– Employer pays \$10,000 in sick leave and withholds \$8,000 in payroll taxes</li><li>– Employer can use the entire \$8,000 as a credit and apply for an accelerated refund of the remaining \$2,000</li></ul>

# SMALL BUSINESS LOAN ASSISTANCE

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## **Economic Injury Disaster Loan program (EIDL)**

- Small Business Administration (“SBA”) is the lender but it is a direct federal loan
- Funds are intended to cover normal operating expenses
- 3.75% interest rates for small businesses
  - Small business is **very** subjective
- Long term repayment period – in some cases up to 30 years
- More information can be found here:

**<https://www.sba.gov/disaster-assistance/coronavirus-covid-19#section-header-1>**

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT ("CARES ACT") – SIGNED INTO LAW MARCH 27, 2020

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## **Provisions Affecting Businesses**

- Payroll Protection Program
- Refundable payroll tax credit for employee retention
- Delayed payment of employer payroll taxes
- Modifications for net operating losses
- Modification of credit for prior year minimum tax liability of corporations
- Modification of limitation on business interest
- Technical amendment regarding qualified improvement property
- Temporary exception from excise tax for alcohol used to produce hand sanitizer

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT ("CARES ACT")

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## **Payroll Protection Program ("PPP")**

- PPP is a loan that companies can apply for at any bank that is a federally insured depository, and will work in conjunction with the Small Business Administration ("SBA")
- Affiliation Rules – The borrower may be unable to apply for a PPP loan if the number of total worldwide employees of all the companies that are part of the borrower's affiliated group is more than 500 employees.
- The Act provides for a waiver of the general affiliation rules in the following cases:
  - Hotels and Restaurants/Food Service
  - Franchises that are approved on the SBA
  - Small businesses that receive financing through the Small Business Investment Company (SBIC) program
- Covered period for all loans granted under the PPP is the period beginning on February 15, 2020 and ending on June 30, 2020
- Covered Loan is any loan made during the Covered Period
- Credit elsewhere test, personal guarantees and collateral are removed – The typical requirement that an extensive analysis be undertaken to determine if the borrower has the ability to obtain some or all of the requested loan funds from alternative sources is removed during the Covered Period

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT ("CARES ACT")

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## **Payroll Protection Program ("PPP")**

- Maximum loan amount is the 2.5 times the average payroll over a specified period or \$10,000,000
- Borrowers may generally use the proceeds of the loan granted for:
  - Payroll costs;
  - Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
  - Employee salaries, commissions, or similar compensations;
  - Payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation);
  - Rent (including rent under a lease agreement);
  - Utilities; and
  - Interest on any other debt obligations that were incurred before the Covered Period

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT ("CARES ACT")

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## **Payroll Protection Program ("PPP")**

- Borrower can apply for some or all of the loan to be forgiven
- Certain costs incurred by the borrower during the 8-week period after the origination date of the loan can be forgiven
  - Payroll costs as defined above
  - To the extent the underlying obligations or services, as applicable, existed prior to February 15, 2020:
    - Interest payments on any mortgage,
    - Payments of rent on any lease, and
    - Payments for any utility services.
- Any amount forgiven is excluded from gross income.
- Amount forgiven will be reduced proportionally by certain reductions the average of full-time employees
- For any portion of the loan not forgiven, the terms are as follows:
  - Repayable over 10 years
  - Interest rate cannot be more than 4%

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT ("CARES ACT")

## **Refundable payroll tax credit for employee retention**

- Credit against employer's share Social Security taxes equal to 50% of qualified wages for each employee for such quarter not to exceed \$10,000 of wages per employee for all calendar quarters
- Qualified wages generally include wages paid after March 12, 2020 and before January 1, 2021
  - If more than 100 full-time employees don't include wages paid to an employee not providing services
  - If less than 100 full-time employees, included wages regardless of whether the employee is providing services
- You cannot include wages taken into account for the payroll credits under the Families First Coronavirus Response Act
- Available to employers whose:
  - (1) operations were fully or partially suspended due to a COVID-19-related shut-down order or
  - (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year
- There is no employee size limit
- All persons treated as a single employer are treated as one employer for purposes of this provision
- Not available to eligible employers who receive the Paycheck Protection Program

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT ("CARES ACT")

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## **Delayed Payment of Employer Payroll Taxes**

- Employers and self-employed individuals can defer payment of the employer's share of the Social Security taxes incurred from March 27, 2020 through January 1, 2021
- Deferred amount paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022
- Not available to an eligible employer participating in the Paycheck Protection Program

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT ("CARES ACT")

## Comparison of Certain Provisions\*

	<b>Paycheck Protection Program (PPP) SBA Loans/Grants (CARE Act)</b>	<b>Loans to Large Businesses From Treasury Exchange Stabilization Fund</b>	<b>Payroll Tax Credit for Sick and Family Leave (Families First Coronavirus Response Act)</b>	<b>Postpone 2020 Payroll Taxes Until 2021 and 2022 (CARE Act)</b>	<b>Employee Retention Tax Credit (ERTC)</b>	<b>Expanded Unemployment Insurance</b>
Injection of stimulus	\$349 billion (Loans. Can be forgiven)	\$500 billion	\$105 billion	\$350 billion (in CY 2020, then paid back in CY 2021-22.)	\$55 billion	\$260 billion
Employer must retain employees? (Details vary.)	Yes, if loans to be forgiven.	Yes. (No forgiveness in any case.)	No.	No.	Yes.	NA
Some details	For businesses with fewer than 500 employees (rules flexible on employee count). Maximum loan: \$10 million or percentage of payroll.	For large, distressed businesses. (Special allocation to air and defense.)	Credit fully compensates mandate up to \$511 or \$200 per week per employee for 2 weeks of sick leave. \$200 for following 10 weeks of family leave.	No conditions.	50 percent tax credit on first \$10,000 of employee compensation. (Businesses with significant reduction in sales revenue.)	Expands amount of weekly payments; expands duration of payments; expands unemployed who qualify.
Interactions	Disqualifies for payroll tax postponement and ERTC.			Not available to employer in PPP.	Not available to employer in PPP. Not available for wages eligible for work opportunity tax credit.	

\* Credit to Martin Sullivan as posted on Tax Notes on March 31, 2020

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT ("CARES ACT")

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## **Modifications of Net Operating Losses**

- Temporarily removes the 80% taxable income limitation to allow an NOL to fully offset income for tax years beginning before January 1, 2021.
- NOLs arising in a tax year beginning in 2018, 2019, or 2020 may now be carried back to each of the five tax years preceding the year of the loss.
- If the 5-year carryback period includes one or more tax years in which the taxpayer had an inclusion under Section 965(a), the taxpayer will be treated as having made the election under section 965(n) (regarding not utilizing NOLs against the 965 inclusion amount).
- Taxpayer may elect to exclude 965 inclusion years from such carryback period entirely. The election must be made by the extended due date of the taxpayer's tax return for the first taxable year ending after March 27, 2020
- There are special rules for straddle years

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT ("CARES ACT")

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## **Modification of credit for prior year minimum tax liability of corporations**

- 2017 Tax Cuts and Jobs Act repealed the corporate Alternative Minimum Tax for tax years beginning after December 31, 2017.
- For corporations that had existing minimum tax credits, the excess credit over the regular tax liability was eligible to be fully refunded by 2022
- Allows corporations to claim a refund of their remaining AMT credits in tax year 2019
- Corporations may also elect to take the entire refundable credit for the 2018 tax year by filing an application for a tentative refund by December 31, 2020

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT ("CARES ACT")

## **Modification of limitation on business interest**

- The 2017 Tax Cuts and Jobs Act imposed a limitation on business interest to 30% of adjusted taxable income
- For tax years 2019 and 2020, the Act permits a deduction for business interest equal to 50% of adjusted taxable income for most taxpayers
- A taxpayer may make an irrevocable election not to apply the increased limitation
- Beginning in 2020, taxpayers may elect to use their 2019 adjusted taxable income (or the prorated 2019 adjusted taxable income amount for short taxable years) as the basis for the limitation computation
  - For partnerships this election must be made at the partnership level
- The increased 50% limitation does not apply to partnerships for 2019
- Unless a partner elects out, half of the excess business interest of the partnership for any taxable year beginning in 2019 which is allocated to the partner will be treated as paid or accrued by the partner and fully deductible in 2020, while the remaining half will be subject to the increased 50% limitation in 2020
- A partner may make an irrevocable election not to apply this treatment in 2019 or 2020, whereas a partnership may only elect not to apply this treatment for tax years beginning in 2020

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT ("CARES ACT")

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## **Technical amendment regarding qualified improvement property**

- The Act corrects an error in the 2017 Tax Cuts and Jobs Act which inadvertently required businesses to depreciate qualified improvement property over 39 years
- Qualified improvement property is generally any improvement to an interior portion of a building that is nonresidential real property if the improvement is placed in service after the date on which the building was first placed in service
- Qualified improvement property does not include expenditures for enlargement of the building, elevators or escalators, or internal structural framework
- Taxpayers may now immediately write off the cost of qualified improvement property.
- The Act makes the change retroactive to property placed in service after December 31, 2017.

# CONTACTS



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