



Select Business Provisions of the CARES Act

Employee Retention Credit

Employers are eligible for an employee retention credit up to 50% of up to \$10,000 in qualified wages paid after March 12, 2020 and before January 1, 2021.

Employers are eligible if:

- Their operations are fully or partially suspended due to COVID-29 related shutdowns; or
- They have experienced a significant decline in gross receipts, 50% of the gross receipts compared to the same quarter in the previous calendar year. The employer remains eligible until the gross receipts are 80% of the gross receipts the employer earned for the same quarter in the prior calendar year.

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For businesses with more than 100 full-time employees, qualified wages are limited to wages paid to retained workers who are not currently working due to the COVID-19 pandemic. For businesses with 100 or less employees, wages paid to all employees are considered qualified. The credit is not available for businesses that receive a Small Business Interruption Loan under the Paycheck Protection Program (PPP).

The credit is allowed against the employer portion of social security taxes. The credit is claimed by reporting the total qualified wages and the related credits of their federal employment tax returns, usually [Form 941 Employer's Quarterly Federal Tax Return](#). In anticipation of receiving the credits, employers can fund qualified wages by accessing federal employment taxes, including withheld taxes, that are required to be deposited with the IRS or by requesting an advance of the credit from the IRS. To receive an advance, employers must submit [Form 7200](#).

Payroll Tax Delay

Employers may defer payments of the employer share of social security tax for two years, with half of the amount required to be paid due on December 31, 2021 and the other half by December 31, 2022.

For employers that have applied for or received a PPP loan may defer payments up until the loan is forgiven. Once a lender issues a decision that the loan is forgiven, the employer can no longer defer payment of the employer's share of social security taxes. Any payments that were deferred continue to be deferred, with 50% due on December 31, 2021 and the remainder on December 31, 2022.

NOLs

The CARES Act includes a five-year Net Operating Loss (NOL) carryback. Taxpayers are allowed to carryback their NOLs earned in tax years 2018, 2019 or 2020. The annual deduction limitation of 80% of taxable income for the use of NOLs has also been temporarily removed for tax years beginning before January 1, 2021.

A taxpayer may waive the NOL carryback for 2018 and 2019 no later than the due date, including extensions, for filing the federal income tax return for the first taxable year ending after March 27, 2020 by attaching a statement to the tax return. A separate statement, saying that the taxpayer is electing to apply Sec. 172(b)(3) under Rev. Proc. 2020-24 and the tax year for which the statement applies, must be supplied for each tax year.

Taxpayers may also disregard certain amounts of foreign income subject to transition tax that would normally be included as income during the carryback period. A taxpayer may elect to exclude the section 965 years from the carryback period, applying the NOL to the remaining taxable years in the carryback period. While all section 965 years are disregarded, they still are counted for the purpose of defining the carryback period. A taxpayer may elect to exclude section 965 years for taxable years 2018 and 2019 no later than the due date, including extensions, for filing the federal income tax return for the first taxable year ending after March 27, 2020. The election is made by attaching a statement to whichever is filed earliest among their:

1. Federal income tax return for the year the NOL arises
2. Application for Tentative Refund
3. Amended federal income tax return

The election statement must say that the taxpayer is electing to apply section 172(b)(1)(D)(v)(I) under Rev. Proc. 2020-24, the taxable year in which the NOL arose, and the taxpayer's section 965 years.

For taxpayers with an NOL in a 2017 straddle taxable year, a taxable year that began before Jan. 1, 2018, and ended after Dec. 31, 2017, they may apply for a tentative refund or credit no later than July 27, 2020. Such taxpayers are also required to make any elections regarding waiving any carryback period, reducing any carryback period or making any other elections by July 27, 2020. Such elections are to be filed where the taxpayer files its Federal income tax return by attaching the statement required to make the election, with "Filed pursuant to Rev. Proc. 2020-24" at the top, to an amended return, Form 1045 or Form 1139 containing only the taxpayer's name, address, and taxpayer identification number. The statement must also indicate the section under which the election is being made and must identify the election, the period for which it applies, and the taxpayer's basis and entitlement to make the election.

To claim a carryback adjustment, taxpayers can either file an amended return or file an application for a tentative refund, which is processed by the IRS within 90 of filing. As the deadline for filing Form 1139, Corporation Application for Tentative Refund or Form 1045, Application for Tentative Refund, for taxpayers other than corporations, for a loss that arose in 2018 has already passed, the IRS has issued a six-month extension to file.

Beginning on April 17, the IRS will accept Form 1045 or Form 1139 by fax. To take advantage of the six-month extension for losses that occurred in 2018, [“Notice 2020-26, Extension of Time to File Application for Tentative Carryback Adjustment”](#) must be included on top of the applicable form.

[Form 1045](#) can be submitted via fax to 844-249-6237

[Form 1139](#) can be submitted via fax to 844-249-6236

Limitation on Business Interest

The amount of interest expense businesses are allowed to deduct on their tax returns is increased to 50% of adjusted taxable income (ATI) or earnings before interest, taxes, depreciation, and amortization (EBITDA), up from 30%, for tax years beginning in 2019 and 2020. Businesses may also elect to use their 2019 EBITDA to determine their 2020 business interest deduction.

Expedited Refunds for Remaining AMT Credits

Corporations with remaining alternative minimum tax (AMT) credits may accelerate the use of the credits by claiming a full refund of the credits in its 2019 tax year. There is also an election that can be made to have all the credit refunded as part of the 2018 tax return by filing a Corporation Application for Tentative Refund ([Form 1139](#)) by December 31, 2020. Beginning on April 17, 2020, the IRS is accepting eligible refund claims by faxing Form 1139 to 844-249-6236.

Employer-Sponsored Student Loan Assistance

Employers may contribute up to \$5,250 annually toward payment of an employee’s qualified student loans, without the money counting as taxable income, through the end of 2020.