Analyzing The CARES Act: From Rebate Checks To Small Business Relief For The Coronavirus Pandemic

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Executive Summary

In response to the unfolding COVID-19 global pandemic (as the US this week surpassed China as the country with the most confirmed cases in the world), the US Senate has passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, a $2 trillion emergency fiscal stimulus package, in order to help ease the effects of the resulting economic damage. While the House has yet to vote on the bill, it is anticipated to be approved and signed into law by President Trump shortly thereafter and includes a wide range of provisions for both loans and outright rebate payments or tax credits aimed at helping individuals, businesses, healthcare entities, and state and local governments meet short-term cashflow demands.

In the context of financial advisors and the clients they serve, the most notable provision in the bill is the direct payments to taxpayers. Specifically, individuals who had up to $75,000 in adjusted gross income in 2019 will receive a one-time payment of $1,200, while married couples with AGI up to $150,000 will get $2,400. Additionally, taxpayers will receive an additional $500 for each qualified child, while individuals and families with income above their respective thresholds will see their relief payments reduced by $50 for every $1,000 in AGI. Notably, while individuals must have a work-eligible Social Security number (and not be claimed as a dependent), they do not have to have had reportable income in 2019 and can also be eligible for other income-benefit programs as well.

From the retirement planning perspective, notable provisions of the CARES Act include the elimination of the 10% early withdrawal penalty on distributions from retirement accounts for so-called “Coronavirus-Related Distributions” (with the option to spread income taxation over three years, and the ability to recontribute back to those same accounts to make up in the future), the suspension of required minimum distributions (RMDs) in 2020 for a wide variety of retirement account (for both account owners as well as beneficiaries) as well as the ability to return current-year distributions, an increase of $600 per week for unemployment benefits for up to four months as well as an expansion of benefits for those who would otherwise not normally qualify (like self-employed individuals and independent contractors), and the deferral of Federal student loan payments through September 30, 2020.

With respect to small businesses that have been impacted by COVID-19, certain small businesses with up to 500 employees will be able to take out loans (up to $10M depending on payroll costs and other factors), which will be eligible for forgiveness if used to cover payroll and other expenses (like rent and utilities), along with other 'employee retention' tax credit opportunities. Other benefits for businesses include a delay in the employer's portion of Social Security payroll tax until January 1, 2021 (with half of the deferred amounts due at the end of 2021, and the other half due at the end of 2022), and more flexible Net Operating Loss rules to obtain immediate refunds, among others.

Beyond benefits for individuals and businesses, the CARES Act provides for $454 billion in emergency lending, not only to states and municipalities, but to airlines and other businesses critical to US national security, and another $150 billion allocated proportionally to state and local governments to offset amounts used to respond to the pandemic.

Ultimately, the key point is that the CARES Act is a historic emergency relief program for Americans and provides much-needed assistance for those affected by the pandemic and the resulting economic damage. And with changes in tax laws come planning opportunities for clients. However, the CARES Act is not without its caveats. As while relief payments to individuals and families are based on 2019 AGI levels, there will be countless Americans currently experiencing sudden financial hardship and unemployment who are seeing significant declines in income, but sadly, will not qualify for relief checks. Similarly, small business relief provisions – for both clients of financial advisors, and potentially financial advisors in their *own* businesses – do have very specific requirements to qualify (in an effort to ensure the dollars go where needed most, but inevitably meaning that some that are close to 'the line' must engage in planning to actually qualify). At the very least, though, the CARES Act will be a dominant conversation for financial advisors and their clients in the months to come as Americans (and the world) continue to cope with the current COVID-19 crisis.

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KEY 2020 CARES ACT PROVISIONS

RECOVERY REBATES

- Refundable income tax credit against 2020 income of up to $2,400 for married couples filing a joint return. All other filers begin with a refundable credit of up to $1,200. The credit amount then increases by up to $500 for each child a taxpayer has under the age of 17.
- AGI threshold amounts: Married Joint, $150,000; Head of Household, $112,500; All Other Filers, $75,000. Payment reduced by $50 for every $1,000 over threshold amounts.
- Individuals must have a work-eligible Social Security number (and not be claimed as a dependent), but they do not need to have had reportable income in 2019 and can also be eligible for other income-benefit programs as well.

CORONAVIRUS-RELATED DISTRIBUTIONS

- Coronavirus-Related Distributions are distributions of up to $100,000, made from IRAs, employer-sponsored retirement plans, or a combination of both, which are made in 2020 by an individual who has been impacted by the Coronavirus.
- Distributions are exempt from the 10% penalty, not subject to mandatory withholding requirements, are eligible to be repaid over 3 years, and the income may be spread over 3 years.

OTHER PROVISIONS

- Required Minimum Distributions are waived in 2020, and taxpayers who have already taken their RMDs for 2020 have the option of returning them, if they so desire.
- 2020 is ignored for the purposes of the 5-Year Rule that applies to Non-Designated Beneficiaries (e.g., charities, estates, non-See-Through Trusts) who inherit a retirement account from decedents who die prior to reaching their required beginning date.
- New $300 above-the-line deduction for "qualified charitable contributions", and the AGI limit for cash charitable contributions has been temporarily repealed.
- Student loan payments deferred until September 30, 2020, and employers can exclude student loan repayments from compensation.

UNEMPLOYMENT COMPENSATION BENEFITS

- 'Regular' Unemployment Compensation is 'bumped' by $600 per week, and the benefit period is extended by 13 weeks.
- Unemployment benefit will be available the first week of unemployment, waiving the 'normal' one-week waiting period.

SMALL BUSINESS BENEFITS

- Certain small business can qualify for small business loans up to a maximum of the lesser of $10 million, or 2.5x average payroll costs to cover payroll, rent, utilities, mortgage interest, group insurance premiums, etc.
- Such loans (which have a maximum interest rate of 4%) are eligible for full or partial forgiveness. Eligible amounts must be spent during the first 8 weeks after the loan is made if spent on payroll costs, rent, utilities, and group health insurance premiums, BUT business MUST maintain the same number of employees (subject to certain timeframes).
- Payroll tax credit for qualifying businesses not receiving a covered loan (above).
- Employers are eligible to defer payroll taxes from the date of enactment, through the end of the year, until the end of 2021 and 2022.

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Source: Coronavirus Aid, Relief, and Economic Security Act

In recent weeks, the novel Coronavirus (COVID-19) has emerged as a bona fide global "pandemic" according to the World Health Organization, with exposures doubling in many countries (including the US) every 3-5 days, and threatening to quickly swamp the health care system's ability to treat those who experience more serious and potentially life-threatening symptoms.

To minimize the risk of an increased fatality rate due to overwhelming the health care system, and learning from prior pandemics like the Spanish Flu in 1918, epidemiologists

have urged countries to “flatten the curve” by engaging in measures that won’t necessarily stop but do *slow* the spread of the virus… ensuring that even if ultimately most people do get infected, the health care system can handle their health needs as sickness spreads.

Consequently, various counties, cities, and even entire states have engaged in “shutdowns” with various work-from-home or outright shelter-in-place mandates, and the President has encouraged the entire nation to engage in “social distancing” and avoid gatherings of more than 10 people at a time.

The caveat, of course, is that when people don’t go out because they’re remaining socially distant and sheltering in place, many businesses see drastic curtailments of their entire customer base, from hotels and airlines to restaurants across the nation. As a result, the outbreak of the coronavirus has resulted in what is by far the largest spike in single-week unemployment claims *ever*, up 3.3 million in just a week. And of course, beyond the outright hardship for those who lost their jobs, the longer people remain unemployed, the further their inability to earn and spend can ripple through to the rest of the economy.

To help fill the void, the Federal Reserve has taken dramatic steps in monetary policy to keep the financial system stable. And Congress has sought to complement their effort with major fiscal stimulus – in what now appears to be the largest economic stimulus package in our country’s history.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 is an estimated $2 trillion package, including nearly half a trillion dollars in individual rebate checks (akin to how the US has handled prior crises in the past 20 years), another $500B for support of several severely-damaged industries, nearly $400B support including tax credits for wages and payroll tax relief, over $300B of support for state and local governments, and almost $150B for various initiatives to support hospitals and the health care system.

As of the publication of this article, the CARES Act has been passed by the Senate and is anticipated to ultimately be passed by the House and signed by President Trump in the coming days. Nearly 900 pages in length, the CARES Act will undoubtedly be pored over for weeks and months to come, but contained below are the most notable provisions relevant to financial advisors and their clients, in particular, to engage in proactive client conversations in the coming days and weeks.

Breaking Down The Recovery Rebates

Perhaps no single provision in the CARES Act has received more interest from the general public than Section 2201, *Recovery Rebates For Individuals*. In short, people want to know whether they should be expecting a check from Uncle Sam, and if so, how much the check will be for.

The good news is that according to estimates by the Tax Foundation, over 90% of taxpayers should receive some amount of Recovery Rebate. The bad news is that thanks to the way the law was drafted, there may be a substantial number of people who could *really* use the help right now who won't qualify, and even for those that do, practical issues with how such payments may be distributed could substantially delay their receipt!

Calculating The Amount Of A Taxpayer's Recovery Rebate Advance

As a starting point, the CARES Act provides a refundable income tax credit against 2020 income of up to $2,400 (more on this in a bit) for married couples filing a joint return, while all other filers begin with a refundable credit of up to $1,200. The credit amount then increased by up to $500 for each child a taxpayer has under the age of 17.

Thus, a single taxpayer with one child would be eligible for up to a $1,200 + $500 = $1,700 refundable credit, while a single taxpayer with two young children would be eligible for up to a $1,200 +$500 + $500 = $2,200 credit. A married couple, on the other hand, with one child and who file a joint return, would be eligible for up to a $2,400 + $500 = $2,900 credit, while the same couple with four children would be eligible for up to a $2,400 + $500 + $500 + $500 + $500 = $4,400 credit.

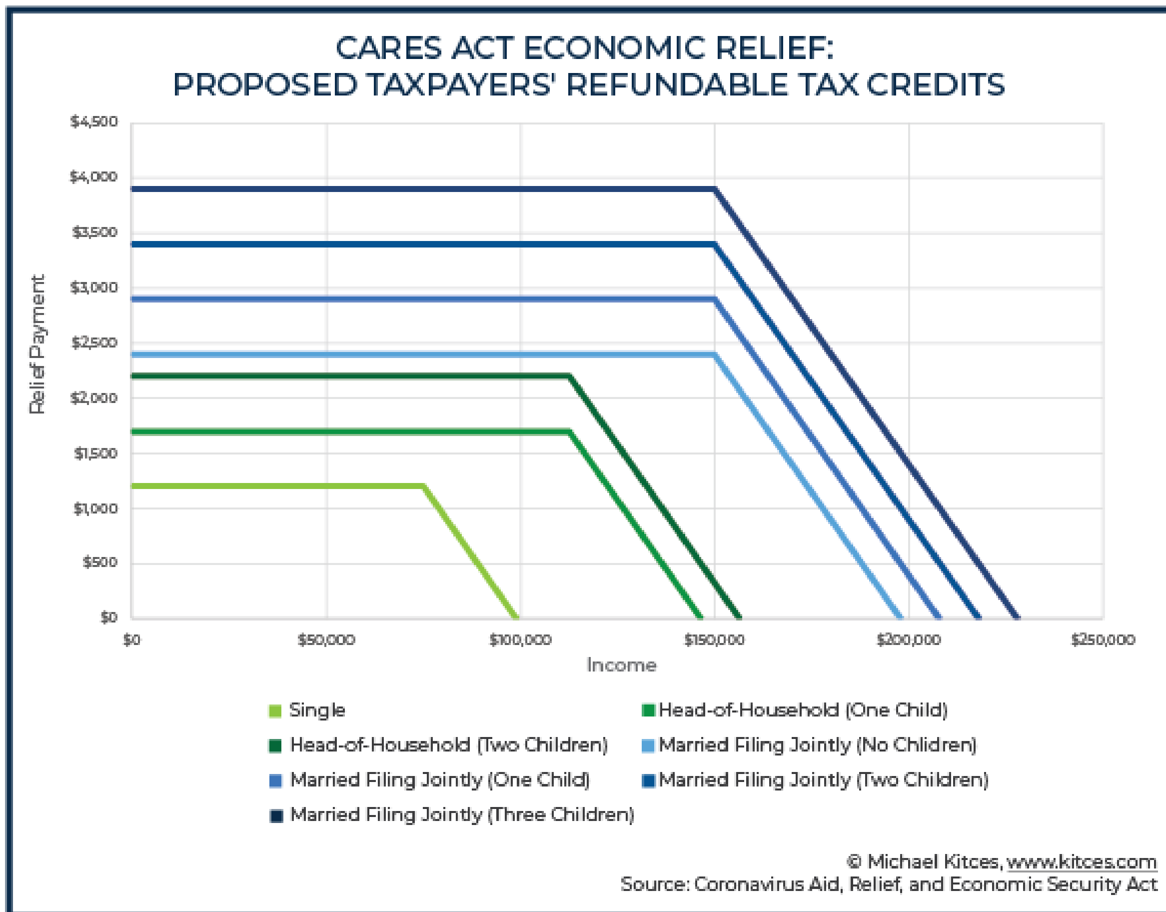
If you've read the last two paragraphs closely, you probably noticed a lot of "up to"s in there. And there's a reason for that. As a taxpayer's income begins to exceed their applicable threshold, their potential Recovery Rebate Payment (their credit) begins to phase out. More specifically, for every $100 a taxpayer's income exceeds their credit, their potential Recovery Rebate will be reduced by $5.

The applicable AGI threshold amounts are as follows:

- Married Joint: $150,000
- Head of Household: $112,500
- All Other Filers: $75,000

> **Example #1**: Mickey and Jackie are married and file a joint return. They have four children, ages 10, 13, 15, and 17, and have $176,000 of Adjusted Gross Income (AGI).
>
> As such, they are eligible to receive a maximum Recovery Rebate of $2,400 + $500 + $500 + $500 = $3,900! (Note: Recall that the potential Recovery Rebate is only increased by $500 for each child *under* 17, so only three of the couple's children qualify.
>
> But while $3,900 is the maximum potential Recovery Rebate the couple to which the couple could be entitled, they have income in excess of their $150,000 threshold amount. More specifically, they are $26,000 over their threshold amount, so their recovery rebate must be reduced by $26,000 x 5% = $1,300.
>
> As such, the ultimate Recovery Rebate check that Mickey and Jackie will receive will be $3,900 – $1,300 = $2,600!

Notably, by virtue of the way the Recovery Rebate is phased out, two taxpayers who have the same filing status will have different phaseout ranges if they have a different number of qualifying children. Because while a taxpayer's Recovery Credit will *begin* to phase out after income exceeds a threshold determined by filing status alone, the starting (potential) Recovery Credit 'burn rate' is a constant $5 per $100 of additional income. Thus, as can be seen in the graph below, the greater the number of qualifying children a taxpayer has, the wider their phaseout range.



Recovery Rebates Will Be *Dispersed* Based On 2018/2019 Income But Are Actually *For* 2020

One of the more confusing aspects of the Recovery Rebate is that it has a bit of a 'split personality', in that the initial amount paid will be based on either a taxpayer's 2018 or 2019 income tax return (whichever is the latest return that the IRS has on file), while it will ultimately be 'trued up' if a taxpayer is owed money based on their actual 2020 income.

In other words, Congress is going to 'front' taxpayers an estimated amount based on their 2018/2019 incomes, but if the 2020 return shows they really 'deserved' it, they'll get it after all, albeit much later. This little 'wrinkle' may cause any number of headaches.

Perhaps the individuals most negatively impacted by Congress's choice to process the Recovery Rebates this way are those taxpayers who had high income in 2018/2019, but who have since been laid off, furloughed, or had their incomes substantially decrease for other reasons. In such situations, individuals may have a genuine need for income at this very moment. And while they won't *ultimately* benefit from the Recovery Rebate until April of 2021 (or whenever they file their 2020 return), that is of absolutely no use to them today!

> **Example #2**: Georgia is a single taxpayer with no children who made $150,000 as a boutique travel agent in 2019, the most recent year for which a tax return is on file with the IRS. Unfortunately, in early February of 2020, after making just $8,000 for the year, she was let go and has been unable to find new employment.
>
> Suppose that Georgia is not re-employed until July, and ultimately makes 'just' $45,000 in 2020. Given these set of facts, Georgia is actually eligible for a $1,200 Recovery Rebate, because her income is well below the $75,000 threshold amount for single filers.
>
> However, because Georgia's 2019 income was $150,000, she won't get *any* cash flow assistance now via a Recovery Rebate check (or direct deposit) but, rather, will have to wait until her 2020 income tax return is filed to have it applied.

Now I ask you… *How does that possibly help Georgia now, when she is at the greatest need?* (Hint: It doesn't.) And given the fact that just yesterday it was announced that nearly 3.3 million (!) people filed for unemployment between March 15th and March 21st, it's likely that there are a lot of 'Georgia's' out there!

Of course, while many taxpayers are likely to see income decreases in 2020 as compared to previous years, some will surely see their incomes rise. And for some, that might mean that they get a check for a Recovery Rebate now that they don't really 'deserve' based on their ultimate 2020 income.

Perhaps surprisingly, there will be no clawback on the 'excess payment' when they file their 2020 return. Such (lucky) individuals get to keep their recovery rebate!

> **Example #3**: Sunny is a toilet paper distributor who files a joint return and has four children under the age of 10. Therefore, he has a potential Recovery Rebate of $4,400.
>
> In 2019, the most recent year for which a return is on file with the IRS, he and his wife had AGI of $130,000, well below their threshold amount of $150,000. As such, the IRS will send Sunny a check for $4,400, his maximum potential rebate amount.
>
> Suppose, though, that due to a large increase in the demand for toilet paper in 2020, Sunny has his best year ever, and he and his wife have $240,000 of AGI. Despite the fact that they are well above the income phaseout range, they get to keep the $4,400 Recovery Rebate, further enhancing what is, at least from an income perspective, already an excellent year for the couple.

(***Nerd Note:*** *While the filing deadline for 2019 income tax returns has been extended to July 15, 2020, those taxpayers whose incomes were low enough in 2019, but not low enough in 2018, to receive a Recovery Rebate advance now, may wish to file their 2019 return as soon as possible to*

try and get it in before the IRS calculates the current payment amount. There is currently no information available on when the 'drop-dead' date for such a submission will be, so the sooner, the better!)

And, of course, income is far from the only thing that may change over time. For example, there were about 3.8 million children born in 2019 that won't show up on a 2018 return, but for whom parents may be entitled to a $500 Recovery Rebate. Marriages and divorces have occurred, and people have died.

All of these may result in Recovery Rebate payments (or lack thereof) that are being received now ending up being dramatically different than the 'real´ Recovery Rebate an individual is entitled to based on their 2020 facts and circumstances, and that won't be sorted out until the 2020 return is filed.

Where And When Recovery Rebate Advances Will Be Paid

The urgency with which some taxpayers need income cannot be overstated. For them, the Recovery Rebate cannot come soon enough. Unfortunately, it's likely to be at least a month, if not more, before such payments will actually be received. The CARES Act requires that these payments be made as soon as possible, but early indications from the Treasury Department are that "as soon as possible" may not be until sometime in May.

As for *where* the Recovery Rebate payments will be made, it depends. It appears that individuals receiving Social Security benefits will receive their Recovery Rebate in the same account they receive their Social Security benefits. The CARES Act also authorizes Recovery Rebate payments to be made to the account into which a taxpayer's 2018/2019 refund was deposited. Other payments will be sent to the last known address on file.

No doubt, this raises potential issues of its own. For instance, what happens if a client had their 2018 refund direct deposited into an account which is no longer active? Or what happens if a taxpayer has moved since they filed their last return? In such instances, tracking down 'lost' Recovery Rebate payments may be a bear, as the CARES Act indicates that the IRS will provide a *phone number* for individuals to report such issues.

Coronavirus-Related Distributions

Mirroring similar relief that has been provided to individuals in Federally declared disaster areas in the past (for things like hurricanes, wildfires, and floods), the CARES Act creates Coronavirus-Related Distributions. Coronavirus-Related Distributions are distributions of ***up to $100,000***, made from IRAs, employer-sponsored retirement plans, or a combination both, which are ***made in 2020*** by an individual who has been ***impacted by the Coronavirus*** because they:

- Have been diagnosed with COVID-19;
- Have a spouse or dependent who has been diagnosed with COVID-19;
- Experience adverse financial consequences as a result of being quarantined, furloughed, being laid off, or having work hours reduced because of the disease;
- Are unable to work because they lack childcare as a result of the disease;
- Own a business that has closed or operate under reduced hours because of the disease; or
- Meet some other reason that the IRS decides to say is OK.

Given the laundry list of potential individuals who may qualify for relief under this provision, it seems rather clear that Congressional intent was to make this provision broadly available. The IRS will likely operate in kind, and take a liberal view of who has been impacted by the Coronavirus *enough* to qualify for a Coronavirus-Related Distribution.

There are a number of potential tax benefits associated with Coronavirus-Related Distributions. More specifically, these include:

1. **Exempt From the 10% Penalty** – Individuals under the age of 59 ½ may access retirement funds without the normal penalty that would otherwise apply.
2. **Not Subject to Mandatory Withholding Requirements** – Typically, eligible rollover distributions from employer-sponsored retirement plans are subject to mandatory Federal withholding of at least 20%. Coronavirus-Related Distributions, however, are exempt from this requirement. Plans can rely on a participant's self-certification that they meet the requirements of a Coronavirus-Related Distribution when processing a distribution without mandatory withholding.
3. **Eligible to be Repaid Over 3 Years**– Beginning on the day after an individual receives a Coronavirus-Related Distribution, they have up to three years to roll all or any portion of the distribution back into a retirement account. Furthermore, such repayment can be made via a single rollover, or multiple partial rollovers made during the three-year period. Finally, if distributions are rolled using this option, an amended return can (and should) be filed to claim a refund of any tax paid attributable to the rolled over amount.
4. **Income May Be Spread Over 3 Years** – By default, the income from a Coronavirus-Related Distribution is split evenly over 2020, 2021, and 2022. A taxpayer can, however, elect to include all of the income from a Coronavirus-Related Distribution in their 2020 income.

*(**Nerd Note:** Although, in general, spreading the income of a retirement account distribution over three years is likely to result in a better tax outcome than including all the income in just a single tax year, that may not be the case now. Notably, if an individual is experiencing significant financial difficulty and, to meet expenses, they take a Coronavirus-Related Distribution, it likely indicates lower-than-normal income, at least temporarily, for 2020. If higher income is expected*

in future years as life returns to 'normal', it may be best to include all the income on 2020's return. Plus, as an added bonus, if some or all of the distribution is later rolled over within the 3-year repayment window, it's only one tax return to amend!)

Enhancements To Loans From Employer-Sponsored Retirement Plans

Many employer-sponsored retirement plans, such as 401(k)s and 403(b)s, offer participants the option of taking a loan of a portion of their retirement assets. For individuals who have been impacted by the coronavirus (using the same definition as outlined above for Coronavirus-Related Distributions), the CARES act enhances the 'regular' plan loan rules in the following three ways:

1. **Maximum Loan Amount is Increased to $100,000** – In general, the maximum amount that may be borrowed from an employer plan is $50,000. The CARES Act doubles this amount for affected individuals.
2. **100% of the Vested Balance May Be Used** – In general, once an individual has a vested plan balance that exceeds $20,000, they are only eligible to take a loan of up to 50% of that amount (up to the normal maximum of $50,000). The CARES Act amends this rule for affected individuals, allowing them to take a loan equal to their vested plan balance, dollar-for-dollar, up to the $100,000 maximum amount.
3. **Delay of Payments** – Any payments that would otherwise be owed on the plan loan from the date of enactment through the end of 2020 may be delayed for up to one year.

Required Minimum Distributions Are Waived *In* 2020

Section 2203 of the CARES Act amends IRC Section 401(a)(9) to suspend Required Minimum Distributions (RMDs) during 2020. The relief provided by this provision is broad and applies to Traditional IRAs, SEP IRAs, and SIMPLE IRAs, as well as 401(k), 403(b), and Governmental 457(b) plans. Furthermore, the relief applies to both retirement account owners, themselves, as well as to beneficiaries taking stretch distributions.

In one somewhat surprising twist, the CARES Act not only eliminates RMDs for 2020 but any RMD that otherwise needed to be taken *in* 2020. More specifically, individuals who turned 70 ½ in 2019, but did not take their first RMD in 2019 (and thus, would have normally been required to take such a distribution by April 1st, 2020, as well as a second RMD *for* 2020 by the end of 2020) do not have to take *either* their 2019 RMD *or* their 2020 RMD! Thus, these procrastinators get to escape two RMDs instead of just one!

Returning Unwanted 2020 RMDs That Have Already Been Distributed

Despite the fact that we're not quite yet through the first quarter of the year, a number of individuals have already taken their RMDs – or at least, what they thought was their RMD at the time – for 2020. Now, in light of the CARES Act, these individuals may wish to 'return' unwanted and no longer necessary RMDs.

For IRA, 401(k), and other retirement account owners, this may be possible in two different ways. In a best-case scenario, the 'RMD' distribution will have taken place within the last 60 days, and the distribution won't be prevented from being rolled over due to the once-per-year rollover rule (either because it came from a plan, is going to a plan, or because no IRA-to-IRA rollover has been made within the past 365 days). In such instances, an individual can simply write a check, or otherwise transfer an amount equal to the 'RMD' back into a retirement account before the end of the 60-day rollover window.

For retirement accounts owners who took their RMD *very* early in the year, and for whom the 60-day rollover window has already expired, there is another potential approach. If it can be shown that the individual has been impacted by the COVID-19 crisis enough to qualify under the liberal guidelines outlined earlier for a Coronavirus-Related Distribution, then the rollover can still be completed… anytime for the next three years (from the date the distribution was received)!

Notably, while most benefits in the CARES Act are only available for actions occurring either after the President declared a national emergency or, in other cases, the enactment of the law, the Coronavirus-Related Distribution provision can apply to distributions as early as January 1, 2020! (Tip o' the hat to Jamie Hopkins for thinking this one up!)

But what about beneficiaries who took RMDs already? Is there any relief for them? Unfortunately, the answer is no. A beneficiary is not eligible to make a rollover. Period. As such, even if the distributed RMD was made within the last 60 days, there is no way to get it back into the inherited retirement account.

(***Nerd Note:*** *The lone exception for beneficiaries would be for a spouse who chose to remain a beneficiary of the deceased spouse's retirement account. In such an instance, they may be eligible to put the RMD back into their* ***own*** *retirement account, as a spousal rollover, using one of the methods described above.)*

2020 Is Ignored For Purposes Of The 5-Year Rule

A final item addressed by the CARES Act's suspension of RMDs for 2020 is the way it impacts the 5-Year Rule that applies to Non-Designated Beneficiaries (e.g., charities, estates, non-See-Through Trusts) who inherit a retirement account from decedents who die prior to reaching their required beginning date.

In general, such beneficiaries must distribute the entirety of their inherited assets by the end of the fifth year after the retirement account owner's death. The CARES Act, however, allows 2020 to be ignored, or simply not counted as one of those five years. Thus, for Non-Designated Beneficiaries subject to the 5-Year Rule who inherited from a decedent dying between 2015 – 2019, the 5-Year Rule is effectively a 6-Year Rule!

(***Nerd Note:*** *Many individuals have been inquiring whether a similar extension of time applies to the new 10-Year Rule imposed by the SECURE Act on Non-Eligible Designated Beneficiaries. The answer is, "No." Recall that 2020 is the first year that an individual could have died with and had a beneficiary subject to the 10-Year Rule. And the 10-Year Rule does not actually begin until the year after the year of death. Therefore, 2020 doesn't count as 1 of the 10 years for purposes of the 10-Year Rule!)*

New $300 Above-The-Line Deduction For "Qualified Charitable Contributions"

Having recently removed many of the above the-line-deductions via the Tax Cuts and Jobs Act (TCJA) in the interest of simplicity (at least that's what they said), Congress promptly introduces a brand-spanking-new above-the-line deduction in the CARES Act for *Qualified Charitable Contributions* made to qualifying charities.

As with many things, when it comes to taxes, there is both good news and bad news. The bad news is that the deduction, which is effective for tax years beginning in 2020, is limited to a whopping (note copious amounts of sarcasm) $300. Even for a taxpayer in the *highest* tax bracket of 37%, that still 'only' amounts to an actual tax-bill-savings of $111. Every little bit helps, but it's hardly going to be a windfall for anyone, as for a taxpayer in the 12% bracket, the 'full' deduction would amount to $36 of tax savings.

The good news, though, is that while the impact on an individual basis may not amount to much, a substantial number of people *will* be able to take advantage of this not-so-substantial benefit. That's because, in order to claim the deduction, ***a taxpayer cannot itemize deductions on their Federal return***. But thanks to the TCJA's near-doubling of the standard deduction, only about 10% of taxpayers today itemize deductions on their Federal return… which means about 90% of taxpayers can potentially benefit from this new tax break in at least some way!

Notably, Qualified Charitable Contributions must be ***made in cash***. And they ***cannot be used to fund either donor-advised funds (DAFs)*** or 509(a)(3) "supporting organizations".

(***Nerd Note:*** *Somebody, somewhere, made an oopsie! Several synopses of the CARES Act that were circulated by Congress, including a version by Senate Finance Committee Chairman Chuck Grassley, stated that this deduction was only applicable for 2020. The actual text of the CARES*

Act, however, has a ‘starting’ year of 2020, but no sunset or ending year. Thus, it would appear to be permanent, whether intentionally or not!)

AGI Limit For Cash Charitable Contributions Temporarily Repealed

Section 2205 of the CARES Act temporarily increases the AGI limit on cash contributions made to charities from a maximum of 60% of AGI (previously increased from 50% by the TCJA), to a maximum of 100% of AGI for “qualified contributions”. As such, an individual can completely wipe out their 2020 tax liability with charitable contributions. If total charitable contributions exceed the 2020 100%-of-AGI limit (so, effectively, once a taxpayer has brought their 2020 income tax liability to $0), the excess may be carried forward as a charitable contribution for up to 5 years.

Notably, though, like Qualified Charitable Contributions, this provision expressly prohibits such contributions from funding either donor-advised funds (DAFs) or 509(a)(3) “supporting organizations”.

Relief For Student Loan Borrowers

The CARES Act includes several provisions aimed at providing relief to student loan borrowers, including the following:

Student Loan Payments Deferred Until September 30, 2020 – Section 3513 suspends required payments on Federal student loans though September 30, 2020. During this time, no interest will accrue on this debt. Unfortunately, though, while *required* payments are suspended, voluntary payments are not prohibited. And by default, payments will continue unless individuals take proactive measures to contact their loan provider and pause payments.

Also notable is that this period of time will ***continue to count towards any loan forgiveness programs***. As such, any student borrower who intends to qualify for a program that will ultimately forgive the entirety of their Federal student debt (such as via the Public Service Loan Forgiveness program) should immediately pause payments. Because whereas other borrowers who continue to pay Federal student loans during this time may simply be paying down what is effectively 0% debt (at least temporarily), those borrowers who will ultimately have their outstanding student debt forgiven (upon completion of whatever requirements are necessary for their particular loan forgiveness program) are paying down a debt that would otherwise be wiped clean anyway!

Finally, all involuntary debt collections are also suspended through September 30, 2020. This not only includes wage garnishment or the reduction of other Federal benefits but the reduction of any tax refund (for student loan purposes). As such, borrowers of student debt who are delinquent on payments and would normally be subject to a reduction of their tax refund have an incentive to file their tax returns early enough so that the refund is processed before this relief expires.

Employers Can Exclude Student Loan Repayments From Compensation – Section 2206 provides employers a (very) limited window of time in which they can take advantage of a special rule to aid employees paying down student debt. In general, amounts paid by an employer to an employee which are used to pay student debt (or payments made by an employer directly to the loan provider) are considered compensation to the employee and are subject to income tax.

Under Section 2206, however, employers have from the date of enactment of the law, through the end of the year, to provide employees with up to $5,250 for purposes of student debt payments and exclude those amounts from their income. This amount, however, is coordinated with the 'regular' $5,250 limit that employers can provide employees tax-free for *current* education. As such, the total maximum tax-free education assistance an employer can provide an employee in 2020 is $5,250.

Pell Grant and Subsidized Federal Student Loan Relief For Students Leaving School – Both Pell Grants and Subsidized Federal Student loans are subject to various limits. Section 3506 of the CARES Act excludes from a student's period of enrollment any semester that a student does not complete due to a qualifying emergency. Section 3507 does the same with respect to the Federal Pell Grant duration limit.

Curiously, both provisions are contingent upon the Secretary of Education being "able to administer such policy in a manner that limits complexity and the burden on the student." Upon first glance, these provisions would appear to create far more "burden" for the Secretary of Education than they do on the student!

Finally, if a student withdraws from school during the middle of a semester (or equivalent) because of qualifying emergency, Section 3508(b) eliminates the amount of a student's Pell Grant that would normally have to be returned, while 3508(c) cancels any Direct loan that was taken to pay for the semester.

Definition Of Qualified Medical Expenses For Certain Tax-Favored Accounts Is Expanded To Include Over-The-Counter Expenses

Per Section 3702 of the CARES Act, beginning in 2020, the definition of qualified medical expenses, for purposes of Health Savings Accounts (HSAs), Archer Medical Savings Accounts (MSAs), and Healthcare Flexible Spending Accounts (FSAs) is expanded to ***include over-the-counter medications***.

Qualified medical expenses for such accounts are further expanded to include amounts paid for "menstrual care products", which are defined as *"a tampon, pad, liner, cup, sponge, or similar product used by individuals with respect to menstruation or other genital tract secretions."*

Other Select Provisions Related To Individual Healthcare

It should come as no surprise that the CARES Act is absolutely loaded with health-related provisions (it is, of course, being passed in response to what is likely the single greatest health-related event of most Americans' lives). With that in mind, other notable personal healthcare provisions include the following:

- Medicare Beneficiaries will be eligible to receive the COVID-19 vaccine (when available) at no cost (Section 3713);
- During the COVID-19 emergency period, Medicare Part D recipients must be given the ability to have, upon request, up to a 90-day supply of medication prescribed and filled (Section 3714);
- Telehealth services may be temporarily covered (through plan years beginning in 2020) by an HSA-Eligible HDHP before a participant has met their deductible (Section 3701); and
- Rules for providing Telehealth services are relaxed during the COVID-19 emergency period for Medicare (Section 3703), Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) (Section 3704), Home Dialysis (Section 3705), and Hospice Care Recertification (Section 3706).

A Cornucopia Of Additional Unemployment Compensation Benefits

Almost immediately, it was clear that the social distancing policies, limitations on gatherings of large groups, and, in the areas hit the hardest by COVID-19 crisis, government-ordered lockdowns would have a dramatic impact on businesses and their ability to retain workers.

That expectation proved a reality yesterday, as the number of individuals applying for unemployment in the most recent (weekly) period jumped to nearly 3.3 million, a figure so high it is an order of magnitude higher than anything seen in generations!

For the many who have already lost their jobs, and for the countless more who will likely find themselves subject to the same fate in the coming weeks, there is, thankfully, some (relatively) good news. Unemployment compensation benefits have been significantly expanded by the CARES Act. These enhancements include:

Pandemic Unemployment Assistance – Self-employed individuals (who are generally ineligible for unemployment compensation benefits), and other individuals who are ineligible for 'regular' unemployment, extended unemployment or pandemic unemployment insurance, or run out of such insurance, will be eligible for up to 39 weeks of benefits via this provision.

Uncle Sam Will Cover Unemployment for the First Week of Unemployment – In general, individuals are ineligible to receive unemployment benefits the first week that they are unemployed. It essentially amounts to an elimination period that's meant to encourage people to try and get another job quickly so as to avoid the week without income. Of course, at the present time, finding work quickly will be difficult, if not impossible. And in recognition of this fact, the CARES Act offers to pay states to provide unemployment compensation benefits immediately, without the 'normal' one-week waiting period.

'Regular' Unemployment Compensation is 'Bumped' by $600 per Week – Section 2104 of the CARES Act provides states with the ability to increase their unemployment benefits by up to $600 per week with Federally-funded dollars, for up to four months. This has the ability to *dramatically* increase the amount of money an individual is entitled to temporarily receive via unemployment compensation benefits, as the average weekly unemployment benefit nationwide is under $400! Thus, many individuals will see their unemployment checks increase by 150% or more, thanks to this part of the CARES Act.

*(**Nerd Note:** It's this part of the bill that briefly stalled the legislation in the Senate, as concern was raised by some legislators that, with enhanced payments, some individuals would actually make more collecting unemployment insurance than they would be by returning to work. Certainly, a fair concern, but one that was ultimately able to be seen past in an effort to move the bill forward and get aid to those who need it.)*

Unemployment Compensation is Extended by 13 Weeks– In the event that people are nearing – and ultimately reach – the maximum amount of weeks of unemployment compensation provided under state law, Section 2107 of the CARES Act will allow them to receive such benefits for an additional quarter.

Incentives to Create Short-Time Compensation Programs – Section 2108 of the CARES Act provides an incentive for states who do not currently have "short-time compensation" programs to establish such programs by covering 50% of the establishment costs incurred

through the end of the year. Short-time programs are meant to help those employees who have seen hours cut (or similar cuts) and have had income drop, but who are still employed, and therefore, ineligible for ***un***employment compensation benefits.

Paycheck Protection Program And Forgivable Loans

Another significant potential benefit included in the CARES Act for 'small' business owners is the Paycheck Protection Program, a (partially) forgivable loan program offered through the Small Business Administration (SBA). Such loans must be applied for by June 30, 2020, and can have a maximum maturity of 10 years. They may be provided via existing approved SBA lenders, as well as lenders who are otherwise certified by the SBA to offer such loans. Furthermore, such loans will be 100% guaranteed by the SBA.

Qualifying For The Paycheck Protection Program

Businesses, including sole proprietorships, that have fewer than 500 employees (including affiliated businesses), or the employee size standard under NAICS Code, if larger, are eligible for this relief (food service businesses also apply if they employ fewer than 500 people per physical location). Eligible borrowers are also required to make a good-faith certification that the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19.

Under the Paycheck Protection Program, lenders will generally be able to issue SBA 7(a) small business loans up to a maximum of the lesser of $10 million, or 2.5 times the average monthly payroll costs over the previous year (excluding annual compensation of amounts over $100,000 per person). And the proceeds of such loans may be used to pay a variety of costs, including:

- Payroll costs
- Group health insurance premiums and other healthcare costs
- Salaries and/or commissions
- Rent
- Mortgage *interest* (excluding amounts pre-paid)
- Utilities
- Other business interest incurred prior to February 15, 2020

Benefits Of Loans Issued Under The Paycheck Protection Program

The single largest *potential* benefit of a loan issued under the Paycheck Protection Program is the possibility of having all or a portion of the loan forgiven. The amount eligible to be forgiven is the amount spent, during the first 8 weeks after the loan is made, on:

- Payroll costs, excluding prorated amounts for individuals with compensation greater than $100,000;
- Rent pursuant to a lease in force before February 15, 2020;
- Electricity, gas, water, transportation, telephone, or internet access expenses for services which began before February 15, 2020; and
- Group health insurance premiums and other healthcare costs.

If this sounds too good to be true, it won't surprise you to learn that there *is* a catch. In order for the above amounts to be forgiven, the business must maintain the same number of employees (equivalents) from February 15, 2020 through June 30, 2020 as it did during either the same period in 2019 or from January 1, 2020 until February 15, 2020. To the extent this requirement is not met, the amount eligible for forgiveness will be reduced, ratably. Additional reductions in the amount to be forgiven will be incurred if employees with under $100,000 of compensation have their compensation cut by more than 25% as compared to the most recent quarter.

And as if this benefit wasn't good enough, it actually gets even better! Any debt forgiven pursuant to this provision is not included in taxable income for the year.

Second, the *maximum* interest rate that can be charged for a loan made under this program is 4%. Small businesses tend to be risky borrowers, so the ability to borrow up to $10 million at no more than 4%, and over a term of up to 10 years, is a pretty significant 'win' for many small businesses in and of itself!

Finally, payments for loans made under the Paycheck Protection Program will be deferred for a period of no less than six months and no longer than one year. Additional guidance will be provided to lenders within 30 days of enactment to further elaborate on the 6-to-12-month deferment period.

New "Employee Retention Credit For Employers Subject To Closure Due to COVID-19"

The economic fallout as a result of the COVID-19 epidemic is unprecedented. As businesses have shuttered their doors or cut back on hours or services, individuals have been laid off in record numbers. As an incentive to encourage businesses who have been hit hard by the economic effects of the COVID-19 crisis from making further layoffs, Section 2301 of the CARES Act introduces a new payroll tax credit (provided they are not receiving a covered loan under section 7(a)(36) of the Small Business Act).

Qualifying For The Employee Retention Credit

The 'trigger' for a company to *begin* to be eligible for the credit is that operations of the company have been fully or partially suspended during a quarter either as a result of a

governmental authority or in which revenue in 2020 has less than 50% of the revenue from the same quarter in 2019.

As such, a business which is not at least partially suspended because of government restriction, and which never sees its year-over-year quarterly revenues plummet below the 50% mark, will not be eligible for the credit.

For those businesses that do meet this (unfortunate) requirement, the business will *continue* to qualify for the credit until the earlier of:

- The end of 2020; or
- Depending upon the method of qualification for the credit, there is either a quarter without a government-required suspension of operations, or gross revenue from the current quarter exceeds 80% gross revenue from the same calendar quarter in 2019, whichever is sooner.

Notably, for businesses qualifying for the credit based on revenue, by virtue of the fact that at least one quarter's revenue in 2020 must be more than 50% less than the revenue for the same quarter in 2019, a company experiencing a sustained substantial (but not-substantial-enough) decrease in revenue throughout the year, may never qualify for the credit (as can be shown with company B in the example below).

Meanwhile, as evidenced in the example below, a company that experiences a more temporary, but dramatic decline in revenue, and which actually experiences a much better year overall, may, in fact, qualify for the credit in one or more quarters!

Finally, it's worth highlighting that the key metric used here is revenue, not profit. Thus, a business with a small profit margin, such as a grocery store (which tend to have margins of less than 5%) that loses 'just' 10% or 15% or revenue may, in fact, already be running at a substantial loss without cutting other costs.

Calculating The Employee Retention Credit

For business planning purposes, it is important for employers not only to understand that they are eligible for a credit but also to know how much of a credit they are eligible for, as this will help inform business decisions. In the simplest terms, the credit is equal to 50% of wages paid to each employee, up to a maximum of $10,000 of wages per employee. There are, however, as usual, some important caveats to which business owners must be made aware.

Specifically, businesses with 100 or fewer employees count "wages" very differently from larger businesses. For small businesses (100 or fewer employees), all wages (up to the $10,000 maximum limit per employee) are eligible to count towards the credit. By contrast, for larger employers with more than 100 employees, only wages paid to individuals (up to

the $10,000 maximum limit per employee) who are not providing services (not working) during a government shutdown, or because business revenues have declined as outlined above, are eligible to count towards the credit. In both cases, wages include qualified health care expenses allocable to those wages.

Deferral Of Payment Of Payroll Taxes

Section 2302 of the CARES Act provides employers with another payroll-related tax break. With the exception of employers who have debt forgiven by the CARES Act for certain loans provided by the Small Business Administration, employers are eligible to defer payroll taxes from the date of enactment, through the end of the year, until the end of 2021 and 2022.

More specifically, 50% of the payroll taxes that would otherwise be due during this period may be deferred until December 31, 2021. The remaining 50% is due on December 31, 2022.

The good news for self-employed persons is that this relief applies to them too, at least with respect to the ‘employer equivalent' portion of their self-employment taxes. Accordingly, 50% of an individual's self-employment taxes, from the date of enactment through the end of 2020, may be deferred, with 50% of *that* amount (so 25% of 2020 self-employment taxes) due December 31, 2021, and the remaining deferred amount due on December 31, 2022.

Notably, payroll taxes and self-employment taxes fund programs such as Medicare and Social Security, which are significantly underfunded already. To mitigate further impact to these programs, the CARES Act authorizes Congress to appropriate amounts from elsewhere in an amount equal to the deferred amounts that would have otherwise gone into the Trust Funds. And interestingly, there doesn't *appear* to be an offset when those deferred payments ultimately *do* go into the Trust Funds.

So, perhaps Social Security and Medicare actually get a little boost thanks to the CARES Act (which, admittedly, would probably just offset some of the effects of reduced payrolls in 2020)?

Net Operating Loss Rules Are Loosened

Section 2303 of the CARES Act amends the rules for corporations (other than REITs) with Net Operating Losses (NOLs). For many years, NOLs were allowed to be carried back up to two years and forward up to 20 years. The TCJA changed those rules, however, beginning in 2018, to allow such losses only to be carried forward, indefinitely.

Now, the CARES Act adjusts those rules once more, allowing any NOL from 2018, 2019, or 2020 to be carried back up to five years. In theory, this should allow companies to reduce prior years' tax bills, allowing them to claim refunds of amounts previously paid to provide further liquidity to get them through the COVID-19 crisis.

The CARES Act further enhances the ability of companies to use their NOLs to offset prior years' tax liabilities by amending another rule put in place by the TCJA. Under the TCJA, NOLs were only able to offset up to 80% of taxable income. Section 2303 of the CARES Act amends the law to allow for up to 100% of taxable income to be offset for 2018, 2019, and 2020.

Section 2023 also provides relief to non-corporations as well by temporarily repealing TCJA-created IRC Section 461(l), which limits the cumulative losses that a taxpayer may claim attributable to businesses (above the income attributable to those businesses) to no more than an inflation-adjusted $250,000 for single filers, and $500,000 for joint filers. These limits are repealed for 2018, 2019, and 2020. Accordingly, taxpayers who had losses suspended because of this provision in 2018 or 2019 should consider the potential benefits of filing an amended return.