

April 01, 2020

Q&A on Nonprofit-Related CARES Act Stimulus Provisions

Related Practices

CARES Act Relief
COVID-19 Resource Center
Nonprofit Organizations
Tax

1. Does the CARES Act include any provisions to incentivize charitable giving?

Yes. Sections 2204 and 2205 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act are intended to increase charitable giving.

Section 2204 – Limited above-the-line deduction for individuals

Section 2204 of the CARES Act allows individual taxpayers who do not itemize deductions (*i.e.*, those who take the standard deduction) to deduct up to \$300 of cash contributions made in taxable years beginning in 2020 to qualifying charitable organizations. A “qualifying charitable organization” is described in section 170(b)(1)(A) of the Internal Revenue Code of 1986 (the “Code”) and includes all charitable organizations to which donations are normally deductible, other than supporting organizations (as defined in section 509(a)(3) of the Code) and donor advised funds (as defined in Section 4966(d)(2) of the Code). Excess charitable contributions that have been carried over from prior years are not eligible for the new above-the-line deduction.

Historically, charitable deductions have been below-the-line deductions, meaning only taxpayers who itemized their deductions could deduct charitable contributions. Charitable deductions have declined drastically in recent years, due, at least in part, to a substantial increase in the amount of the standard deduction under the Tax Cuts and Jobs Act of 2017 (TJCA) thereby resulting in more taxpayers taking the standard deduction instead of itemizing. This CARES Act amendment to the Code is intended to incentivize more taxpayers to provide support for charitable organizations as they face increasing demands in service alongside projected declines in giving due to a slowing economy – in addition to the decline in giving they saw following enactment of the TJCA. Nonprofit advocate groups will likely push for a greater limit to the above-the-line deduction in Phase 4 of the CARES Act.

According to an estimate prepared by the Joint Committee on Taxation, this provision is expected to decrease federal income tax revenues by approximately \$1.5 billion.

Section 2205 – Temporary increases in the caps on annual contribution limits

Section 2205 of the CARES Act temporarily raises certain existing limits on the amount of cash charitable contributions that individuals and corporations may deduct. Individuals who itemize may deduct 100% of “qualified contributions,” capped by the amount of their adjusted gross income (AGI), less the amount of all other charitable contributions allowed under section 170(b)(1) of the Code. This individual deduction cap is increased for 2020 from the usual maximum of 60% of the taxpayer’s AGI. Charitable contributions that exceed the cap may be carried over for the next five tax years. For this purpose, “qualified contributions” means contributions that are made in cash to an organization that is described in section 170(b)(1)(A) of the Code, and includes all charitable organizations to which donations are normally deductible, other than supporting organizations (as defined in section 509(a)(3) of the Code) and donor advised funds (as defined in Section 4966(d)(2) of the Code).

For corporations, the increase with respect to “qualified contributions” (as defined above) is from 10% to 25% of taxable income, less the amount of all other charitable contributions allowed under section 170(b)(1) of the Code, with a similar five year carry over allowance for excess contributions. The limit on food inventory contributions by corporations under section 170(e)(3)(C) of the Code is increased from 15% to 25%.

The new provision is “elective.” Furthermore, in the case of partnerships and S corporations, the election is made separately by each partner or shareholder. At this time, there is no guidance concerning how these elections are made, although the election presumably will be made on the individual’s 2020 income tax return

Section 2205 applies only to qualified contributions made in calendar year 2020. According to an estimate prepared by the Joint Committee on Taxation, this provision is expected to decrease tax revenues by approximately \$1.1 billion.

2. Do the provisions of the CARES Act that provide forgivable loans to small business apply to nonprofit organizations?

Yes, under certain circumstances. Charitable organizations exempt under section 501(c)(3) of the Code and Veteran organizations exempt under section 501(c)(19) of the Code with 500 or fewer employees are eligible to apply for the Paycheck Protection Program, a low-interest loan program under the CARES Act administered by the Small Business Administration (SBA). Eligible nonprofits may generally borrow an amount equal to two and a half times the average monthly payroll costs incurred during the previous year (up to \$10 million) and the loan may be forgiven if the organization maintains its staffing levels for eight weeks after receiving the loan.

3. What other support is available to nonprofits under the CARES Act?

While the Paycheck Protection Program is only available to 501(c)(3) and 501(c)(19) organizations, other provisions of the CARES Act provide economic assistance to a broader range of tax-exempt organizations, large and small. For, example, the Economic Injury Disaster Loan (EIDL) grant program under the CARES Act provides emergency economic relief to private nonprofits in the form of low-interest loans with deferred principal and interest payments and a topline \$10,000 grant. In addition, nonprofit organizations that do not receive loans under the Payroll Protection Program are eligible for Employee

Retention Payroll Tax Credits – a credit against payroll tax liability of 50% of qualified wages for each employee during certain periods of nonoperation. Larger nonprofits with 500 to 10,000 employees are also eligible for a low-interest (capped at 2%) loan under the Industry Stabilization Fund established by the CARES Act. The loan does not accrue interest or require repayment for the first six months. Like the Paycheck Protection Program, recipients of a loan from the Industry Stabilization Fund must maintain certain staff and compensation thresholds.

Related People

Elizabeth Prendergast

Associate

eaprendergast@michaelbest.com

T 303.536.1737

Timothy Schally

Partner

tgschally@michaelbest.com

T 414.225.4987