



The third coronavirus stimulus package, the CARES Act, was passed last week. The \$2 trillion package contains a number of tax and loan programs that could benefit workers and companies. Below you will find information regarding these programs, the qualification requirements, and process requirements for taking advantage of those programs. These items will continue to be updated as more information becomes available.

Tax Benefits

Employee Retention Tax Credit

Designed to encourage companies to keep employees on their payroll, for employers who have been subject to closure as a result of COVID-19, this tax credit permits fully refundable 50% tax credit applicable to the employer's share of payroll taxes on wages up to \$10,000 per employee. The amount of the credit is 50% of **qualifying wages** paid up to \$10,000 in total. Wages paid after March 12, 2020, and before Jan. 1, 2021, are eligible for the credit. Wages taken into account are not limited to cash payments, but also include a portion of the cost of employer provided health care.

Eligibility Requirements:

The credit is available to all employers regardless of size, including tax-exempt organizations. There are only two exceptions: State and local governments and their instrumentalities and small businesses who take small business loans.

Qualifying employers must fall into one of two categories:

1. The employer's business is fully or partially suspended by government order due to COVID-19 during the calendar quarter.
2. The employer's gross receipts are below 50% of the comparable quarter in 2019. Once the employer's gross receipts go above 80% of a comparable quarter in 2019, they no longer qualify after the end of that quarter.

These measures are calculated each calendar quarter. Qualifying wages are based on the average number of a business's employees in 2019.

Employers with less than 100 employees: If the employer had 100 or fewer employees on average in 2019, the credit is based on wages paid to all employees, regardless if they worked or not. If the employees worked full time and were paid for full time work, the employer still receives the credit.

Employers with more than 100 employees: If the employer had more than 100 employees on average in 2019, then the credit is allowed only for wages paid to employees who did not work during the calendar quarter.

How can you take advantage of this?

Employers can be immediately reimbursed for the credit by reducing their required deposits of payroll taxes that have been withheld from employees' wages by the amount of the credit.

Eligible employers will report their total qualified wages and the related health insurance costs for each quarter on their quarterly employment tax returns or Form 941 beginning with the second quarter. If the employer's employment tax deposits are not sufficient to cover the credit, the employer may receive an advance payment from the IRS by submitting [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#).

Eligible employers can also request an advance of the Employee Retention Credit by submitting [Form 7200](#).

Tax Modifications for Net Operating Losses

In an effort to provide businesses with financial assistance and access to liquidity, the CARES Act amends the federal income tax rules to the use of net operating losses (NOLs). Under the Act, corporations which incur losses in 2020 (or has incurred losses in 2019, or 2018) is permitted to carryback NOLs to the prior five years to offset prior year income to claim a tax refund on previously paid federal income taxes.

Eligibility Requirements:

The CARES Act amends Section 172 of the Internal Revenue Code to allow corporate NOLs arising in a taxable year beginning after December 31, 2017 and before January 1, 2021, to be carried back to each of the five taxable years preceding the taxable year of the loss. No election is required to carry back such NOLs.

- For calendar year corporations, NOLs arising in 2018, 2019 and 2020 are eligible to be carried back to the prior five taxable years, and continue to be carried forward indefinitely.
- The NOL is first carried back to the earliest tax year of the 5-year carryback period, and then to the next succeeding tax year in such carryback period. Note if a taxpayer is included on a tax return for a "short period" (consisting of less than 12 months), such short tax period is treated as a full tax year for purposes of the 5-year carryback.
- The CARES Act does not change the current rule that corporate capital losses are carried back three tax years and carryforward for five tax years.

How can you take advantage of this?

Speak with your tax advisor about taking advantage of the Net Operating Loss provision of the CARES Act.

Deferred Payment of Employer Payroll Taxes

Employers may defer payment of the employer share of payroll taxes owed on wages paid for the period ending December 31, 2020. Deferred taxes are due in two installments: 50% by December 31, 2021 and 50% by December 31, 2022.

Eligibility Requirements:

This payroll tax deferral is open to all employers, and does not require that a COVID-19 related impact has been made. However, those that have received loan forgiveness through the Paycheck Protection Program are not eligible.

How do I take advantage of this?

Guidance has not yet been given on this provision by the IRS. AFFI recommends that you confer with your tax attorney regarding how to enact this deferral. A revision of form 941, the Employer's Quarterly Federal Tax Return, is expected shortly.

Loan Provisions

Paycheck Protection Program

This \$349 billion lending program is based on a current Small Business Administration loan program with a 100% guarantee. The program provides payroll protections for 2.5 months, not to exceed \$10 million. Employers must certify that the loan is being used to retain workers, maintain payroll, make mortgage or lease payments, and pay utilities. Establishes the maximum 7(a) loan amount to \$10 million through December 31, 2020 and provides a formula by which the loan amount is tied to payroll costs incurred by the business to determine the size of the loan. Eligibility excludes compensation above \$100,000 per year. Loans will be capped at 4% interest.

Eligibility Requirements:

- Defines eligibility for loans as a small business with not more than 500 employees, or the applicable size standard for the industry as provided by SBA, if higher.
- Allow businesses with more than one physical location that employs no more than 500 employees per physical location in certain industries to be eligible and is below a gross annual receipts threshold in certain industries to be eligible.
- Specifies allowable uses of the loan include payroll support, such as employee salaries, paid sick or medical leave, insurance premiums, and mortgage, rent, and utility payments.
- Provides delegated authority, which is the ability for lenders to make determinations on borrower eligibility and creditworthiness without going through all of SBA's channels, to all current 7(a) lenders who make these loans to small businesses, and provides that same authority to lenders who join the program and make these loans.
- Business must have been operational on February 15, 2020, and had employees for whom it paid salaries and payroll taxes, or a paid independent contractor.

How can you take advantage of this?

For more information on Paycheck Protection Program, click [here](#). To apply for the program, click [here](#) for information on approved lenders.

Economic Injury Disaster Loans (EIDLs)

Under the CARES Act, small businesses in all 50 states qualify for Economic Injury Disaster Loan declarations. This allows for low-interest federal disaster loans to provide working capital for small businesses who are suffering economic injury during the coronavirus crisis. Economic Injury loans are available up to \$2 million in assistance to help overcome temporary loss of revenue. Loans may be applied to debts, payroll, accounts payable, and other bills. The interest rate will be capped at 3.75% for small businesses. Repayment can be made in as much as 30 years.

Eligibility Requirements

In general, businesses with fewer than 500 employees qualify. It is possible for frozen food manufacturers with as many as 1,250 to qualify for the loan, however. We recommend that you apply for the loan if you fall under the 1,250 level.

How can you take advantage of this?

You can apply directly for a EIDL through this portal at the Small Business Administration (SBA): <https://covid19relief.sba.gov/#/>

AFFI will be updating these provisions on an ongoing basis as more information is available.