Webinar-Highlights of Business Tax Provisions in H.R. 748 and Overview of CARES Act

Presenter: Edward P. Rigby, CPA, MST - Partner
Moderator: John Engelbrecht, CPA, MST- Director
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Modifications for Net Operating Losses (NOLs)

- The CARES Act temporarily repeals 80 percent of taxable income limitation enacted by the Tax Cuts and Jobs Act
- The Tax Cuts law change generally limited the use of NOLs to 80 percent of the taxpayer's taxable income
- The Tax Cuts law change also eliminated carrybacks of NOLs and eliminated the 20-year carryover limitation
- For NOLs arising in a taxable year beginning after December 31, 2017 and before January 1, 2021, taxpayers may carryback NOLs to the preceding five years before the NOL tax year
- Carryback of NOLs could impact other tax issues such as general business credits, foreign tax credits, special deductions for corporations for export activities

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Modification of Limitation on Losses for Non-Corporate Taxpayers

- The Tax Cuts and Jobs Act imposed a limitation on deduction of losses for non-corporate taxpayers
- Losses subject to the limitation were treated as an NOL carryforward to subsequent tax years
- The CARES Act suspends the limitation on active business losses for tax years after 2017 and before 2021
- Owners of passthrough entities such as partnerships and S corporations must still meet other loss limitation rules such as basis and at-risk requirements as well as passive loss rules

Modifications of Limitations on Business Interest

- The Tax Cuts and Jobs Act enacted a limitation on the deduction for business interest expense beginning after December 31, 2017
- The deduction for business interest expense is limited to 30 percent of adjusted taxable income
- Excess business interest expense is carried forward to subsequent tax years
- Certain small business taxpayers and real estate businesses by election are not subject to the limitation
- The CARES Act modifies the interest expense limitation rule for the 2019 and 2020 tax years by applying a 50 percent limitation of adjusted taxable income instead of 30 percent
- Taxpayers may elect to use 2019 adjusted taxable income for purposes of determining their 2020 tax year limitation

Above the Line Charitable Contributions and Other Modifications to Charitable Contribution Rules

- CARES Act allows individual taxpayers who do not elect to itemize deductions to claim a deduction from gross income, i.e., an “above the line” deduction up to $300

- New law temporarily suspends for 2020 the limitations on adjusted gross income for cash contributions to qualified charities

- Prior law imposed a 60 percent of AGI limitation (raised from 50% AGI from Tax Cuts and Job Acts from 2018) on cash contributions, and no above the line deduction for individual taxpayers who did not elect to itemize deductions.

Technical Amendment Regarding Qualified Improvement Property

- The Tax Cuts and Jobs Act enacted modifications to bonus depreciation and Section 179 expensing for capital investment in business property
- Legislative intention was to allow bonus depreciation or special 15-year MACRS depreciation for certain qualified improvement property
- Qualified improvement property generally means an improvement to the interior portion of nonresidential real property
- Section 179 deductions were allowed subject to certain dollar limitations and taxable income limits
- The omission of qualified improvement property from the definition of 15-year property in a drafting error in the Tax Cuts Act meant that taxpayers could not claim bonus depreciation
- The CARES Act provides a technical correction to treat qualified improvement property as 15-year property as if enacted as part of Tax Cuts

Small Business Act (SBA) Paycheck Protection Program

- The CARES Act amends the SBA by creating a new business loan program for the covered period February 15, 2020 through June 30, 2020
- The SBA loan program is available for businesses, non-profit organizations, sole-proprietorships, independent contractors and eligible self-employed individuals with not more than 500 employees
- To help cover certain operational costs such as payroll, health benefits, rent, interest (but not principal) on mortgages, utilities
- Under a special rule for hospitality and dining industries, for those businesses with more than one location, the 500-employee limit applies for each physical location
- Maximum loan amounts (up to $10 million) are generally based on average monthly payroll costs for the one-year period prior to loan disbursement date multiplied by 2.5

Small Business Act (SBA) Paycheck Protection Program

- Loan terms according to the SBA guidelines are generally up to 2 years with interest rates capped at one percent
- Payroll costs generally include salaries and wages (not in excess of $100,000 per individual as prorated for the above covered period), health and retirement benefits, state and local taxes
- Independent contractors and sole proprietors can qualify for loans on their own

SBA Loan Forgiveness

- The CARES Act allows loan forgiveness (tax-free for income tax purposes) based on the borrower's cost of payroll, benefits, rent, interest on mortgages, and utilities paid during the eight-week period (following loan disbursement)
- Eligible borrowers must have been in operation prior to February 15, 2020
- Loan forgiveness amount is reduced if employment (based on full time equivalent employment) is reduced or wages are reduced in an amount in excess of twenty five percent
- However if, employment or wage reduction is restored by the employer before June 30, 2020, the loan forgiveness amount is not subject to reduction
- Loan forgiveness is applied for with the lender servicing the SBA

Employee Retention Credit and Delay of Payment of Employer Payroll Taxes

- Allows a tax credit for certain employer payroll taxes for employers subject to closure due to COVID-19
- The credit is equal to 50 percent of qualified wages for each calendar quarter, taking into account wages paid after March 12, 2020 and before January 1, 2021
- The total amount of wages that can be taken into account is capped at $10,000 per employee
- The credit is a refundable tax credit that is applied against the employer’s share of the Social Security employment tax
- Eligible employers are those businesses that have been carrying on a business during 2020 and have been forced by governmental authority to suspend operations due to COVID-19
- Eligible employers are also able to claim the credit if they have suffered a substantial decline in gross receipts from prior year activities

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Employee Retention Credit and Delay of Payment of Employer Payroll Taxes

- Employers with more than 100 employees, only those employees that are not providing services due to the COVID-19 closures or substantial decrease in gross receipts are counted for purposes of the credit
- Employers with no more than 100 employees can include all employees for purposes of the 50 percent up to $10,000 per employee credit
- Delay of payment of employer's share of social security tax for wages paid after March 27, 2020 and before January 1, 2021

Edward P. Rigby, CPA, MST
Tax Partner

Edward Rigby is a Partner in the Tax Services Department of Prager Metis, a member of Prager Metis International Group. He has over 25 years of experience as a tax professional.

In his position as Tax Partner, Ed acts as a lead tax consultant and strategist to the firm's clients. His responsibilities include directing, motivating, and managing firm tax department personnel, directing the business relationships with clients, and leading the firm's business development initiatives.

Prior to joining the firm in January 2020, Ed held tax leadership positions with prominent New Jersey and New York accounting firms. He earned an impressive reputation among clients and fellow colleagues as being a highly successful negotiator and sophisticated tax strategist for leading companies and high wealth business executives. Ed also founded a successful corporate tax consulting firm which serviced privately owned companies in life sciences, manufacturing, and financial services industries. His past experience as a business owner helped him better understand and appreciate the necessity of having trusted business and financial advisors.

Edward has been recognized as being a trusted advisor to business executives in the pharmaceutical, manufacturing, financial services, real estate development, global art and fashion industries. His areas of expertise include providing advice on mergers and acquisitions, international tax structuring and tax benefits for business investment, and research and development. He has also successfully negotiated financially impactful tax rulings with IRS and State taxing authorities. Ed's clients not only benefit from tax savings resulting from sophisticated tax planning, but are also able to avoid problems associated with non-compliance with the ever increasing complexity of federal tax law and regulations.

Ed has authored numerous articles on behalf of the New Jersey Society of CPAs covering topics such as Opportunity Zone tax benefits, Section 199A deductions, and interest expense limitation rules. He has served as guest speaker at Monmouth University's Real Estate Graduate program and presented tax-related education and training to law firms, bankers, and internal professional staff.

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John Engelbrecht is a Director in the Tax Department of Prager Metis CPAs, a member of Prager Metis International Group. He began his public and private sector career in 1979.

John has an expertise in a full range of tax services including tax planning, structuring and consultation, tax planning for mergers and acquisitions, due diligence, and international tax consultation. He has also represented clients before the Internal Revenue Services, local tax authorities and additional regulatory agencies.

John has worked with clients in several industries including Financial Institutions, Hospitality, Manufacturing and Distribution, Not-for-Profits, and Real Estate. He has also served as technical editor and contributing author for the three-volume publication, *Taxation of Financial Institutions*.

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