

CARES Act Update: IRS Provides Additional Relief for Taxpayers, Partnerships

April 13, 2020

Summary

On April 8, 2020, the Internal Revenue Service issued two Revenue Procedures to make it easier for taxpayers to benefit from retroactive changes to the tax law that were included in the recently enacted Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). Revenue Procedure 2020-22 provides guidance on how taxpayers can benefit from the changes made by the CARES Act to the Code section 163(j) interest expense limitation. Significantly, this Revenue Procedure allows taxpayers more time to make elections under section 163(j) and to withdraw previously made elections under that section. The second piece of guidance issued by the IRS, Revenue Procedure 2020-23, allows certain partnerships that are otherwise prohibited from filing amended tax returns to file amended returns for 2018 and 2019 in order to be able to benefit from certain provisions in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that were intended to apply to partnerships.

Revenue Procedure 2020-22

The CARES Act included a number of temporary changes to the Code section 163(j) interest expense limitations for 2019 and 2020. For taxpayers other than partnerships, the limitation for 2019 and 2020 is increased from 30% of EBITDA to 50%. For partnerships, the 2019 limitation is not affected, but 50% of any disallowed excess business interest for 2019 can be carried forward by partners to 2020 and used without limitation. The partnership's business interest expense for 2020 (as well as the remaining excess business interest expense of the partners from prior years) is subject to the new 50% limitation.

The CARES Act also made a technical correction to the 2017 Tax Cuts and Jobs Act that allows the immediate full expensing of improvements made to existing nonresidential real property ("Qualified Improvement Property") and otherwise treats Qualified Improvement Property as 15-year property. However, immediate expensing is not available to a real property trade or business that elects out of the section 163(j) interest expense limitation. Moreover, such an electing trade or business is required to depreciate Qualified Improvement Property over a 20-year recover period instead of 15 years.

Due to the changes made by the CARES Act, some taxpayers that made a real property trade or business election may now wish that they had not made the election, either because the increased 50% limitation means the election was not necessary or because the opportunity to fully expense

Qualified Improvement Property was more valuable than increased interest deductibility. However, once made, the real property trade or business election generally cannot be revoked.

Revenue Procedure 2020-22 allows taxpayers who made a real property trade or business election for 2018, 2019 or 2020 to withdraw the election on an amended tax return, in which case the taxpayer will be treated as never having made the election. Revenue Procedure 2020-22 also allows taxpayers who did not make a timely real property trade or business election to make one now and includes guidance on how to make various other elections under section 163(j) that are permitted by the CARES Act.

Click here to access the revenue procedure: [Rev. Proc. 2020-22](#)

Revenue Procedure 2020-23

Apart from the changes to the section 163(j) interest expense limitation and the Qualified Improvement Property technical correction, the CARES Act included several other retroactive changes to the tax law beneficial to taxpayers including increased NOL utilization and carryback ability. Generally, if taxpayers have already filed their 2018 and/or 2019 tax return, the only way for those taxpayers to benefit from such changes is by filing an amended tax return. However, partnerships that are subject to the centralized partnership audit regime under the Bipartisan Budget Act of 2015 (“BBA Partnerships”) are generally not able to file amended returns. Instead, they must file an Administrative Adjustments Request (AAR), which generally adjusts the partnership’s income only for the year in which the AAR is filed. A partnership that files an AAR in 2020 would only be able to obtain a refund for any resulting adjustments when the partnership files its 2020 tax return, as late as October 15, 2020.

In order to enable partners in BBA Partnerships to more quickly obtain refunds resulting from the CARES Act’s retroactive relief provisions, Rev. Proc. 2020-23 provides an important administrative fix by permitting partnerships that filed 2018 or 2019 tax returns prior to April 8, 2020 (the issuance date of Rev. Proc. 2020-23) to file amended tax returns and schedule K-1s for 2018 and 2019 by September 30, 2020.

Affected Taxpayers that May Benefit from Rev. Proc. 2020-23

In particular, Rev. Proc. 2020-23 may be beneficial to the following BBA Partnerships:

- Partnerships that were not able to deduct a portion of their interest expense as a result of the 30% interest expense limitation under section 163(j). They will now have the ability to go back and deduct interest expense up to 50% of adjusted taxable income rather than 30%.
- Partnerships that placed into service Qualified Improvement Property in 2018 or 2019.
- Partnerships that want to use Revenue Procedure 2020-22 to withdraw or make a late real property trade or business election out of section 163(j).

- Partners who were or would be allocated losses from a partnership in 2018 or 2019 may be able to carry back those losses as a result of the provision in the CARES Act that allows NOL's arising in 2018, 2019 or 2020 to be carried back 5 years.

BBA Partnerships are not required to use the amended return procedures under Revenue Procedure 2020-23 and may elect to use the normal AAR procedure instead. Partnerships that have had changes in the identity of their partners may prefer to use an AAR rather than filing an amended return since the adjustments resulting from the AAR procedure will flow to the existing partners of the partnership at the time the AAR is filed instead of flowing to the partners who were partners in the prior year, as would occur if an amended return is filed under Revenue Procedure 2020-23.

Click here to access the revenue procedure: [Rev. Proc. 2020-23](#)