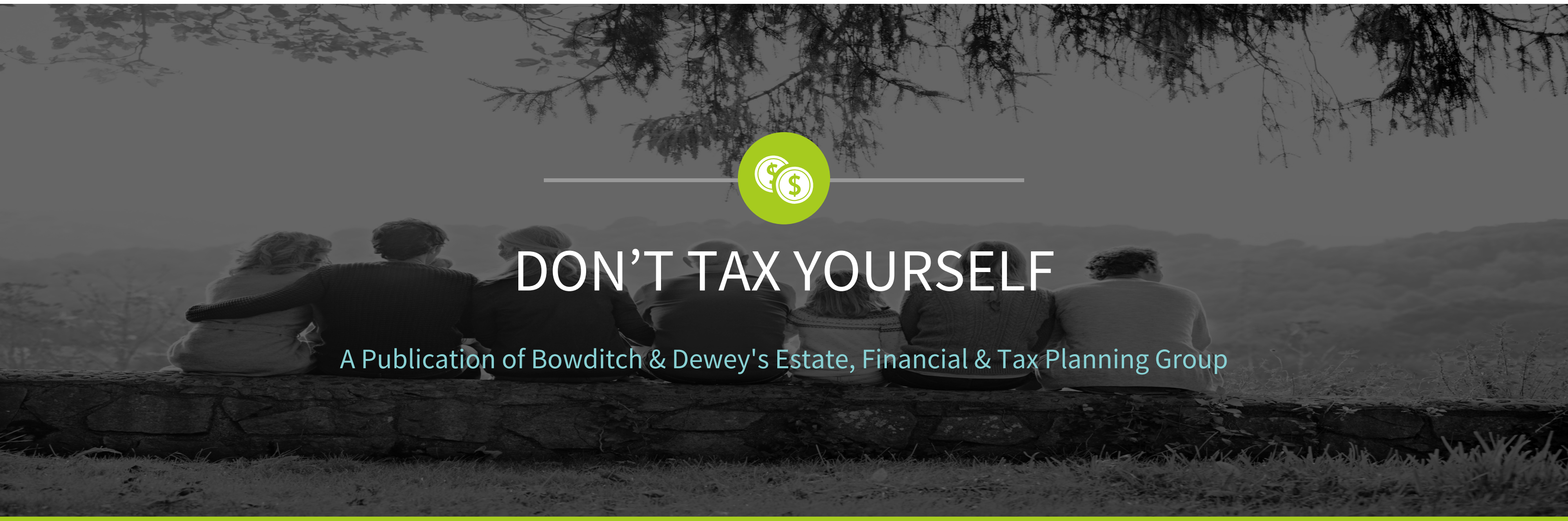

CARES Act Business Tax Provisions

BY BOWDITCH & DEWEY • APRIL 3, 2020

PAYROLL TAX CREDIT AND DEFERRAL

Under the CARES Act, businesses and non-profit organizations can receive a refundable credit against employment taxes equal to 50% of "qualified wages" paid to their employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended, due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

For employers with more than 100 employees, the credit is for wages paid to employees not providing services because of the COVID-19 state of emergency. For employers with 100 or fewer employees, the credit is for wages of all employees. The credit is provided for the first $10,000 of compensation, including health benefits, paid to an eligible employee and is provided for wages paid or incurred from March 13, 2020 through December 31, 2020. With the credit equal to 50% of such compensation, the maximum credit amount per employee is $5,000.

Under the Act, employers can also defer payment of payroll taxes owing for the "payroll tax deferral period" (the period between March 27, 2020 and January 1, 2021). Employers can defer payment of 50% of such payroll taxes until December 31, 2021. They can defer payment of the remaining 50% of payroll taxes until December 31, 2022. Self-employed individuals can defer a corresponding 50% of self-employment taxes until December 31, 2021 and December 31, 2022 in the same proportions.

Employers that participate in the CARES Act Payroll Protection Loan Program cannot also receive the refundable employment tax credit, and if their Payroll Protection Loans are forgiven they cannot defer their payroll taxes.

COMPARISON TO PAYROLL PROTECTION LOAN PROGRAM

If a business has 50 employees and each employee earns annual compensation of $60,000 (including benefits), under the Payroll Protection Loan Program, the business could borrow $625,000 (or 2.5 times a monthly payroll of $250,000). If the business spends this $625,000 loan on 8 weeks of payroll, rent and utilities, the entire amount of the loan may be forgiven under the terms of the loan program.

If the business opted instead to take the refundable payroll tax credit, it would receive a refundable credit of $250,000 ($5,000 per employee). It could also defer payroll taxes of 6.2% on the compensation it pays for the period between March 27, 2020 and January 1, 2021. In this scenario, the Payroll Protection Loan Program provides a greater monetary benefit.

RELAXED LIMITATION ON LOSSES AND DEDUCTIONS

For all taxpayers, the CARES Act reduces the limitations on a company's use of losses. Net operating losses (NOLs) are currently subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year. The CARES Act provides that an NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years. The provision also temporarily removes the taxable income limitation to allow an NOL to fully offset income. Companies may amend prior year returns to obtain the net operating loss tax benefits provided above. The Act also increases the limitation on the business interest expense deduction for the 2019 and 2020 tax years from 30% of adjusted taxable income to 50% of adjusted taxable income (calculated with certain adjustments).

For more information on the Act's tax provisions, see the Senate's Summary of the CARES Act Tax Provisions.