

# The Other Side of the Coin: Financial Issues in a Post- COVID World

Presented by the American Bar Association Section of Family Law,  
BNY Mellon Wealth Management, and Marcum Advisory & Consulting

Program Materials

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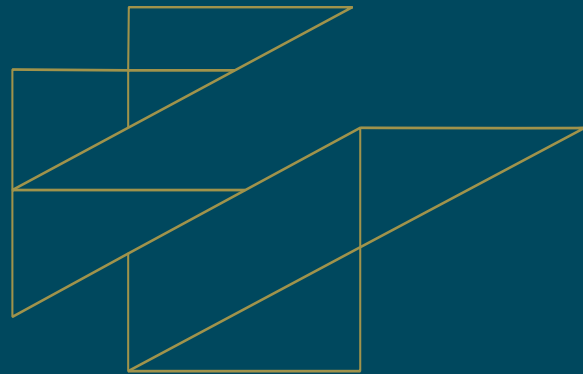
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# CARES Act

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# Provisions for Individuals

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## Stimulus payments

- \$1,200 for singles
- \$1,200 for heads of household
- \$2,400 for married couples filing jointly

# Provisions for Individuals

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## **Stimulus payments – additional \$500 per child**

- Families receive an additional \$500 credit for each qualifying child under 17 with the credit being subject to the same AGI based phase-out thresholds.
- Payments not available if the person has no social security number, is a nonresident alien or is an adult dependent

# Provisions for Individuals

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## Stimulus payments

- Qualification based on adjusted gross income (AGI) of the most recently filed income tax return - for 2019 return or 2018 return if 2019 return not yet filed
- Filing and payment date for 2019 income tax returns extended to July 15, 2020
- Once the taxpayer's AGI exceeds a certain limit of AGI, the amount of the stimulus payment is reduced or eliminated
- The credits are reduced by \$5 for every \$100 of AGI above the phase-out thresholds

# Provisions for Individuals

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## Stimulus payments

- Stimulus payment is an advance for an income tax credit to be claimed on the 2020 income tax return.
- IRS won't require individuals to repay any overpayments of their credits although taxpayers will receive the difference in 2020 if they were previously underpaid based on their 2020 income tax return
- The credit is fully refundable for individuals with low or zero tax liabilities

# Provisions for Individuals

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## Stimulus payments

- To expedite payments, the IRS will issue electronic payments for people who have provided bank account information with filing tax returns in the past.
- Other people will receive paper checks

# Provisions for Individuals

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## **Stimulus payments – phase-out thresholds**

- \$75,000 for singles, completely phased out at AGI exceeding \$99,000
- \$112,500 for heads of household, completely phased out at AGI exceeding \$136,500
- \$150,000 for married couples filing joint, completely phased out at AGI exceeding \$198,000



# Provisions for Individuals

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## Stimulus payments – divorce

- If not yet divorced – payment would be community property in a community property state and likely divided equally between the parties
- The stimulus payment plus the \$500 per child payment deposited electronically to an account provided by the taxpayer in connection with 2018 or 2019 tax return. If no account known to the IRS, payment will be sent to the address on the taxpayer's most recent tax return. It is possible that one or neither of the spouses lives at the address where the IRS sends the check.
- If filing jointly in 2018 and divorced by 2019 but 2019 return has not been filed, payment will be electronically deposited into the account shown on the 2018 tax return (which account may no longer exist or be in the name of only one spouse), or if no account known to the IRS, the refund will be in the form of a check in the name of both parties. The CARES Act specifically states that where a payment is made in connection with a joint return, half of the credit shall be treated as having been made to each individual filing the return.

# Provisions for Individuals

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## Stimulus payments – divorce

- Likely that the parent who claimed the child or children on their 2019 return will obtain the benefit of the \$500 payment(s). However, if the 2019 return is not yet filed, the payment for the children will be based on the parent who claimed the children on their 2018 income tax return. Probably not fair for parents who have joint custody and have elected to alter the child tax exemption year to year.
- Remember, the stimulus payments are considered an advance of a 2020 tax credit and a parent who is entitled to claim the child or children on his or her 2020 tax return should receive the benefit of the payments for the qualifying children.

# Provisions for Individuals

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## Stimulus payments – divorce – child support arrears

- If payor is behind on child support payments, it is likely that the payor's stimulus payment will be offset and reduced by the amount owed in child support in cases where the states have reported the past due child support payments to the U.S. Treasury.
- Other unpaid debts such as back taxes, student loan payments or other garnishments will not be applied to the CARES Act payment.

# Provisions for Individuals

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## Unemployment benefits

- Provides for an additional \$600/week for four months on top of existing unemployment benefits, the extra \$600 being provided by the Federal government
- Unemployment benefits are extended an additional 13 weeks
- The Act extends unemployment benefits to self-employed workers, independent contractors and those with a limited work history
- Payments will date back to an applicant's eligibility date or the date the applicant's state signed an agreement to provide the benefits, whichever is later.
- Eligible people will receive retroactive payments to one of the above dates.

# Provisions for Individuals

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## Unemployment benefits - divorce

- The extra \$600/week (\$2,400/month) in federal unemployment benefits may impact current child and spousal support orders.
- Unemployment benefits may be considered income available for support and included in a party's income for purposes of calculating child or spousal support.
- Can party not receiving the unemployment benefit seek a modification of the support order based on the receipt of an extra \$2,400/month? Remember, the 13 week extension of unemployment benefits and the additional \$600/week is short-term, so it is unlikely a court would order a modification of child and spousal support orders.

# Retirement Plan Provisions Affecting Individuals

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## Penalty for early withdrawal

- Waives the 10% early withdrawal penalty, but not the income taxation, on retirement account distributions (IRAs, 401(k)s and other qualified plans) for taxpayers facing COVID-19 related challenges.
- Withdrawal must be made by an individual (or the spouse or dependent of an individual) diagnosed with COVID-19 with a CDC approved test, or an individual who experiences adverse financial consequences as a result of quarantine, business closure, layoff, furlough, reduced hours due to the virus, being unable to work due to lack of child care due to the virus or other factors determined by the Treasury.
- Maximum distribution is \$100,000.
- The distribution must be taken between January 1, 2020 and December 31, 2020.

# Retirement Plan Provisions Affecting Individuals

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## Penalty for early withdrawal

- The amount distributed must be repaid to the retirement plan at any time over a three year period beginning on the day after the date the distribution was made.
- The repayment can be made without affecting the retirement account caps.
- The repayment may be made to any eligible retirement plan of which the person taking the distribution is a beneficiary and to which the person would be eligible to make a rollover contribution, including 401(k) plans, 403(b) plans, and IRAs among others.
- If not repaid, the distribution can be included in income over three years, beginning with the tax year in which the distribution was received.

# Retirement Plan Provisions Affecting Individuals

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## Penalty for early withdrawal

- As of March 30, the distribution is not available to individuals who continue to work with a reduced salary. However, the Secretary of the Treasury has the authority to expand the list of individuals who can take the distribution.
- The distribution is not subject to the automatic 20% withholding.



# Retirement Plan Provisions Affecting Individuals

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## Loans from qualified plans

- Increases qualified plan loan limits from 50% to 100% of the plan balance.
- Allows loans from qualified plans up to the lesser of (1) \$100,000 or (2) 100% of the present value of the participant's account balance or the nonforfeitable accrued benefit.
- The previous limit was up to the lesser of (1) \$50,000 or (2) 50% of the present value of the participant's account balance or the nonforfeitable accrued benefit.
- The increase loan amount applies for loans taken between March 27, 2020 and September 23, 2020 (180 days after enactment of the CARES Act). After that, the borrowing limit reverts to the traditional \$50,000.

# Retirement Plan Provisions Affecting Individuals

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## Loans from qualified plans

- State automatic temporary restraining orders that take effect upon filing for divorce may be a hurdle to being able to take a loan from a qualified plan.
- State automatic temporary restraining order may necessitate the consent of non-participant spouse or a court order prior to taking a loan from a qualified plan.
- Loans from a qualified plan may be considered income for purposes of child and support prompting the supported spouse requesting an upward modification of support based on the other spouse's increased cash flow. The loan could also create more liquidity for payment of attorney and professional fees.

# Retirement Plan Provisions Affecting Individuals

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## Loans from qualified plans

- Normally, loans from qualified plans must be repaid within five years or, if not, it will be considered a taxable distribution from the plan.
- If the loan payment is due between March 27, 2020 and December 31, 2020, the payment may be delayed for one year from the original due date.
- These special loan provisions apply to the same individuals who are eligible for the penalty-free withdrawals.
- These increased loan provisions only apply for a period of 180 days. Note that loans are only able to be taken from a qualified plan and only if the plan allows such loans. Loans may not be taken from an individual retirement account (IRA).

# Retirement Plan Provisions Affecting Individuals

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## Suspension of minimum required distributions

- Minimum required distributions from retirement plans are suspended for 2020, regardless of whether the taxpayer has been impacted by the virus.
- This avoids the need for plan participants and IRA owners to liquidate investments during a time when market values are depressed.
- These plans include qualified 401(a) defined contribution plans, 403(b) plans and governmental 457(b) plans and IRAs

# Retirement Plan Provisions Affecting Individuals

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## Suspension of minimum required distributions

- Since the Act waives all minimum required distributions for 2020, the amount already distributed from the IRA or 401(k) does not meet the definition of a minimum required distribution.
- Thus, it appears that minimum required distributions already taken in 2020 may be placed back into the plan if (1) done with 60 days of the distribution and (2) the taxpayer has not done a 60 day rollover within the last 12 months.
- The year 2020 distribution will be ignored in applying the five year distribution rule for minimum required distributions applicable to certain distributions after a participant's death.

# Provisions Affecting Business

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## Net operating losses

- Allows business to temporarily carry back net operating losses to prior years.
- The TCJA of 2017 previously eliminated the ability to carryback NOLs for years after 2017 even though it did provide for an unlimited carryforward of NOLs
- NOLs incurred in 2018-2020 may be carried back 5 years and may fully offset income in the carryback years.
- NOLs arising before January 1, 2021 may fully offset income. Prior to the CARES Act, NOLs were limited to offset up to 80% of taxable income.
- Businesses will be able to amend or modify tax returns for tax years dating back to 2013 in order to take advantage of the carryback.

# Provisions Affecting Business

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## Net operating losses

- Depending on the status of the divorce, these refunds could be considered an additional marital asset to be divided, or they may be considered as a source of funds for one party to pay overdue child or spousal support or equitable distribution payments.
- Possible refund for up to 5 year carryback. Corporate tax rate is now 21%. Carryback can offset income previously taxed at 35%. However, HEROS Act passed by House on 5/15/2020 prohibits the carryback to pre-2018 tax years.

# Miscellaneous Provisions

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## Tax incentives to encourage charitable giving

- \$300 above-the-line deduction charitable deduction
- Available in 2020 and thereafter
- Only available if taxpayer does not itemize deductions
- Percentage of adjusted gross income (AGI) limitations do not apply
- Must be paid in cash to a public charity defined in Section 170(b)(1)(A). Can't be paid to a donor advised funds or supporting organization.
- Charitable contribution from a previous year does not qualify. Section 2204.



# Miscellaneous Provisions

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## Tax incentives to encourage charitable giving

- 100% of cash contributions deductible in 2020. Suspends percentage of AGI limitations for tax year 2020 for contributions of cash.
- Contribution must be made to a public charity defined in Section 170(b)(1)(A). Can't be made to a donor advised fund or a supporting organization.
- Must take other charitable contributions into consideration e.g., long-term capital gain property subject to 30% of AGI limitation
- Amount in excess of 100% of AGI may be carried over for 5 years
- Taxpayer must elect to have this provision apply. Section 2205.

# Disclosure Appendix

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