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The CARES (Coronavirus Aid, Relief and Economic Security) Act was signed by President Trump to help provide financial stability and relief for individuals and businesses affected by COVID-19. While the bill is very broad and addresses a number of areas and industries, and many of the specific details will still need to be analyzed, we believe the following are important to highlight for you and your business.

Business Loans – Paycheck Protection Program

Note that this could provide the largest cash flow impact to employers, but with a potential repayment requirement. These loans are administered through your local banks, so please contact your commercial lender for application details.

The CARES Act provides that businesses with fewer than 500 employees — including sole proprietors and nonprofits— will have access to nearly $350 billion in loans under Section 7 of the Small Business Act during the "covered period," which runs from February 15, 2020 through June 30, 2020. The loans, which are referred to as "paycheck protection loans" and are fully guaranteed by the federal government through December 31, 2020, are generally limited to the LESSER OF:

- the sum of 1) average monthly "payroll costs" for the 1 year period ending on the date the loan was made (an alternative calculation is available for seasonal employers) multiplied by 2.5, and 2) any disaster loan (discussed below) taken out after January 31, 2020 that has been refinanced into a paycheck protection loan, and
- $10 million.

Payroll costs, in turn, are the sum of the following:

- wages, commissions, salary, or similar compensation to an employee or independent contractor,
- payment of a cash tip or equivalent,
- payment for vacation, parental, family, medical or sick leave,
- allowance for dismissal or separation,
- payment for group health care benefits, including premiums,
- payment of any retirement benefits, and
- payment of state or local tax assessed on the compensation of employees,

Payroll costs do not include, however:

- the compensation of any individual employee in excess of an annual salary of $100,000,
- payroll taxes,
- any compensation of an employee whose principal place of residence is outside the U.S., or

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- any qualified sick leave or family medical leave for which a credit is allowed under the new Coronavirus Relief Act passed last week.

Example. Rob's Car Wash applies for a paycheck protection loan on May 1, 2020. The business had $1.2 million in payroll costs for the period May 1, 2019 through May 1, 2020, for a monthly average of $100,000. Rob's Car Wash is entitled to a fully guaranteed federal loan —assuming it's made before December 31, 2020 — equal to the LESSER OF:

- *$250,0000 ($100,000 in average payroll costs * 2.5), or*
- *$10 million.*

The loans will have a maximum maturity of 10 years and an interest rate not to exceed 4%. Proceeds may be used to cover payroll, mortgage payments, rent, utilities, and any other debt service requirements. The standard fees imposed under Section 7 of the Small Business Act are waived, and <u>no personal guarantee is required</u> by the business owner.

An additional provision in the CARES Act provides for possible deferment of repayment of the loans for a period of at least six months, but not to exceed a year.

<u>Loan Forgiveness of Paycheck Protection Loans</u>

A separate section of the CARES Act calls for a portion of the aforementioned paycheck protection loans to be forgiven on a tax-free basis. The amount to be forgiven is the sum of the following payments made by the borrower during the 8-week period beginning on the date of the loan:

- payroll costs (as defined above)
- mortgage interest,
- rent,
- certain utility payments.

To seek forgiveness, a borrower must submit to the lender an application that includes documentation verifying the number of employees and pay rates, and cancelled checks showing mortgage, rent, or utility payments.

Example. Continuing the previous example with Rob's Car Wash, in the first 8 weeks after the business borrows the $250,000, the business pays $200,000 in payroll costs, mortgage interest, and utility payments. Rob's Car Wash is eligible to have $200,000 of the $250,000 loan forgiven. The forgiveness will not create taxable income. In addition, because of the deferment rules in the CARES Act, any payments due on the remaining $50,000 will not be due for six months.

There is a provision, however, that reduces the amount that may be forgiven if the employer either:

- Reduces its workforce during the 8-week covered period when compared to other periods in either 2019 or 2020, or
- Reduces the salary or wages paid to an employee who had earned less than $100,000 in annualized salary by more than 25% during the covered period.

This reduction can be avoided, however, if the employer rehires or increases the employee's pay within an allotted time period.

Business Loans - Emergency Government Disaster Loan and Grant

The CARES Act also expands access to Economic Injury Disaster Loans under Section 7(b)(2) of the Small Business Act to include not only businesses with fewer than 500 employees, but also sole proprietors and ESOPs. For any loan made under this program before December 31, 2020, no personal guarantee will be required on loans below $200,000. The bill allows a disaster loan to be taken out between January 31, 2020 and the date on which a paycheck protection loan is available for reasons "other than paying payroll costs." Presumably, any loan taken out for payroll purposes will be confined to the paycheck protection loans described above.

In addition, the Act creates a new Emergency Grant to allow a business that has applied for a disaster loan to get an immediate advance of up to $10,000. The advance can be used to maintain payroll, and is not required to be repaid, even if the borrower's request for a 7(b) loan is denied.

Employee Retention Credit

The CARES Act makes available a one-year only credit against the employer's 6.2% share of Social Security payroll taxes for any business that is forced to suspend or close its operations due to COVID-19, but that continues to pay its employees during the shut-down.

A business is eligible for the credit in one of two ways:

1. The operation of the business was fully or partially suspended during any calendar quarter during 2020 due to orders from an appropriate government authority resulting from COVID-19, or

2. The business remained open, but during any quarter in 2020, gross receipts for that quarter were less than 50% of what they were for the same quarter in 2019. The business will then be entitled to a credit for each quarter, until the business has a quarter where it's recovered sufficiently that its receipts exceed 80% of what they were for the same quarter in the previous year.

For each eligible quarter, the business will receive a credit against its 6.2% share of Social Security payroll taxes equal to 50% of the "qualified wages" paid to EACH employee for that quarter, ending on December 31, 2020.

The business's qualified wages depend on its size; if there were more than 100 employees during 2019, the qualified wages are limited ONLY to those wages that were paid by the employer during the quarter for the period of time the business was shut down.

If there were less than 100 employees for 2019, however, qualified wages include not only those paid to employees during a shut-down, but also wages paid for each quarter that the business has suffered a sharp decline in year-over-year receipts, as described in #2 above.

In both cases, qualified wages include any "qualified health plan expenses" allocable to the wages, such as amounts paid to maintain a group health plan. In either case, however, the amount of qualified wages for EACH employee for ALL quarters may not exceed $10,000.

Note that any wages taken into account in determining the new payroll tax credit for family medical leave or sick leave (see the ***Families First Coronavirus Response Act*** below) may not be taken into account in determining qualified wages for the employee retention credit.

If an employer takes out a payroll protection loan under Section 7(a) of the Small Business Act as detailed above, no employee retention credit will be available.

Delay of Payment of Employer Payroll Tax and Self-Employment Tax

In addition to the various new payroll tax credits created by the Coronavirus Relief Act and the CARES Act, the new law would again seek to alleviate the burden on employers struggling to make payroll by allowing the employer's share of the 6.2% Social Security tax that would otherwise be due from the date of enactment through December 31, 2020, to be paid on December 31, 2021 (50%) and December 31, 2022 (50%). Similarly, a self-employed taxpayer can defer paying 50% of his or her self-employment tax that would be due from the date of enactment through the end of 2020 until the end of 2021 (25%) and 2022 (25%).

This means an employer that incurs its 6.2% share of Social Security tax in 2020 May 1) defer payment of that tax until 2021 and 2020, but 2) receive an immediate credit against those yet-to-be paid payroll taxes via the sum of the emergency medical leave credit, sick leave credit, and new employee retention credit. While this will increase the cash available to small businesses in the coming months, it will definitely impact payroll tax filings and computations.

Also note, this deferral is not available to any business that has a Paycheck Protection Program loan forgiven as discussed earlier.

Other business-related provisions

Corporate Net Operating Losses

-Temporarily removes 80% taxable income limitation / can fully offset prior taxable income

-NOLs in 2018, 2019, 2020 can be carried back 5 years

Other loss limitations

-Excess farm losses for 2018-2025 are allowed

-Excess business losses for 2018, 2019, and 2020 are allowed

Modifications of business interest limits

-Deductible business interest limits increased from 30% to 50% for 2019 and 2020

-Special rules for partnerships

Corrections regarding Qualified Improvement Property

-QIP now 15-year property that qualifies for Special Depreciation

-Retroactive, so amended 2018 and 2019 returns are possible

<u>2020 exception from excise tax for alcohol used to make hand sanitizer</u>

<u>Individual-related provisions</u>

The key piece most have heard about relates to the individual stimulus payments:

The IRS is going to take a look at your 2019 tax return. If your 2019 return has not yet been filed, the Service will review your 2018 return instead. And even better: if you haven't filed a return for EITHER year — for example, you collected Social Security, but did not have enough taxable income to necessitate the filing of a return — the IRS will determine that you are eligible for a check based on your Form SSA-1099, Social Security Benefit Statement.

Once the IRS has either your 2019 return, 2018 return, or Social Security statement, it's going to cut you a check for $1,200 (if single/$2,400 if married filing jointly) PLUS $500 for each child under the age of 17. Not *everyone* gets a check, however. You'll need to have provided a valid social security number for yourself, your spouse and any qualifying children on your tax returns, and those who are claimed as a dependent on another's tax return also won't be receiving a payment. Those on the higher end of the income scale will phase out once "adjusted gross income (AGI)" exceeds $75,000 (if single, $150,000 if married, $112,500 head of household). Once over those thresholds, you'll lose $5 of your payment for every $100 your AGI exceeds those thresholds. So...

- If you are single with no kids and would be due a payment of $1,200, it will be wiped out completely if your AGI exceeded $99,000 (($99,000 - $75,000) * 5% = $1,200).
- If you are married with no kids and are due a payment of $2,400, it will be gone if your AGI exceeded $198,000 (($198,000-$150,000)*5% = $2,400).
- If you've got kids, then obviously, it will take more income before all of the payment is wiped out. For example, a married couple with two children who is eligible for the maximum payment of $3,400 wouldn't lose all of their payment until AGI exceeded $218,000.

The payments will be made between now and December 31, 2020 — in many cases, it will be paid electronically if you have provided direct deposit information to the IRS on your 2018 or 2019 tax returns — but it's important to understand that any payment you receive acts as an *advance payment* of a credit you will compute AGAIN on your 2020 tax return.

What that means is that when 2021 rolls around and you prepare your 2020 tax return, you'll have to recompute the amount you're owed *based on 2020 data*. Now, a lot of things may be different in 2020 when compared to 2019 or 2018: you may have more income or less tax liability or fewer kids under age 17...you get the idea. In any event, you'll have to compute the payment owed to you based on 2020 data, and compare it to the advance payment you actually received. If the advance payment was less than what you are owed in 2020— for example, you were phased out in 2019 but not 2020 or you had another child — the excess will be treated as a credit that reduces your 2020 tax liability.

If the advance payment is GREATER than what you're owed on your 2020 tax return, however, the question becomes: what then? The CARES Act does not explicitly require income recognition for any excess. Nor is there a mechanism for a taxpayer to repay any excess advance payment. Thus it is entirely possible a taxpayer could, for example, receive an advance payment in 2020 based on 2019 or 2018 income, only to find themselves ABOVE the phase out threshold in 2020, giving rise to no credit on the 2020 return, and yet still not have to repay the excess amount to the IRS.

Putting it all together, there are some people who will NOT receive an immediate check — because they did not file a 2018 or 2019 return and do not receive a Form SSA-1099, Social Security Statement. If that taxpayer files a 2020 return, however, he or she will receive a credit equal to that payment, provided income, filing status and family size haven't significantly changed. In other words, as long as you file a return in ANY ONE of 2018, 2019, or 2020 and don't have income in excess of the phase-out threshold, you'll be getting either an advance payment or a credit.

Example. A is single and 30 years old. In 2017, A decided to go to graduate school full-time. A goes to school in 2018 and 2019, earns no income, and files no tax return. As a result, A does not receive a check for $1,200 as part of the stimulus package in 2020. If A files a 2020 tax return, however, A will receive a credit against her tax liability in 2020, effectively putting an extra $1,200 into A's pocket.

<u>Other individual-related provisions</u>

<u>Retirement plans</u>

<u>Tax-favored withdrawals</u>

-Up to $100,000 of withdrawals allowed for affected individuals

-No 10% early withdrawal penalty

-Income inclusion over 3 years (2020-2022)

-Can be repaid at any time during the 3-year period beginning on date of distribution

<u>Loans from qualified plans</u>

-$100,000 max with other limitations

-180-day period to take loan starting 3/27/20

-One year delay for scheduled repayments, interest still accrues

<u>No RMDs for 2020</u>

<u>$300 above-the-line contribution for individuals in 2020</u>

<u>Modified charitable contribution limits in 2020</u>

Individuals

-Election out of the AGI limit on 2020 *<u>cash</u>* contributions

-Contributions to donor advised funds do not qualify for election

Corporations

-Limit increased to 25% from 10% for 2020

-Food inventory contribution limit increased to 25% from 15% for 2020

Employer student loan payments

-Certain employer-payments of student loans in 2020 are excludible up to $5,250

In addition to the CARES Act, On March 18, 2020, the ***Families First Coronavirus Response Act*** was also signed into law. This enhanced the Family and Medical Leave Act with the following details:

Families First Coronavirus Response Act

Emergency Family and Medical Leave Act (FMLA)

- Applies to companies with 500 or fewer employees.
- Employee must have been employed for 30 days (not the typical 1 year)
- Applies if employee is unable to work (or unable to telework) due to:
    - Federal, State or Local quarantine order
    - Health care provider's advice to self-quarantine
    - Caring for a family member due to COVID-19 quarantine
    - Caring for a child whose school or place of care is closed due to COVD-19
    - Experiencing COVID-19 symptoms and seeking medical diagnosis
- Employer is required to pay regular wages after 10 days of the employee's start of leave up to 10 weeks.
- Employees can qualify for up to $200 per day, $10,000 total paid.
- Employer receives a payroll tax credit of up to 100% of the wages paid to the employee.

Emergency Paid Sick Leave

- Applies to businesses that employ fewer than 500 employees although businesses employing fewer than 50 people can opt out if doing so would jeopardize the businesses viability.
- Applies if employee is unable to work (or unable to telework) due to:
    - Federal, State or Local quarantine order
    - Health care provider's advice to self-quarantine
    - Caring for a family member due to COVID-19 quarantine
    - Caring for a child whose school or place of care is closed due to COVD-19
    - Experiencing COVID-19 symptoms and seeking medical diagnosis
- Any leave paid will be reimbursed via federal payroll tax credits.

- Full-time employees are eligible for up to 2 weeks of paid leave and part-time workers get equal to their two-week average.
- Employees are eligible for up to a maximum of $511 per day ($5,110 in total over 10 days) if they are sick themselves with COVID-19 and 2/3 their normal pay up to $200 per day ($2,000 in total over ten days) if they are caring for a sick family member or children.
- Paid sick time provided under this Act does not carryover from one year to the next. Employees are not entitled to reimbursement for unused leave upon termination, resignation, retirement, or other separation from employment.
- An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first two weeks of partial paid leave.

This is a lot of information to digest, and we are here to help you with any questions or additional details you may need. Please contact us at your earliest convenience for assistance.