SUMMARY OF THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT ("CARES")

This summary focuses on the implications to businesses and individuals directly with no discussion around unemployment taxes or healthcare provisions.

SMALL BUSINESS ADMINISTRATION LOAN PROVISIONS

The Small Business Administration ("SBA") is offering loans under Section 7(a) of the Small Business Act with the following conditions:

- Maximum of $10,000,000 at 4% for a period not to exceed 10 years
- Loan payment deferral offered between 6 – 12 months
- Issued by banks, but guaranteed 100% by the SBA
- Require no personal guarantee, collateral, fees, or inability to obtain credit elsewhere

This loan program is for small businesses, non-profits, and other organizations with no more than 500 employees (in the case of accommodation and food service businesses, limit is 500 per location). They are also available to certain sole proprietors, independent contractors, and self-employed individuals. These loans are to assist during a covered period of Feb 15, 2020 – June 30, 2020 for the following:

- Continuation of health care benefits for employees during paid sick, medical, or family leave
- Interest payments on a mortgage obligation (not principal) and/or Rent
- Utilities
- Interest on any debt prior to the covered period
- Payroll Costs (prorated for covered period)
    - Wages, salaries, commissions, cash tips (not exceeding $100,000 per year per employee)
    - Payment for vacation, parental, family, medical, or sick leave (not under the prior Act)
    - Health Insurance premiums & Retirement benefits
    - Payments to sole proprietors, independent contractors not to exceed $100,000 in 1 year

Borrower must certify the following:

- Uncertainty of current economic conditions is causing difficulty in continuing operations
- Funds will be used to retain workers, maintain payroll, or make interest, utility or rent payments
- No existing loan application pending for a Section 7(a) loan
- No other amounts have been received during 2020 under Section 7(a) for the same purpose

The actual loan available is calculated as follows:

- Loan received under Section 7(b)(2) from Jan 31, 2020 to when covered loans available; plus
    - If in business for the 1 year period prior to the date the loan is made, the average total monthly payroll costs during that year, times 2.5; or
    - If not in business between Feb 15, 2019 and Jun 30, 2019, the average total monthly payments for payroll costs between Jan 1, 2020 – Feb 29, 2020, times 2.5

We are waiting on clarity regarding the ability to hold loans under both Section 7(a) and 7(b) and how the loans impact or relate to one another.

LOAN FORGIVENESS UNDER SECTION 7(a)

A recipient of a Section 7(a) loan may apply for forgiveness to the extent the proceeds were used on the following during the 8 week period beginning on the date of the covered loan origination:

- Payroll Costs (defined above)
- Interest on a mortgage obligation (originating prior to Feb 15, 2020)
- Payment on a rent obligation (lease agreement prior to Feb 15, 2020)
- Utility payment (service originating prior to Feb 15, 2020)

The debt forgiven cannot be greater than the principal owed on the debt and is reduced by any amount granted under the EIDL program (see below). The forgiveness shall be reduced by multiplying the sum of the amounts in the categories above by a percentage (not to exceed 100%) calculated by dividing:

- Average number of full-time equivalent ("FTE") employees per month during 8 week period; by
- Either of the following chosen by the borrower:
    - Average FTE employees per month between Feb 15, 2019 – Jun 30, 2019; or
    - Average FTE employees per month between Jan 1, 2020 – Feb 29, 2020

The loan forgiveness amount is also reduced by any salary reduction greater than 25% for an employee making less than $100,000 from the most recent full quarter prior to the 8-week period.

If a FTE employee is rehired between Feb 15, 2020 and 30 days after enactment and/or has salary restored, that employee is not included for purposes of the reduction calculated above.

In order to allow loan forgiveness, the lender must receive the following:

- Evidence of the number of FTE employees on payroll and pay rates for the periods outlined above under the reduction scenarios (i.e. payroll tax filings)
- Payment verification on mortgage, lease, and utilities (i.e. payment receipts)
- Certification that the above is correct and the amounts were used for the reasons above

EMERGENCY ECONOMIC INJURY DISASTER LOAN GRANTS

Under Section 7(b)(2) of the Small Business Act, loans are being granted in response to the COVID-19 pandemic during the period from Jan 31, 2020 – Dec 31, 2020 to the following:

- Businesses, Co-ops, & ESOPs with not more than 500 employees
- Sole proprietors and independent contractors
- Tribal small business concern with not more than 500 employees

There is no personal guarantee requirement and the business need only have been operating by Jan 31, 2020. The SBA may approve the loan solely on credit score without requiring a tax return or transcript.

Additionally, an entity may request a grant of $10,000 within 3 days of filing an application to cover:

- Provide paid sick leave to employees or maintain payroll
- Meet increased supply costs
- Make rent or mortgage payments, or
- Repaying an obligation that can no longer be met due to revenue losses.

BUSINESS BENEFITS

Employer Retention Credit for Employers Subject to Closure Due to COVID-19

A refundable credit of 50% of eligible wages (not to exceed $10,000 per employee in all quarters) and allocable health plan expenses will be allowed against the Employer's FICA taxes if the following occurs:

- The operation of the business is fully or partially suspended due to orders from a governmental authority limiting commerce, travel, or group meetings due to COVID-19; or
- Where for the first quarter beginning Jan 1, 2020, receipts are less than 50% for the same quarter in the prior year until those receipts pick up to 80% of the same quarter in a prior year

Eligible wages cannot exceed the amount the employee would have earned during the 30 days prior to the periods above, does not include those paid under the Families First Coronavirus Relief Act provisions, and are calculated as follows:

- If the average of employees in 2019 was more than 100 employees, wages paid by to an employee who is not providing services due to the circumstances above; or
- If the average of employees in 2019 is less than 100 employees, wages paid to an employee where the significant decline test above is met

This credit is not allowed on any wages where a Work Opportunity Tax Credit has been taken or if an employer receives a loan under Section 7(a) of the modified Small Business Act (outlined above) and only applies to wages paid between March 12, 2020 and Dec 31, 2020.

Delay of Payment of Employer Payroll Taxes

Payment of the employer FICA taxes incurred between the enactment of the CARES Act and Dec 31, 2020 may be deferred with 50% paid by Dec 31, 2021 and the remainder by Dec 31, 2022. Self-Employed individuals may defer 50% of the total FICA portion under this provision as well. A taxpayer who receives loan forgiveness on a Section 7(a) loan is not eligible for this deferral.

Paid Leave for Rehired Employees

For purposes of the FMLA Expansion outlined in the prior Act, employees who were laid off after March 1 and had worked for the employer for at least 30 days prior to the layoff and are rehired are eligible.

Modification of Credit for Prior Year Minimum Tax Liability of Corporations

The CARES Act allows for a 100% refund of any AMT credit carryforward into tax year 2019.

Modifications for Net Operating Losses

For tax years 2018 – 2020, a taxpayer may file a carryback claim taking a net operating loss during these periods back up to 5 years. Additionally, net operating losses may fully offset income in 2019 and 2020 in lieu of the 80% limitation.

Modifications to Charitable Contributions

For corporations, charitable contributions are allowed up to 25% of taxable income for tax year 2020. Further, contributions of food inventory during 2020 are allowed up to 25% of income.

Modification of Limitation on Business Interest

For taxable years beginning in 2019 and 2020, interest is limited to 50% (up from 30%) of adjusted taxable income. For partnerships, although this new increase shall not apply, partners may take 50% of any excess on their 2020 returns with no limitation and subject the remainder to the standard limitations. To compensate for the likely drop in adjusted taxable income for tax year 2020, a taxpayer is allowed to use 2019's figures for both the 2019 and 2020 tax returns.

Technical Amendments Regarding Qualified Improvement Property

Qualified Improvement Property was inadvertently caught up in 39 year property under the Tax Cuts and Jobs Act. The CARES Act adjusts this by bringing the Qualified Improvement Property category to a 15 year life and making it eligible for 100% bonus depreciation. Additionally, this application is retroactive as if it were included in the original Tax Cuts and Jobs Act for property placed in service after September 27, 2017 with no written binding contract prior to that date.

Temporary Exception from Excise Tax for Alcohol Used to Produce Hand Sanitizer

For distilled spirits removed between Jan 1 – Dec 31, 2020, excise taxes shall be waived if used to produce and distribute hand sanitizer in response to the COVID-19 pandemic.

INDIVIDUAL BENEFITS

Rebates to Citizens

Each adult is to receive $1,200 and $500 per dependent under 17. The payment amount is phased out based on the following AGI amounts from the 2019 or 2018 return:

- Beyond $75,000 for single or married filing separate
- Beyond $112,500 for Head of Household filers
- Beyond $150,000 for married filing jointly

Payments will be made electronically if the IRS has information on file since Jan 1, 2018. Within 15 days of issuance, the IRS will notify recipients of the amount, method, and date of issuance. If entitled to a higher amount when filing for 2020 tax returns, the balance will be a credit on the 2020 tax return. No repayment is necessary of overages.

Withdrawals from Retirement Accounts

The CARES Act suspends the penalty for early withdrawal by an individual under age 59 ½ from a qualified retirement account if no more than $100,000 is withdrawn by one of the following individuals:

- An individual diagnosed with COVID-19
- An individual whose spouse was diagnosed with COVID-19
- Anyone who experiences adverse financial consequences after being quarantined, furloughed, laid off, forced to work reduced or no hours due to the closing of a business or school

The income tax consequences can be spread out over 3 years (at the election of the taxpayer) and may be recontributed within that same time frame disregarding the contribution limits for each respective year. There is uncertainty as to whether this would make the withdrawal not subject to income tax.

Required Minimum Distributions

The Treasury is temporarily waiving required minimum distribution requirements for 2020 distributions which have not yet been paid.

Modification of Limitation on Losses for Taxpayers Other Than Corporations

Under the Tax Cuts and Jobs Act, individuals were limited to the amount of pass-through losses that could be taken on tax returns beginning in Tax Year 2018. The CARES Act eliminates that limitation retroactively to 2018 and forward to 2020.

Modifications to Charitable Contributions

Individuals may deduct a $300 charitable contribution from taxable income for 2020 if they do not itemize deductions. For others, donations allowed up to 100% of AGI. In either case, amounts to a Donor Advised Fund or Private Foundation do not appear to qualify for these enhancements.

Modifications for Net Operating Losses

For tax years 2018 – 2020, a taxpayer may file a carryback claim taking a net operating loss during these periods back up to 5 years prior. Additionally, the limitation put in place by the Tax Cuts & Jobs Act has been suspended so that net operating losses may fully offset income in 2019 and 2020.