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On March 27, 2020 the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law. Below, we have outlined portions of the CARES Act that are most relevant for individuals and small businesses. Insight from Nick Dupre of Stanfield and Dupre, PLLC, a business and estate attorney that provides legal guidance to our business (and many of our clients), is included in this outline. It is important to remember that the information provided below is based on our initial interpretations of the CARES Act – things will almost certainly evolve over time since, at this point, we do not have clarifying guidance from the regulatory authorities charged with implementing these provisions. We will continue to monitor for regulatory and guidance changes and plan to issue additional correspondence as needed.

Key Provisions of the CARES Act

1. **Individual Recovery Rebate/Credit**
   The CARES Act allows for a 2020 income tax credit for eligible individuals of $1,200 ($2,400 for individuals filing a joint return) plus $500 for each qualifying child of the taxpayer. A qualifying child means the child must be under the age of 17 as of December 31, 2020. An eligible individual is defined as any individual other than a nonresident alien or an individual claimed as a dependent by another taxpayer.

   The full credit is available for any individuals with adjusted gross income less than the following amounts:

   - Married filing joint: $150,000
   - Head of household: $112,500
   - All other filers: $75,000

   A partial credit is available to filers with adjusted gross income between the ranges listed above and the following amounts. No credit is available to filers with income above the following amounts:

   - Married filing joint: $198,000
   - Head of household: $146,500
   - All other filers: $99,000

The credit will ultimately be based on your 2020 adjusted gross income, but the credit is being advanced based on your 2019 adjusted gross income. If you have yet to file your 2019 tax return, the credit will be based on your 2018 adjusted gross income. The cutoff date for filing 2019 tax returns and having that information be included for the purpose of calculating your recovery credit has not been announced.

If the advanced rebate received during 2020 is ultimately less than you are entitled to base on your 2020 income, then the excess credit will be applied to your 2020 tax return. On the other hand, if the advance rebate you receive is greater than the credit in which you are entitled, you do not have to pay back the excess on your 2020 tax return.

The rebate is considered a tax credit (it reduces the amount of tax you pay) and thus is not considered taxable income.

We expect it to take at least three weeks before taxpayers receive their direct deposit payment (much longer for paper checks). The funds will be deposited to the bank account the IRS has on file based on the last tax return in which you received a refund.

If no bank account is on file, the IRS will mail the rebate to the address on your most recent tax return. If your address has changed since your last filed return, you should file Form 8822 with the IRS ASAP.

2. **Paycheck Protection Program (PPP)**
A significant benefit of the CARES Act for small businesses is the PPP, which is a potentially forgivable loan guaranteed by the Small Business Administration (SBA). These loans must be applied for by June 30, 2020 with an approved SBA lender (not through the SBA directly).

Businesses, including sole proprietorships, that have fewer than 500 employees (including affiliated businesses) are eligible for this relief. Under the PPP, lenders will generally be able to issue SBA 7(a) small business loans up to a maximum of the lesser of $10 million or 2.5 times the average monthly payroll costs over the previous year (excluding annual compensation of amounts over $100,000 per person).

The proceeds of the loan may be used to pay the following expenses:

- Payroll costs including gross wages and the employer's portion of payroll taxes;
- Group health insurance premiums;
- Rent;
- Mortgage *interest* (excluding pre-paid); and
- Utilities (electricity, gas, water, telephone and internet access)

The amount of the loan used for payment of these expenses occurring during the first eight weeks after the loan is made will be forgiven. Forgiven debt is normally treated as taxable income, however, forgiven debt under the PPP will not be considered taxable income.

It is important to note that in order for the above amounts to be forgiven, the business must maintain the same number of employees from February 15, 2020 through June 30, 2020 as it did during either the same period in 2019 or from January 1, 2020 until February 15, 2020. To the extent this requirement is not met, the amount eligible for forgiveness will be reduced ratably. Additional reductions in the amount to be forgiven will be incurred if employees with under $100,000 of compensation have their compensation cut by more than 25% as compared to the most recent quarter.

For amounts not forgiven, the maximum interest rates that can be charged for a loan made under this program is 1.0% and the maximum term is two years. Payments for loans made under the PPP will be deferred for a period of six months.

PPP – Next Steps

Our firm is working to identify SBA lenders who are willing to process loan applications for our clients. Here are a few things to keep in mind when applying for a PPP loan:

- While you may only take one PPP loan, it may be worthwhile to apply with multiple lenders. Start by contacting your regular business banker but also reach out to other SBA lenders. The terms will be the same with any lender, so you should take the first PPP loan you are offered.
- There is no requirement to demonstrate financial harm to your business from COVID-19 to access a PPP loan. All applicants are assumed to have been harmed, thus eliminating the cumbersome process of documenting and reviewing harm for applicants and lenders.
- Loan forgiveness is only available when PPP loan funds are used on the eligible expenses (listed above) in the first eight weeks after the loan date. It is very important to keep clear records showing how you spend PPP loans funds – this is an area where we can help. As a best practice, consider opening a separate bank account to receive the PPP loan funds and only making distributions from that account when directly paying eligible expenses. The goal is to establish an easily identifiable paper trail linking the PPP loan funds to appropriate expenditures.

We expect the PPP to be exceptionally popular since it is basically "free money" for small businesses who maintain their workforce through this crisis. It is important that you work to secure your PPP loan quickly. Congress set aside $349 billion for this program and it is certainly possible that the demand for PPP loans will exceed this number (i.e., the well could run dry).

SBA lenders are furiously working to set up the necessary processes for PPP loan applications. In the meantime, you can start to gather the following documentation which will probably be required by any PPP lender:

- 2018 and 2019 business tax returns
- 2019 financial statements
- Payroll tax returns (annual IRS Form 944 or last four IRS Forms 941)
- Payroll summary
- A voided check for the account you want to use for PPP loan funds (consider opening a new account)

Our office will have much of this information on file, but please try to find copies of these documents in your records or client portal before contacting our office. We intend to offer PPP loan application assistance as a part of our normal service for all clients enrolled in our bookkeeping and payroll tax return services.

April 8, 2020 UPDATE:
Many lenders have temporarily stopped accepting PPP loan applications. Our firm continues to seek new banking relationships for our clients and will attempt to connect borrowers and lenders as opportunities arise.

The SBA also announced that 75% of the PPP loan funds must be used for wage expenses which leaves no more than 25% of the loan funds available for other expenses (e.g., rent, mortgage interest, utilities).

3. **Economic Injury Disaster Loan (EIDL) Program**
The CARES Act offers another lending option for small businesses known as the EIDL program. This program differs from the PPP most notably in the following ways:

- The SBA serves as the direct lender
- The maximum loan size is $2 million and is not limited by the monthly payroll calculations of the PPP
- Applicants may request an advance, which is treated as a grant, of $10,000 which will be distributed by the SBA within 3 days
- Applicants are not required to repay the $10,000 advance if they are ultimately denied an EIDL loan

- Loan proceeds can be used for financial obligations and operating expenses that could have been met had the pandemic not occurred
- Collateral is required and the SBA will place a UCC lien against the assets of the business
- A personal guarantee is required for loans greater than $200,000
- There is no loan forgiveness beyond the $10,000 grant

Taxpayers can apply for both a PPP loan and an EIDL loan. However, the $10,000 grant must be deducted from any loan forgiveness amounts under a PPP loan.

April 8, 2020 UPDATE: There has been some confusion about the EIDL grant in recent days. Some reports indicate that the SBA is only offering $1,000 per employee up to a maximum of $10,000 while other reports suggest that such a methodology is not compliant with the original intent of the CARES Act. We will update this document when more definitive guidance is available but, in the meantime, there seems to be little harm in applying for an EIDL and requesting the $10,000 grant.

4. Other Payroll Related Relief

If you do not receive an SBA 7(a) loan (the PPP is an SBA 7(a) loan) then there are two other options to provide relief for your payroll expenses.

<u>Employee Retention Credit</u>

As an incentive to encourage businesses who have been hit hard by the economic effect of the COVID-19 crisis from making further layoffs, the CARES Act introduces a new refundable payroll tax credit for eligible employers. Eligible companies are those whose operations have been fully or partially suspended as a result of a government order or those whose revenue in 2020 has less than 50% of the revenue from the same quarter in 2019. For businesses that do meet this (unfortunate) requirement, the business will continue to qualify for the credit until the earlier of:

- December 31, 2020; or
- Depending upon the method of qualification for the credit, there is either a quarter without a government-required suspension of operations, or gross revenue from the current quarter exceeds 80% gross revenue from the same calendar quarter in 2019, whichever is sooner.

In the simplest terms, the credit is equal to 50% of wages paid to each employee up to a maximum of $10,000 of wages per employee. Businesses with more than 100 employees have further provisions related to this credit. The credit applies to wages paid after March 12, 2020 and before January 1, 2021.

Deferral of Payment of Employer Payroll Taxes

The CARES Act allows taxpayers to defer paying the employer portion of certain payroll taxes through the end of 2020 with the exception of employers who have debt forgiven by the PPP outlined above. 50% of the payroll taxes that would otherwise be due during the period of March 25, 2020 through January 1, 2021 may be deferred until December 31, 2021. The remaining 50% is due on December 31, 2022. This also applies to self-employed individuals, at least with respect to the 'employer equivalent' portion of their self-employment taxes.

5. Other Items for Individuals

Retirement Distributions

Coronavirus-related distributions are distributions of up to $100,000 made from IRAs, employer-sponsored retirement plans, or a combination of both, which are made in 2020 by an individual who has been *impacted* by the Coronavirus because they:

- Have been diagnosed with COVID-19;
- Have a spouse or dependent who has been diagnosed with COVID-19;
- Experience adverse financial consequences as a result of being quarantined, furloughed, being laid off, or having work hours reduced because of the Coronavirus;
- Are unable to work because they lack childcare as a result of the Coronavirus; and/or
- Own a business that has closed or operate under reduced hours because of the Coronavirus.

Given the current conditions, it is reasonable to assume that the IRS will take a liberal view of who has been *impacted* by the Coronavirus enough to qualify for a Coronavirus-related distribution.

Coronavirus-related distributions will receive favorable tax benefits such as:

- Exempt from the 10% early withdrawal penalty for individuals under the age of 59 ½;
- Not subject to the mandatory tax withholding of 20%;
- Eligible to be repaid over 3 years, which will require filing amended tax returns to reclaim the tax paid on any repaid principal withdrawal; and
- Distributions can be split evenly over 3 years (2020, 2021, and 2022). Taxpayers, however, can elect to include all of the income in their 2020 income

Retirement Account Loans

Many employer-sponsored retirement plans, such as 401(k)s and 403(b)s offer participants the option of taking a loan of a portion of their retirement assets. For individuals who have been impacted by the Coronavirus (using the same definition outlined above for Coronavirus-related distributions), the CARES act enhances the 'regular' plan loan rules in the following ways:

- Maximum loan amount is increased to $100,000
- 100% of the vested plan balance, up to the maximum amount of $100,000 can be used
- Payments that would otherwise be owed on the plan loan from the date of enactment through the end of 2020 may be delayed for up to one year

2020 Required Minimum Distributions
Required minimum distributions (RMDs) for 2020 are suspended and are not required per the CARES Act. The relief provided by this provision is broad and applies to Traditional IRAs, SEP IRAs, SIMPLE IRAs, 401(k)s, 403(b)s, and Governmental 457(b) plans. The relief applies to both retirement account owners and their beneficiaries taking stretch distributions.

The CARES Act not only eliminates RMDs for 2020, but any RMD that otherwise needed to be taken in 2020. More specifically, individuals who turned 70 ½ in 2019, but did not take their first RMD in 2019 (and thus, would have normally been required to take such a distribution by April 1, 2020, as well as a second RMD for 2020 by the end of 2020) do not have to take either their 2019 RMD or their 2020 RMD.

Above-the-Line Charity Deduction
The CARES Act adds an above-the-line deduction for the amount (not to exceed $300) of qualified charitable contributions made by individuals during the 2020 tax year. This deduction is eligible to individuals who do not itemized their deductions. The maximum deduction of $300 will be a dollar for dollar reduction of the taxpayer's 2020 adjusted gross income.

Unemployment Benefits
Self-employed individuals (who are generally not eligible for unemployment compensation benefits) and other individuals who are not eligible for 'regular' unemployment may be eligible for pandemic unemployment assistance issued by the CARES Act. The Act also provides states with the ability to increase their unemployment benefits by up to $600 per week with Federally-funded dollars for up to four months.

Unemployment benefits are intended as a temporary wage replacement for those who are out of work through no fault of their own. State law determines who is eligible for benefits, how much they will receive, and for how long. Unemployment benefits are considered taxable income. Questions about your eligibility for unemployment benefits should be directed to the appropriate authority in the state you work.

There is much more to the CARES Act than is summarized here. We have chosen to focus this communication on the items most likely to impact our clients in the near future. This document does not provide individual tax advice. We encourage you to contact our team for more tailored tax advice before making any important decisions that could impact your tax liability. The most up-to-date and reliable source for information on the IRS's response to the COVID-19 crisis can be found on their website at https://www.irs.gov/coronavirus.

Please feel free to share this update with family and friends. Provisions of the CARES Act that may not be important to you personally could have a profound impact on the viability of someone else's small business. We anticipate a great deal of interest in PPP loans within the small business community, and most of us know people who own or work for small businesses that can benefit from this relief. Our firm is ready, willing, and able to help small businesses prepare the necessary documentation for PPP loans.

Stay well,

Katie Lomness

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