THE CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY ACT (THE “CARES ACT”)

OVERVIEW

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”, the “Act”). The legislation is in response to the Coronavirus (COVID-19) pandemic. The CARES Act is a massive stimulus bill which includes loans to large and small businesses, expanded unemployment benefits and significant individual and business tax relief. The projected cost of the bill is over $2 trillion, of which about $500 billion is allocated to temporary relief from certain tax provisions. The business tax changes will provide for immediate cash flow relief for many businesses.

In this summary, we will review selected individual and business tax provisions. We will also summarize the Act’s small business lending programs, Paycheck Protection Program and Economic Injury Disaster Loans, each of which provide potential loan forgiveness in the form of grants based on certain requirements being met by the end of 2020.

PROVISIONS AFFECTING INDIVIDUALS

Rebates for Individuals

The individual rebates have been the most widely discussed relief provision by the media due to the broad application to the general public. Eligible taxpayers will receive up to $1,200 ($2,400 for married filing jointly), plus $500 for each qualifying child. The rebate applies whether or not the taxpayer has any income. Individuals that can be claimed as a dependent on another person’s tax return are not eligible for this rebate.

Payments will generally be made by direct deposit to a taxpayer’s bank account if that information is on file with the Internal Revenue Service (IRS), otherwise by check. In either case, rebates are expected to be paid within the next two weeks for both electronic payments and paper check.

A full rebate will be available only for individuals whose income is below certain thresholds. The amount of rebate begins to phase-out at adjusted gross income (AGI) of $75,000 ($150,000 for married filing jointly). Above those amounts, the rebate is reduced by $5 for each $100 over these limits. The rebate is fully phased out when AGI reaches $99,000 ($198,000 for married filing jointly).

This rebate is a 2020 benefit to be based on 2020 income. However, to provide this monetary relief immediately, the CARES Act provides an advance funding mechanism. The IRS will make an initial calculation of your rebate based on your 2019 or 2018 federal tax return (the most recent return filed). If a 2018 return has not been filed, the IRS can use information from 2019 social security benefit statements. Based on this information, the IRS will calculate and distribute the rebate without any action required by the recipients. If you receive less than the full rebate based on these initial calculations by the IRS, you will be able to use the difference as a refundable credit on your 2020 return, if you qualify for tax year 2020 under the rules described above.

Tax-Favored Withdrawals from Retirement Plans (coronavirus-related distributions)

Withdrawals up to $100,000 (in the aggregate) from qualified plans, including Individual Retirement Accounts (IRAs), during 2020 for coronavirus-related purposes receive several favorable tax treatments. Retirement plan owners under age 59½ can withdraw from qualified plans and IRAs during 2020 without a 10% early withdrawal penalty, if the withdrawal is for coronavirus-related purposes (defined below) subject to a $100,000 limit. The withdrawn amounts may be repaid (to the plan or to an IRA) in one or more payments at any time during the 3-year period beginning on the day after the distribution was received, and those repayments will be treated as a tax-free rollover, without regard to any contribution cap. For distributions not repaid within the 3-year period, the taxpayer would recognize taxable income and may be recognized ratably over 3 years. If you withdraw from your own IRA under this provision, you need to confirm the withdrawal is coronavirus-related (defined below). If you want to withdraw from a company-sponsored retirement plan under this provision, the administrator may rely on an employee's certification that a withdrawal is coronavirus-related.

Coronavirus-related purposes are defined as (1) a taxpayer or a member of their household has been diagnosed with coronavirus requiring all family members to be quarantined,(2) being unable to work due to lack of child care due to the coronavirus, (3) a person who has experienced adverse financial consequences due to being furloughed, laid off or having work hours reduced, and (4) closing or reduced business hours of a business owned or operated by individuals due to the coronavirus. Other qualifying factors may be determined by the Secretary of Treasury.

Loans from Qualified Retirement Plans (coronavirus- related distributions)

Currently the limit for loans from a qualified plan is $50,000. Loans limits were increased to $100,000 from qualified plans during the 180-day period beginning on the date of enactment, which is March 27, 2020. In addition, for any loans from qualified retirement plans that are outstanding on or after March 27, 2020 and which have a payment due in 2020, the due date for the payment will be delayed for 1 year.

Waiver of Required Minimum Distributions

Required minimum distributions ("RMDs") for certain defined contribution plans (e.g., 401(k)s) and IRAs) are waived for calendar year 2020. This applies for (1) those who have been taking annual RMDs and (2) those who turned 70½ in 2019 but deferred the first RMD to April 1, 2020. If you have not already taken your RMD, you are not required to do so in 2020.

For those who have already taken an RMD in 2020, you may elect to roll it over within 60 days of withdrawal, assuming you otherwise qualify for rollover treatment (beneficiaries of inherited IRAs do not qualify for 60-day rollover treatment). For those for whom the 60 days has already passed, it's possible the IRS could provide relief in the future. However, the CARES Act does not change the rule that limits rollovers to once every 12 months.

If a retirement plan owner died and the beneficiaries who inherit the plan are required to satisfy the 5-year rule for distributions, the 2020 distribution can be ignored and therefore adds an additional year for deferral.

Charitable Contribution Deductions

Up to $300 of charitable contributions can be deducted by taxpayers who do not itemize (i.e., an "above the line" deduction). This is not a temporary provision; it applies to any tax year beginning after 2019. However, this only applies to contributions made in cash and does not include contributions to donor advised funds, certain supporting organizations or certain private foundations.

For those who do itemize deductions, the limitation for certain charitable contributions has been increased to 100% of AGI at the election of the taxpayer. Contributions must be made in cash and cannot be made to a donor advised fund, certain supporting organizations or certain private foundations. Partners of partnerships and shareholders of S-corporations could also qualify for this treatment if they individually elect to do so. This provision is limited to charitable contributions made in 2020.

Excess Business Loss Deductions

The CARES Act suspends the limit on excess business losses ($250,000 for single filers and $500,000 for married filing jointly) under Section 461(l) in 2018, 2019 and 2020 so that it takes effect for the first time in 2021. Taxpayers should amend their 2018 income tax returns if this limitation applied to them.

Temporary Relief for Federal Student Loan Borrowers

All federal student loan payments (principal and associated interest) are suspended for 6 months, through September 30, 2020, without penalty. This applies only for federally owned loans, which covers 95% of all student loan borrowers.

Employers Can Pay Employee Student Loans

In general, an employee's gross income does not include up to $5,250 per year of employer payments for the employee's education, if structured through an educational assistance program. The CARES Act adds student loan repayments made after the date of enactment (March 27, 2020) and before January 1, 2021. Such payments can be made to the student or the lender and will still be subject to the overall $5,250 limitation for all educational payments.

PROVISIONS AFFECTING BUSINESSES

Employee Retention Tax Credit

Certain employers are eligible for a tax credit against their employment tax equal to 50% of qualified wages (up to $10,000) paid to each employee.

For employers with more than 100 full-time employees, qualified wages are wages paid to employees when they are not working due to the COVID-19-related circumstances. For businesses with 100 or fewer employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for the first $10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

An employer is eligible for this credit only if they were carrying on a trade or business in 2020 and (i) the operation of that business is fully or partially suspended (for specified reasons) by the government (Federal, state or local) due to COVID-19, or (2) the business has seen a significant decline in gross revenue (50% less than in the calendar quarter of the prior year) and for so long until the business recovers to 80% of prior year's revenue. A business can elect not to have this provision apply. If the business receives a loan under the new Paycheck Protection Program (described below), the business is not eligible for this credit.

Delay of Payment of Payroll Taxes

Employers and self-employed individuals can defer the employer portion of payroll taxes with respect to their employees. These payroll taxes are commonly referred to as FICA and equal 6.2% of Social Security wages. This applies to payroll taxes for the period from enactment of the CARES Act (March 27, 2020) to December 31, 2020. Fifty percent (50%) of the deferred payroll taxes will be payable on December 31, 2021; the remaining 50% will be payable on December 31, 2022. If the business receives loan forgiveness under the new Paycheck Protection Program, the business is not eligible to defer payment of payroll taxes.

Net Operating Losses Modification

The CARES Act suspends the 80% limitation on a company's use of net operating losses. Additionally, net operating losses from 2018 through 2020 can be carried back for 5 years, and therefore the losses may result in an offset of income previously taxed at the top marginal tax rates.

Increase in Limit on Business Interest Expense

For 2019 and 2020, businesses can deduct business interest up to a limit of 50% of taxable income, which is an increase from the existing limit of 30%. Special rules apply to pass-through businesses.

Charitable Deduction Limitation Increased

The deduction limitation for corporations for certain charitable cash contributions made in 2020 is increased to 25% of taxable income (increased from 10% of income under prior rules) as long as the contribution is made to a public charity.

SMALL BUSINESS LOANS

Paycheck Protection Program (PPP)

To help small businesses with near-term liquidity concerns and to encourage the retention of employees, the CARES Act includes a complicated set of rules for government guaranteed loans and grants to eligible businesses, without personal guaranties or collateral. If certain requirements are met by the end of 2020, those businesses may be eligible to have all or a portion of the loan forgiven.

Nearly $350 billion is allocated for helping small businesses through a Paycheck Protection Program loan. Small businesses are generally those with 500 or fewer employees, whether they are for profit or non-profit. Individual sole-proprietors, independent contractors and other self-employed individuals are eligible for loans. The primary forms of assistance are loans fully guaranteed by the government and grants and facilitated by the U.S. Small Business Administration (the "SBA").

PPP loans cannot have a maturity beyond 10 years and cannot have an interest rate above 4%. These loans will have a 100% government guarantee if made between February 15, 2020 and June 30, 2020. Principal and interest payments will generally be deferred for at least six months (and may be deferred up to one year).

Economic Injury Disaster Loans (EIDL)

EIDLs, which are available until December 31, 2020, allow small businesses, non-profits, sole proprietors and contractors with fewer than 500 employees that are impacted by COVID-19 to receive loans up to $2 million to pay debts, payroll and meet other expenses. The loans may have a maximum term of 30 years with interest rates of 3.75% for small businesses and 2.75% for non-profits. The SBA may approve the loan based solely on credit score and will be based on economic injury. Guarantees are required for loans greater than $250,000 and collateral is required for loans greater than $25,000. Borrowers can receive emergency grants equal to $10,000 within 3 days of applying for an EIDL.

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