The Coronavirus Aid, Relief, and Economic Security Act (The CARES Act)

Selected Business Provisions

Paycheck Protection Program and Loan Forgiveness

The Paycheck Protection Program authorized by the CARES Act makes loans available to small businesses with less than 500 employees. The loans are intended to be at least partially forgivable if the employer maintains employees and complies with the CARES Act. Sole proprietors and non-profits may qualify under this program.

The loan is limited based on payroll costs, including commissions and health insurance and retirement benefits, incurred during the prior 12 months. The maximum loan is 2.5 times the average monthly payroll for the prior 12 months. (Payroll for the prior 12 months divided by 12 times 2.5.) Payroll costs above $100,000 per employee is excluded from the computation. The maximum borrowing is limited to $10 million.

The loans can be used during the covered period (February 15, 2020 – June 30, 2020) for:

- Employee salaries and commissions
- Group health care benefits
- Retirement plan contributions
- Payments of interest on mortgage obligations (does not include principal payments)
- Rent
- Utilities
- Interest on other debt incurred before February 15, 2020

Loan terms are up to 10 years with interest capped at 4%. No personal guarantees or collateral is required, and standard SBA fees are waived. Payments may be deferred for six to twelve months.

The CARES Act allows for a portion of the paycheck protection loans to be forgiven. The amount eligible to be forgiven is the amount paid during the 8-week period beginning on the date the loan is taken for:

- Payroll costs
- Interest payments on mortgages
- Rent
- Certain utilities

To qualify for forgiveness, the borrower must provide documentation to the lender to support qualifying use. Forgiveness is reduced if the employer reduces his workforce during the 8-week period compared to the same period in 2019 or reduces the salary paid to an employee earning less than $100,000 by more than 25%. The amount forgiven is not considered taxable income.

To qualify for these loans, you must certify that you will use the money to retain workers, maintain payroll or make mortgage, rent or utility payments. You must also certify that the "uncertainty of current economic conditions makes necessary the loan request" to support your ongoing operations.

You apply for these loans directly with your bank. If your bank is not an approved SBA Section 7(a) lender, you will need to contact another bank. These loans are intended to be disbursed quickly. Banks are scrambling to get their processes in place, but waiting on SBA guidance may delay the processing of loans.

Economic Injury Disaster Loan Program

The CARES Act made several changes to the SBA Economic Injury Disaster Loan (EIDL) Program. These loans are available to small businesses in a declared disaster area to cover economic injury resulting from the disaster (e.g., loss of revenue). The entire United States has been declared a disaster area effective January 31, 2020, for purposes of these loans.

EIDL loans are processed directly through the SBA. Loans are available up to a maximum of $2 million at an interest rate of 3.75% for up to a maximum of 30 years. Loans over $200,000 must be guaranteed by an owner.

Applicants under this loan program may request an expedited disbursement of up to $10,000 while the loan is being processed. If the loan is denied, the advance is not required to be repaid if it was used for authorized costs.

An applicant may receive both these SBA loans as long as they cover different costs.

Employee Retention Credit

Employers are eligible for a one-year only 50% refundable payroll tax credit on wages paid up to $10,000 per employee if either:

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

- The business remained open but gross receipts for any calendar quarter during 2020 fell below 50% of gross receipts for the same calendar quarter in the prior year. The business remains eligible until gross receipts in any calendar quarter exceed 80% of the same calendar quarter in the previous year.

For employers with 100 or fewer employees, all employee wages and health insurance count. For employers with more than 100 employees, only the wages of employees who are furloughed or work reduced hours as a result of the employer's closure or reduced gross receipts count.

Note: Employers who take out payroll protection loans are not eligible for this credit.

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

50% of employer payroll taxes (the 6.2% employer share of social security tax) that would be due 3/27/2020 through 12/31/2020 may be deferred with ½ the deferred amount due by 12/31/2021 and ½ due by 12/31/2022. The Medicare portion of employer payroll taxes may not be deferred.

Caution: The Delay of Payment provision is not available to any business that has any portion of a Payroll Protection loan forgiven.

Changes to Net Operating Loss Rules (NOL)

NOLs for tax years 2018 – 2020 are eligible for a five-year carryback (previously, no carrybacks were allowed).

NOLs carried to 2019 and 2020 can offset 100% of taxable income (rather than 80% previously allowed).