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Coronavirus Aid, Relief and Economic Security (CARES) Act

The United States Senate passed the Coronavirus Aid, Relief and Economic Security (CARES) Act on March 25th and the House of Representatives passed it on March 27th. President Trump signed the bill into law that same day. These are some of the major elements:

One of the most talked about components of the of the CARES Act is direct cash payments in the form of rebate checks. The way the process will work will be in the form of an immediately refundable credit for 2020 to eligible taxpayers in an amount up to $1,200 (or $2,400 for joint filers), with a phase-out beginning at $75,000 (or $150,000 for joint filers). The amount increases by $500 for each child.

Student Loan payments are suspended for federal student loans through September 30, 2020.

Unemployment Insurance is expanded to an additional $600 per week payment to each recipient until July 31, 2020. Unemployment payments will be available to those not traditionally eligible for unemployment benefits – the self-employed, independent contractors, and those with limited work history – who are unable to work as a direct result of the coronavirus. That expansion will be in effect until December 31, 2020. Unemployment payments are extended from 26 weeks to 39 weeks

The 10% early withdrawal penalties, if caused by certain coronavirus-related distributions, are waived for IRAs up to $100,000 made during 2020 from an eligible retirement plan.

CARES also allows a 2020 tax deduction of $300 for eligible charitable contributions, such as contributions to churches and charities, for taxpayers who do not itemize their deductions.

For businesses receiving direct assistance from the Treasury Department, loans must be secured, for a term of not more than 5 years. While the loan is outstanding, borrowers are required to maintain existing employment levels, as of March 13, 2020. In addition, executive compensation for borrowers is subject to certain limits until March 1, 2022. In addition, businesses' ability to repurchase stock while the loan is outstanding, plus an additional year, is restricted.

There are also $350 billion in Paycheck Protection Program loans to small businesses to help retain workers. These loans will be available through the Small Business Administration.

To be eligible, a business is required to make a good faith certification that:

1. Due to the uncertainty of the current economic conditions it is necessary to obtain the loan to support ongoing operations of the business
2. The funds will be used to retain workers and maintain payroll or make mortgage, lease or utility payments, and
3. There isn't a duplicative application for the same purposes submitted by the business to other lenders/agencies

The Small Business Administration (SBA) will require lenders to provide complete payment deferment relief (including payment of principal, interest, and fees) to applicable borrowers for a period of at least six months, but not more for one year.

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The SBA program provides 100% guaranteed loans of up to 2 ½ months of payroll costs, not to exceed $10 million. Payroll costs exclude compensation paid to individuals, including the self-employed, above $100,000 a year.

Loan proceeds can be used to cover payroll support, employee salaries, mortgage or rent payments, utility payments, and existing debt obligations.

The portions of loans used to cover payroll costs and existing debt obligations from February 15, 2020 to June 30, 2020 are eligible for forgiveness, and the forgiven amount will be non-taxable, to encourage

businesses not to lay off workers. Loan forgiven portions will be reduced for businesses that lay off employees over the next four months.

If a company laid off employees or reduced their wages/salaries during the time period between February 15, 2020 and June 30, 2020, the amount of forgiveness is reduced proportionally by (i) any reduction in employees retained compared to historical levels, and (ii) the decrease in pay of any employee to below 25% of their historical compensation. Temporary furloughs will be taken into account and limit loan forgiveness. To an attempt to encourage workforce stability, the CARES Act takes into account that many businesses may have laid off employees or reduced salaries, or they are planning to do so. If those reductions were made between February 15, 2020 and April 26, 2020, they are not counted if the business rehires the number of personnel or returns the adjusted salary, as applicable, by June 30, 2020.

Businesses can apply for loans through December 31, 2020.

Here are some of the tax credits available -

If an employer needs to shut down or is otherwise significantly negatively affected by the COVID-19 pandemic, the employer will receive a refundable retention payroll tax credit. Eligible employers are allowed a credit against employment taxes equal to 50% of qualified wages (up to $10,000 in wages) for each employee.

To be eligible, employers must have business operations that are fully or partially suspended due to shut-down orders from a governmental authority or whose gross receipts are less than 50% of their gross receipts for the same quarter in the prior year.

For employers with more than 100 full-time employees, wages are eligible for the credit if paid to employees who are not providing services due to the suspension of the business or a reduction in gross receipts. For employers with 100 or fewer employees, all wages paid qualify for the credit.

The credit is available for wages paid from March 13, 2020, through December 31, 2020. The credit is refundable to the employer to the extent that it exceeds the employer's liability for payroll taxes.

Employers and self-employed individuals are allowed to delay payments of the employer's share of social security tax (i.e., 6.2% on employees' wages). One half of the payroll taxes may be deferred until December 31, 2021, with

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the balance due on December 31, 2022 in order to help employers to hold onto cash during what many expect to be the worst of the economic crisis.

The CARES Act also relaxes the limitations on a company's use of net operating losses ("NOLs"). It allows an NOL arising in a taxable year beginning in 2018, 2019, or 2020 can be carried back five years (rather than permitted only to be carried forward). It also allows NOLs generated in taxable years beginning on or after January 1, 2018 to offset 100% of taxable income for 2019 and 2020 (rather than only up to 80% of taxable income).

The CARES Act accelerates the recapture of AMT credits. If a company has AMT credits it should look at this acceleration to further reduce current year tax payments. It also eliminates the limitation on a non-corporate taxpayer's ability to deduct excess business losses from a trade or business for the 2019 and 2020 taxable years. In addition, the provision allows carryover losses into subsequent taxable years as a technical correction.

Finally, the deductibility of business interest expense was previously limited to no more than 30% of the sum of the taxpayer's adjusted taxable income ("ATI") and business interest income. This percentage is increased to 50% in any taxable year beginning in 2019 or 2020 resulting in taxpayers being able to deduct more interest.

Questions? All of us here at SilvermanAcampora LLP are working and ready to help. Please feel free to e-mail thefirm@silvermanacampora.com or call us at (516) 479-6300.