

# **California Restaurant Association Presents Small Business Provisions of the CARES Act**

**April 9, 2020**

**Presenting:  
Weintraub Tobin Law Corporation**

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# **CRA Presents**

# **Small Business Provisions of**

# **the CARES Act**

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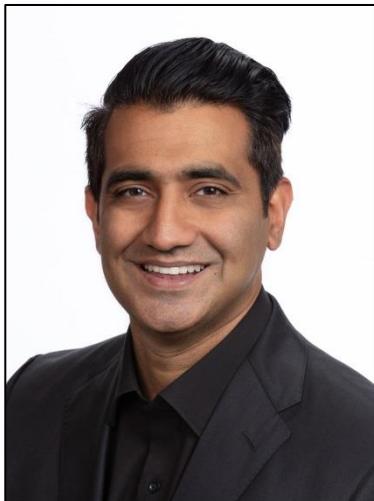
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emailed to all registered attendees.**

**The novel Coronavirus pandemic has motivated lawmakers to legislate new measures to improve public health and provide financial assistance to broad sections of the U.S. economy**

Congress has passed important pieces of legislation with wide ranging impact on U.S. society:

1. The Families First Coronavirus Response Act (March 18<sup>th</sup>)
2. CARES Act (March 27<sup>th</sup>)

# Panelists



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# The Economic Impact of the Coronavirus will be Severe

- **Marriott CEO:** “*Coronavirus outbreak is worse for business than 9/11 and 2008 financial crises combined*”
- **White House health advisor Dr. Anthony Fauci said the United States** “*can start thinking about getting back to some degree of normality when the country as a whole turns that corner*” of reducing the spread of the coronavirus outbreak”

# Income Tax Implications



Panelist: Jim Clarke

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# Income Tax Filing Dates

- Federal and California tax filing and payment deadline moved from 4/15 to 7/15
  - Includes payment of 2019 taxes due, as well as Q1 2020 payments
  - Does not currently extend Q2 deadline of 6/15
  - 37 total states have mirrored the 7/15 deadline, other states with varying dates between 4/30 and 7/31.
  - Extends IRA contribution deadline to 7/15 as well.

# Tax Provisions – CARES Act

- Employee Retention Credit – Refundable payroll tax credit of 50% of qualified wages.
  - Eligible to businesses that were fully or partially suspended due to COVID-19 shut-down order OR gross receipts decline 50% YOY
- Delay of Payment of Employer Payroll Taxes
  - Employer portion of Social Security taxes (6.2%) can be deferred.
  - Deferred taxes paid in 2 equal installments on 12/31/21 and 12/31/22.
  - Beware of personal liability for principals

# Retro-Active Changes

- Business Interest Expense limitation [163(J)]
  - Increase the limit from 30% to 50% for 2019 and 2020
  - Does not apply to partnership in 2019, but does apply in 2020
- Qualified Improvement Property – Technical Correction
  - QIP placed in service after 12/31/17 is 15 year property and eligible for bonus.
  - Requires amendment of 2018 return to address 2018 improvements
    - Eligible for bonus depreciation – can create NOL in 2018

# Retro-Active Changes (Cont'd)

- Modification of NOL rules
  - NOLs arising in 2018, 2019, and 2020 can be carried back 5 years.
  - Eliminates 80% limitation on use of NOLs until 2021 tax years
- Repeal of the Overall Loss Limitation (461)
  - Retroactive to 2018 through 2020, business losses can offset non-business income without limitation (previously limited to \$250K on individual returns/\$500K joint)
- Remaining Corporate AMT Credits can be refunded
  - Claim must be submitted by 12/31/2020

# Accounting for Paycheck Protection Program Loans and Forgiveness

## Financial Reporting:

- Balance Sheet transaction at loan inception.
  - Record the Cash received and associated Note Payable on balance sheet.
- Upon approval of loan forgiveness, recognize the gain on forgiveness in the Income Statement, with a related reduction to the Note Payable.
  - Recommend presentation as “Other Income”

## Tax Reporting:

- Forgiveness is Non-Taxable - M-1 adjustment to reduce taxable income

# Employment Oriented Measures



Panelist: Lukas Clary

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# Permitted Layoffs

- California WARN Act has been suspended in part.
- allows mass layoffs with notice, but without 60 day prior notice requirement.

# Unemployment

- Pandemic Unemployment Assistance Program
- Fully funded by the federal government
- 1/27/2020 through 12/31/2020
- Maximum of 39 weeks assistance for anyone unemployed due to COVID-19 diagnosis, caring for someone with COVID-19 diagnosis, caring for children home from school, or unable to reach workplace because of a stay at home order
- Expands UI coverage to gig workers, independent contractors and self-employed individuals

# Sick Leave

- Families First Coronavirus Response Act (FFCRA)
- Provides paid sick time and expands FMLA to provide an extended period of partially paid leave (Emergency Family and Medical Leave Expansion Act (E-FMLA))
- 4/1/2020 through 12/31/2020
- E-FMLA leave available if EE unable to work due to need to care for child under 18 if the child's school is closed due to COVID-19
- Initial 10 days unpaid, thereafter paid leave at 66% of salary for three months
- Employer must make reasonable efforts to restore the employee to a comparable position and pay
- Maximum of \$200 per day and \$10,000 in the aggregate per EE

# Emergency Paid Sick Leave

- Emergency Paid Sick Leave Act (E-PSLA)
- 4/1/2020 through 12/31/2020
- Requires employers to provide paid sick leave to employees if they are not able to work because they are subject to a stay at home order, has COVID-19 symptoms, is caring for someone with COVID-19 symptoms, has a child whose school is closed due to COVID-19 precautions
- 80 hours of paid sick time
- No restrictions based upon period of employment
- Cannot make the EE use existing sick time first
- Maximum \$511 per day, \$5110 in the aggregate per EE

# Additional Legal Matters



Panelist: Andy McCarthy

# Contractual and Financing Terms

- A Material Adverse Change ("MAC") clause is a contractual term providing that, if a material adverse event occurs with respect to the company, one or both parties to the contractual arrangement have the right to take certain protective actions, such as accelerating or terminating the contract, accelerating a loan, or refusing to close the transaction. Any MAC clause contained in a contract should be carefully evaluated with respect to the unknown impact of the COVID-19 pandemic.
- A Force Majeure clause allows the termination, suspension or delay of a contract or performance under the contract if an event beyond the control of the parties occurs that prevents or interferes with performance. Examples of such events can include natural disaster, acts of war, terrorism or pandemic. Force Majeure clauses can be drafted with a wide variety of differing triggering and other terms and should be carefully reviewed.
- Specific disclosures regarding the unknown impact of the COVID-19 pandemic should be included in pending investment, financing and other transactions. Examples of these types of disclosures as used by public companies and some private companies are available on line.

# Tax Credits And Deposit Offsets

- Payroll Tax Credits
- Employers who pay qualifying EE's under either the E-FMLA or the E-PSLA
- Cost of paid leave is offset by refundable tax credit on Employers share of Social Security and Medicare taxes for ALL employees (not just those on leave)
- Employer may retain existing Employer's share of employment tax deposits up to the amount of the qualifying leave paid
- If existing deposits not sufficient to pay the qualifying leave, the employer is to file a request for an accelerated credit for the remaining amount of qualifying leave

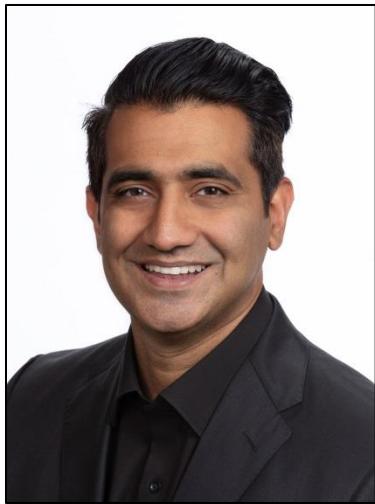
# Pension Plan Related Relief

- IRA penalty free withdrawal if under 59 1/2 of up to \$100,000
- Taxed over three years, or may be repaid over three years
- IRA/401K no required mandatory distribution in 2020

# Real Estate Protective Measures

- California authorizes local governments to halt evictions, slow foreclosures and protect against utility shutdowns
- Moratoriums vary by jurisdiction
- Moratoriums preclude evictions and impose a temporary rent deferral for those who can demonstrate their payment inability is caused by COVID-19
- Waiver if interest and late fees on unpaid rent
- Extended period (3-6 months) to repay the rent after the end of the Pandemic
- Moratoriums are rent deferrals, not rent forgiveness

# Updates on Legislation to Help Businesses



Panelist: Aman Badyal

# Paycheck Protection Program

- Loans available to businesses with less than 500 employees as well as self-employed individuals.
  - Employee cap applied on a per location basis for restaurants.
- Loan amounts equal to:
  - $2.5 \times$  monthly U.S. “Payroll Costs” (capped at \$100k/employee).
  - + Outstanding principal of any Economic Injury Disaster Loan.
  - Maximum loan amount of \$10M.
- No personal guarantees or collateral required.
- Funds must be used for: payroll, rent, utilities and/or interest payments on mortgages or other debt incurred before February 15, 2020.
- 2-year term, 1% interest, no payments for 6 months.

# PPP Loan Forgiveness

- Funds used for payroll, rent, mortgage, utilities are eligible for forgiveness.
- Amount of loan forgiveness reduced by the amount of any reduction in full-time equivalent employees or a greater than 25% reduction in salaries/wages.
- If you have already reduced employment or wages, you can re-hire prior to June 30, 2020 and receive full loan forgiveness.
  - However, you must spend at least 75% of loan amount on payroll.

# Other SBA Loan Programs

## Economic Injury Disaster Loan

- 3.75% Interest Rate for small businesses. Up to 30-year maturity.
- Up to \$2M Loan Amount.
- No personal guarantees required if loan amounts is less than \$200,000.
- \$10,000 Grant available within 3 days of application.

## SBA Express Loans

- Funds distributed within 36 hours; up to \$1M loan amount.

# Conclusions and Next Steps

1. Raise as much liquidity as possible (Cost Savings, Bank facility, Merchant Credit, etc.)
2. Apply for a PPP Loan. First Come First Serve.
3. Educate yourself and consult your advisors
  - Weintraub Tobin Resource Hub  
<https://www.weintraub.com/covid-19-resources>
  - SBA, <https://www.sba.gov/disaster-assistance/coronavirus-covid-19>

# Conclusions and Next Steps (pt 2)

4. Assess your company new obligations under the CARES Act and state law (i.e. Sick Pay, etc.)
5. Communicate a clear plan to all stakeholders (i.e. employees, customers, banks, insurers, etc.)

# Questions?



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## CRA Helpline

800.765.4842 ext. 2743 or email [helpline@calrest.org](mailto:helpline@calrest.org)

## Resources:

<https://www.calrest.org/coronavirus-resources>

<https://www.weintraub.com/covid-19-resources>